

# **An academic study of the Universal Periodic Review (UPR) from the perspective of Children's Rights**

*(An analysis of the effectiveness of the UPR as a mechanism for promoting  
and protecting human rights, with the focus on children's rights)*



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## Acronyms

ASEAN	Association of Southeast Asian Nations
BOC	Norwegian Ombudsman for Children
CEDAW	Convention for the Elimination of Discrimination Against Women
CO	Concluding Observations
CPR	Civil and Political Rights
CR	Child Rights
CRC	Convention on the Rights of the Child
DRC	Democratic Republic of Congo
ESCR	Economic, Social and Cultural Rights
FGM	Female Genital Mutilation
GRULAC	Group of Latin American and Caribbean States
HIV/AIDS	Human immunodeficiency virus infection / acquired immunodeficiency syndrome
HRC	Human Rights Council
ICMRW	International Convention on the Protection of All Migrant Workers and Their Families
IMF	International Monetary Fund
ISHR	International Service for Human Rights
NAM	Non-Aligned Movement of States
NCHR	Norwegian Centre for Human Rights
NGO	Non-Government Organization
NHRC	National Human Rights Commission
NHRI	National Human Rights Institution
OHCHR	Office of the High Commissioner for Human Rights
OP-AC	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
OP-CAT	Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
SAHRC	South African Human Rights Commission
SuR	State under review
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNPO	Unrepresented Nations and Peoples Organization
UPE	Universal Primary Education
UPR	Universal Periodic Review
USA	United States of America
WEOG	Western European and Other States Group

## Executive Summary

*"There can be no keener revelation of a society's soul than the way in which it treats its children."* (Nelson Mandela, former president of South Africa)

\* \* \*

The thesis undertakes a study of the Universal Periodic Review (UPR) from the perspective of children's rights. The UPR is a new mechanism of the Human Rights Council (HRC), based in Geneva. The study analyses the effectiveness of the UPR as a mechanism for promoting and protecting human rights, with the focus on children's rights.

The genius of the UPR is that it is a relatively quick mechanism, it is universal, i.e. every state is reviewed, and that it embraces three main actors: the states themselves, UN treaty bodies, and civil society, including NHRIs and NGOs, in an open and transparent manner.

With the completion of the first cycle of the UPR and the first group of states just finishing their second review, it is timely to consider how effective the UPR has been. The main body of the research examines children's rights within the UPR system as a whole - noting trends and issues to see where children's rights fit within the spectrum of other human rights' concerns.

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### 1.0 Summary of the Problem Statement and Research questions

#### 1.1 Problem Statement

The UPR began in 2008 with mixed views about its potential for assisting the HRC to promote and protect human rights around the world. After the UPR's first two or three sessions, though, much of the initial scepticism had dissipated, being replaced with goodwill and commitment, based on the principles of cooperation and dialogue. However, because it is something new, the problem is that no one really knows whether this will be sustained in the long term. The research looks at the evidence available to determine whether this could be so.

#### 1.2 Research Question

The main purpose of this study is to analyse the UPR from the viewpoint of children's rights with this question in mind: *"Will children be better off as a result of the UPR?"* On the whole, children's rights are considered to be politically safe compared to other more sensitive and politically charged human rights topics such as the death penalty, torture or freedom of speech. At first glance, the UPR has shown promising signs for improving children's rights on the ground. Will this be verified by the research?

This new mechanism appears to offer good opportunities for children's rights to be promoted. Will this really happen? Will the UPR provide extra impetus for the realization of children's rights around the globe? What real difference has the UPR made so far and what is its potential for the future? These are some of the questions that are at the centre of this study.

\* \* \*

## **2.0 Summary of Methodology**

The model used for this paper was to examine other bodies of research on the UPR, to use the official UN documents of the UPR, analyse data collected on *UPR Info*'s database ([www.upr-info.org](http://www.upr-info.org)) and to conduct interviews among various experts within the UPR process.

### **2.1 Methodological Context**

In summarizing her article on *Public Policies and Child Rights: Entering the Third Decade of the Convention on the Rights of the Child*, Marta Murras (2011) writes:

After 20 years of implementation of the Convention on the Rights of the Child (CRC), it is increasingly clear that states bear the responsibility to promote, guarantee, respect, and fulfil the realization of children's rights by all members of the national and international communities. An initial emphasis on legal reforms to adapt national law to the CRC – absolutely necessary but not sufficient – need to give space to changes in other important areas of public action: economic policy, and financing; social policy and administration; and public participation, including that of children.

It is within this context that the research for this thesis has been conducted, namely to examine the UPR so as to determine how it has promoted and protected children's rights thus far and what is its potential for the future. Essentially the UPR is a political forum whereby human rights issues are raised through a 'peer review' system. If the political will is there, then the public actions and reforms expressed by Murras will follow. If, however, the political will is not there, then very little will change. This research examines the UPR to see what recommendations about children are being put to states and what follow up has happened. Four states were singled out for this evaluation.

### **2.2 Methods**

The research method was to use four main sources to collect data: (1) official UN documents, (2) other research studies, (3) the database of the NGO '*UPR Info*', and (4) interviews with eight actors from within the UPR's process. Internet searches were also carried out to access more general information about the UPR.

### **2.3 Qualitative and Quantitative Data Collection and Analysis**

The qualitative data came mostly from those interviewed and also from documents of the UPR such as mid-term reports, reports of the Working Group on various states, and national reports. The interviewees were chosen from different sectors of the UPR so as to provide a range of views on the UPR and how children's rights feature in it. The official UN documents of the UPR provided information on specific recommendations about children and their rights and showed the type of issues that were being raised. The wording of the recommendations was also significant, as to whether they led to no significant action or whether they called for specific and detailed follow up by the State. Mid-term reports provided informed opinions both from the State under Review and from others about the follow-up phase.

The quantitative data came from the database of *UPR Info* and the reports of the Working Group for the states. *UPR Info*'s database provided a collection of figures that could be analyzed and tabulated. For example, it enabled the development of a numerical summary of



recommendations in the 1st cycle of the UPR, a listing the top five states that received the most recommendations, the top five 'recommending states' and the top five human rights issues of UPR. The database also allowed for a similar analysis with regards children's rights and to determine how frequently they were raised in comparison to other rights.

Whilst *UPR Info's* database provided information on the entire 1st cycle of the UPR, it did not do so for the 13th Session, i.e. the first round of the 2nd cycle, and so this data was collected manually. The same criteria was used as that by *UPR Info* in categorizing a recommendation as a Child Right.

Four states were examined in detail for reasons given below, with emphasis on the follow-up phase of the UPR.

## **2.4 Limitations**

As the UPR is still in its early days, material available for research is limited. However, the first cycle of the UPR concluded in October 2011 with all 193 states being reviewed. This has provided sufficient data to consider emerging trends and issues. Now that the first group of states have just completed a full cycle and have been reviewed for a second time, there is information available to examine what actions governments have undertaken on the recommendations they accepted at their first review. This consideration is conducted through the lens of children's rights. In particular, four states with the highest number of children's rights recommendations from the first review have been singled out for special scrutiny, namely the United Kingdom, South Africa, Netherlands and the Philippines.

\* \* \*

## **3.0 Summary of the Main Body of Research**

The research section of the paper begins by looking at children's rights within the political domain of the UPR. Children's rights are but one category of rights among many others. How do they compete? Politics and economy are intricately linked and, depending on a government's views about children, this may influence how it responds to children's rights both politically and in the nation's budget. Do children get a fair hearing at the UPR or are they sidelined because of other more pressing human rights concerns or development priorities?

To consider this question, images of childhood were considered to inform on how different images may impact on the way states could respond to recommendations put to them. To give an example of other possible influences, cultural relativism is examined alongside universalism to ascertain whether cultural relativist states respond differently to the more dominant universalist view of children's rights.

The paper then considers the purpose and function of the UPR and provides a commentary on its performance in the 1st cycle, including a response to the question: "How seriously are states taking the UPR?" In scrutinizing the UPR, a number of strengths as well as weaknesses are identified, some of which have been picked up in the HRC's review of the UPR in 2011. The role of NGOs in Phase 4 of the UPR is highlighted.

Following this, the paper investigates the question 'how well do children's rights fare in the UPR?' It identifies the top ten states that have been championing children's rights during the 1st cycle. The quality of recommendations is then considered, ranging from those that are very

general to those that are sharp and call for specific actions from the SuR. The proportion of children's rights accepted, rejected or 'no clear position taken' is noted, as well as a comparison between the number of Child Rights recommendations from the 1st Session and those at the 13th Session for the same states.

A major aspect of the research examines the four states named earlier with regards to the follow up that has occurred on children's rights since their first review.

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## **4.0 Summary of Main Findings**

There are two areas considered here, firstly the UPR mechanism itself and then how children's rights fare under this mechanism.

### **4.1 Main findings about the UPR Mechanism**

The research highlights a number of findings. First of all there are several findings about the UPR mechanism itself in relation to the problem statement: Are states taking it seriously and can the initial momentum be maintained? Evidence for the latter is limited. In terms of the mechanism itself, the following conclusions have been drawn:

- a. The UPR is being taken seriously.
- b. The way it has been structured has helped make the process a success, thus far.
- c. Quantity and clustering – although the quantity of recommendations is high for many states, clustering the recommendations together where they are making the same recommendation has made the large number of recommendations more manageable.
- d. Quality - the quality of recommendations often leaves much to be desired. More need to have greater clarity and lead to specific actions in their follow-up.
- e. Under the UPR system, the number of times a recommendation is raised does not give extra weight to its force. Recommendations only need to be raised once for the issue to be considered by the State. This is a positive aspect of the mechanism.
- f. Accountability - a weakness in the system is that states do not have to explain the recommendations they do not accept.
- g. Mid-term reporting – where it happens, it shows that a state is taking the follow up seriously, although only a handful of states have acted on this invitation so far. It also provides an opportunity for NGOs and other bodies to monitor a state. It is something that could be suggested as a compulsory element to the modalities as it would help improve the outcomes of the recommendations. NGOs and NHRIs are also encouraged to submit mid-term reports to provide an alternative viewpoint.
- h. The UPR is still relatively unknown by the general public - more needs to be done to publicize the mechanism.

- i. NGOs and NHRIs play very significant roles in promoting human rights at the UPR. On their part, Children's Rights NGOs can take up their issues about children to help ensure that children get a fair hearing at the UPR.

#### **4.2 Children's rights within the UPR**

The following findings about children's rights at the UPR are presented:

- a. Children's rights have performed strongly in the 1st cycle.
- b. Regional differences - African states attract more of their equal share of children's recommendations and make fewer recommendations in return. Whereas the reverse is the case for the Western European and Other Group of States (WEOG), who receive a small proportion of Child Rights recommendations yet put out the highest number in comparison to any other group of states.
- c. Child Rights are country-specific – Child Rights issues are not spread evenly across the board but particular issues are targeted towards individual states. This is a significant finding as it shows that where there are children's rights abuses, the international community is aware and is using the UPR mechanism to encourage the state to attend to them.
- d. Actionable recommendations - only 32.5% of all children's rights recommendations call for clear responses from states that can be easily measured. This finding invites states, NGOs, NHRIs and UN bodies to push for more tightly worded recommendations in future UPR sessions.
- e. Some states prioritize children's rights over others. Results of the research have yielded a list of the top ten states that have championed children's rights in the 1st cycle. This information should be helpful to NGOs for lobbying states on their issues about children.
- f. The number of children's rights in the 13th Session are higher than the average number over the last half of the 1st cycle. This is a strong indication that children's rights are firmly on the UPR agenda and that the future of children's rights under the UPR is promising.

#### **4.3 The Follow-up Phase**

The scrutiny given to the four states in this research has shown that each state has made efforts to take action on the Child Rights recommendations put to them at their UPR in 2008. Each reported in either their national report for their second review, or during the review itself, or both, on actions taken. To that extent, and in conjunction with the findings listed above, one can conclude that under the UPR children are better off - but the effort has to be sustained.

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## CHAPTER I

### International Human Rights Mechanisms and Children's Rights

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#### Chapter Summary

This chapter introduces the topic of the research undertaken, namely an examination of the Universal Periodic Review (UPR) as a UN mechanism that has the potential to hasten the implementation of children's rights by those states that are party to the Convention on the Rights of the Child (CRC). The chapter begins with a brief introduction to the Human Rights Council (HRC), a subsidiary organ to the General Assembly of the United Nations, and places the question of children's rights within the framework of the HRC's new mechanism for promoting human rights, namely the Universal Periodic Review. The chapter goes on to consider the problem statement as to whether the UPR will be taken seriously by Member States. Further to this, the research question is posed to give focus for the research. The remainder of the chapter provides a detailed explanation of the UPR and finishes by highlighting ways in which non-government organizations (NGOs) can engage with it.

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The subject of this research is Children's Rights, situated within the context of the Universal Periodic Review (UPR). To understand the mechanism of the UPR first one must look at the Human Rights Council (HRC) to explain why and how this mechanism was instituted.

#### 1.1 Institution of the Human Rights Council

In 1945 the *United Nations* (UN) replaced the *League of Nations* which had failed its primary purpose of preventing major world conflicts. At the end of the Second World War 51 countries, the inaugural group of United Nations, committed to maintain international peace and security, develop friendly relations among nations and to promote social progress, better living standards and human rights ([http://en.wikipedia.org/wiki/United\\_Nations](http://en.wikipedia.org/wiki/United_Nations)). Today, the UN membership stands at 193 countries<sup>1</sup>, virtually every country in the world. The main organization within the UN that monitors human rights and violations against human rights is the HRC.

On 15<sup>th</sup> March 2006 the General Assembly of the United Nations instituted the *Human Rights Council* (General Assembly resolution 60/251, 2006) as a subsidiary organ of the General Assembly, replacing the *Human Rights Commission* which up to that time had the role of examining and monitoring human rights concerns. However, as Salama (2009) notes, it did this on a selective country-by-country basis and became discredited by its perceived politicisation,

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<sup>1</sup> South Sudan is the latest member state to join the UN in 2011

which hindered constructive dialogue on human rights issues. The main purpose of this new body, the HRC, is to

be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner [and to] address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon. It should also promote the effective coordination and the mainstreaming of human rights within the United Nations system. (UN General Assembly Resolution, 2006, A/60/251)

Essentially, its aim is to prevent abuses, inequity and discrimination, to protect the most vulnerable, ensure all human rights and fundamental freedoms are being respected and to expose perpetrators. Rathgeber (2012) remarks that “critical observers often viewed the HRC in its first years as a body that functioned with a rather state-oriented perspective, following particular political national considerations and reflecting likeminded alliances among its membership.” However, he claims that there was an improved performance, notable by late 2010, towards making states accept, in principle, the legitimacy of discussing, reporting, and monitoring their behaviour in relation to human rights. He attributes this improvement in no small way to the new mechanism of the UPR.

In terms of practicalities the HRC is based in Geneva and meets for 10 weeks each year over 3 sessions. General Assembly Resolution 60/251 defines its composition to be 47 elected UN Member States which serve for an initial term of 3 years and cannot be elected for more than two consecutive terms. It is based on equitable geographic distribution, namely 13 seats for African States, 13 seats for Asian States, 8 seats for Latin American and Caribbean States, 6 seats for Eastern European States and 7 seats for Western European and other States (<http://www.ohchr.org/EN/HRBodies/HRC/Pages/Membership.aspx>).

\* \* \*

## **1.2 The UPR: A new mechanism for monitoring and promoting human rights**

The same General Assembly resolution 60/251 of 15 March 2006, which created the Human Rights Council, also mandated the Council to

undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country and with consideration given to its capacity-building needs; such a mechanism shall compliment and not duplicate the work of treaty bodies.

On 18 June 2007, one year after holding its first meeting, the HRC adopted its “[Institution-building package](#)” (The Office of the High Commissioner for Human Rights [OHCHR], 2007, A/HRC/RES/5/1) which provided elements to guide its future work. The UPR was one instrument in this new package, a mechanism which assesses the human rights situations in all 193 Member States of the United Nations. However, Sen (2009) emphasizes that it should be regarded not just as a mechanism which takes place in Geneva but as a process as well, which

is a much larger and longer project that begins before the Geneva element and extends considerably beyond it. Sen (2011) regards the UPR as the 'flagship' mechanism of the HRC in helping it attain the aim of promoting and protecting human rights universally. It is a state-driven process and gives every state the opportunity to declare what has achieved with regards to implementing its human rights obligations, including those of the treaties and conventions it has ratified and to inform about future challenges it faces in these areas.

Within the framework of human rights' monitoring, children come in for special attention because of their inherent vulnerability. They have claim to special rights. These rights were pronounced in a UN treaty passed by the General Assembly in New York on 20th November 1989 and came into force a little less than a year later after receiving the required twenty ratifications or accessions. Since then nearly every country in the world has ratified this Convention, the Convention on the Rights of the Child (hereinafter CRC). However, Verhellen (2006) attests that the debate on the distinction between human rights and children's rights is still in its infancy. Nonetheless, children's rights as a unique category of human rights are well recognized within the UN system.

The intention of this research paper, then, is to examine what influence the United Nations has on improving respect for children's rights around the world, using the HRC's Universal Periodic Review as its focus.

Whilst the CRC is the most widely ratified convention, its implementation still leaves much to be desired in many countries. The Committee on the Rights of the Child is the body that oversees its implementation through regular country reviews and it is clear from its reports that much is still to be done to fully implement the rights of children around the world. In fact the Committee on the Rights of the Child has produced a document, General Comment No. 2, to encourage State parties to establish an independent institution for the promotion and monitoring of implementation of the Convention so as to support it in this regard (CRC Committee, 2002, CRC/GC/2002/2). This is but one step towards helping monitor and improve the situation of children's rights in every country. The HRC's UPR brings another opportunity for this to happen.

\* \* \*

### **1.3 Problem Statement**

According to Sen (2009), the UPR began with a mixture of optimism and suspicion, a period of some uncertainty, lack of familiarity, learning, frankness, defensiveness, hope, optimism, relief and much more. In the first year, she notes, "there was understandable scepticism from several quarters before the UPR started and in its very early days there was suspicion that powerful countries would somehow avoid a meaningful critique and that the 'usual suspects' would be the focus of attention" (Sen). However, informal conversations with many stakeholders, she adds, suggest strongly that much of the scepticism has dissipated, being replaced with goodwill and commitment.

On the face of it, it appears that this new mechanism has the potential for championing human rights in a way that has not been seen before – a universal and even-handed approach, conducted in a spirit of cooperation and dialogue, with states monitoring states about their human rights situations. Whilst signs are encouraging, can the momentum and the 'goodwill' be sustained? Will it be taken seriously in the long term? The problem is that no one really knows at this point in time.

Now that the UPR has just completed the full cycle for the first group of states, there is sufficient material available to make an initial investigation on its effectiveness. Has there been serious follow up by these states or have they been slow to take action on the promises made at their first review? The research considers this question from the perspective of children's rights, through the lens of those recommendations put to them in 2008.

More pertinently, this research examines children's rights within the UPR system as a whole - noting trends and issues to see where children's rights fit within the spectrum of other human rights issues and what priority they hold. Do children's rights get a fair share of 'airplay' or are they pushed into the background, giving precedence to more pressing human rights' concerns?

\* \* \*

#### **1.4 Research Question**

The purpose of this study is to analyse the UPR from the viewpoint of children's rights with this question in mind: "*Will children's rights be better promoted and protected as a result of the UPR, and as a result, will children be better off?*" Several of those interviewed for this research commented that children's rights are regarded as politically 'safe' compared to other more sensitive and politically charged human rights topics. At first glance the UPR seems to offer promising potential for improving children's rights on the ground. Will this be verified by the research?

This new mechanism of the HRC offers the opportunity for children's rights to be promoted within the political and diplomatic context of the UPR. Will this really happen? Will the UPR provide extra impetus for the realization of children's rights around the globe? What real difference has the UPR made so far and what is its potential for the future? These are some of the questions that are at the centre of this study.

The UPR is still in its early days but having now completed the first cycle, there is sufficient data available to make an assessment of emerging trends and issues. Fourteen states have recently been reviewed for the second time and so they can be considered in some detail, particularly on what follow up has happened since their first review. This is done through the lens of children's rights. These fourteen States are Morocco, South Africa, Tunisia, Algeria, Bahrain, India, Indonesia, Philippines, Poland, Ecuador, Brazil, Netherlands, Finland and the United Kingdom. The United Kingdom, South Africa, Netherlands and the Philippines come in for special scrutiny to see if children will be better off under the UPR<sup>2</sup>.

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#### **1.5 The Universal Periodic Review (UPR)**

Given that the UPR is the focus of this research, it is relevant to introduce it here and to explain in some detail how it works.

##### **1.5.1 An Introduction to the UPR**

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<sup>2</sup> See Chapter II for an explanation as to why these four States were selected.

The UPR is a unique mechanism whereby all 193 member States of the United Nations are reviewed by the 'Working Group', composed of the 47 members of the HRC (OHCHR, 2007, A/HRC/RES/5/1). The remaining 146 'observer' states can also participate in the review on an equal footing with those in the Working Group, although at the review itself they may get less time to speak to the State under Review (SuR) than members of the Working Group. In other words, the UPR is a *peer review*: states reviewing states.

#### 1.5.1.1 The Troika.

Each State reviewed is assisted by a group of three states, known as the "troika", which serves as a rapporteur. The trioka assists the SuR in its preparation for the Review, questions in advance proposed by states are passed on to the SuR via the troika and the troika is responsible for overseeing the writing of the draft report of the review. The selection of troikas for state reviews is done through the drawing of lots prior to each Working Group session. The SuR can reject a state drawn to form the troika for their review and ask for another draw.

#### 1.5.1.2 Modalities of the UPR.

The UPR is simple in structure and egalitarian in nature. All states, no matter how small or big, are subjected to exactly the same process for their review. The uniqueness is that every state is reviewed during the cycle, (hence the name 'universal'), and the review comes around cyclically every 4½ years (hence the term 'periodic'). The 1st cycle occurred over 4 year period, but after a review of the process by the HRC in 2011, it was extended to 4½ years as per the HRC Resolution A/HRC/RES/16/21 (2011) along with other changes decided on by the HRC (OHCHR, 2011, A/HRC/DEC/17/119), notably:

- the second and subsequent cycles will last 4.5 year;
- the order of review established for the first cycle of the review shall remain the same;
- there will be 14 sessions per cycle<sup>3</sup>;
- only 14 States will be reviewed per session;
- each review will last 3.5 hours and the State under Review (SuR) will be given 70 minutes with the other states allotted 140 minutes in total..

Further amendments were made whereby "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" (OHCHR, 2011, A/HCR/RES/16/21). Furthermore all States will have the opportunity to take the floor which was not the case during the 1st cycle. Previously, members of the Working Group were allotted 3 minutes to address the SuR and observer states were given 2 minutes. This meant that only around 55 to 60 states could take the floor during the allotted time, thus denying input from other states that may have registered to speak. Under the changes for the second and subsequent rounds, all states have the opportunity to address the SuR. If needs be, the time per delegation will be reduced to two minutes or otherwise the 140 minutes will be divided by the number of speakers. To determine the order of the speakers' list "States will be arranged in English alphabetical order and the beginning of the list will be drawn by lot. However, States can swap place by mutual agreement" (OHCHR, 2011, A/HRC/DEC/17/119).

All these changes for the 2nd cycle have been well received as they have addressed a number of concerns that surfaced during the 1st cycle. Particularly welcomed has been the new

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<sup>3</sup> In the 1st cycle there were 12 sessions with 16 states reviewed in each session. See Appendix 5 for the full list of states for the 1st Cycle and Appendix 6 for the 2nd Cycle.



modality for the speakers' list, which now prevents stacking the list with 'friendly' states and also all delegations wishing to speak can now do so, which was not the case in the 1st cycle, albeit their time may be somewhat reduced.

Another modification to the modality of the UPR is that states are encouraged to provide a mid-term report to the HRC on the accepted recommendations, although this is to be voluntary (OHCHR, 2011, A/HRC/RES/16/21).

### **1.5.2 Review Instruments and Objectives of the UPR**

The UPR is a review of a state's performance regarding the protection and implementation of human rights in its territory, hence the following instruments form the basis on which the review is conducted:

- (a) the Charter of the United Nations (i.e. all UN member states must comply with the charter to maintain peace and security, develop friendly relations between nations, promote international cooperation and encourage respect for human rights and fundamental freedoms without discrimination);
- (b) the Universal Declaration of Human Rights (UDHR);
- (c) the human rights instruments to which a state is party (such as the Convention on the Rights of the Child);
- (d) voluntary pledges and commitments made by states, including those undertaken when presenting their candidatures for election to the HRC
- (e) applicable international humanitarian law (OHCHR, 2006, A/HRC/RES/5/1).

Objectives of the UPR are:

- (a) the improvement of the human rights situation on the ground;
- (b) the fulfilment of the State's human rights obligations and commitments and assessment of positive developments and challenges faced by the State;
- (c) the enhancement of the State's capacity and of technical assistance, in consultation with, and with the consent of, the State concerned;
- (d) the sharing of best practice among states and other stakeholders;
- (e) support for cooperation in the promotion and protection of human rights;
- (f) the encouragement of full cooperation and engagement with the HRC, other human rights bodies and the Office of the United Nations High Commissioner for Human Rights. (OHCHR, 2006, A/HRC/RES/5/1)

The UPR is a simple, tight and well orchestrated mechanism – and the genius of this points to its potential success.

### **1.5.3 The 4 phases of the UPR**

The Annex to Human Rights Resolution 5.1 (OHCHR, 2006, A/HRC/RES/5/1) details the modalities for the four phases of the UPR. They are summarized here.

#### **PHASE 1: Preparation of Reports**

There are three official documents to be prepared for a state's review. The first is the report from the SuR. This report is compiled by the State, in consultation with civil society, on its human rights performance as well as the challenges it faces in fulfilling its human rights obligations. Here the State can identify where it may need some assistance from other states to

help with the implementation, either financially or through technical assistance. The size of this report is limited to around 20 pages.

The second document is a compilation prepared by the Office of the High Commissioner for Human Rights (OHCHR) by United Nations bodies containing information from Treaty Bodies, Special Procedures, and other relevant official UN Documents. This report is limited to approximately 10 pages.

A third document is a summary by the OHCHR containing information provided by submissions from various stake holders such as national human rights institutions, Non-government organizations, human rights defenders, academic institutions and other sectors of civil society. This also is limited to around 10 pages.

### **PHASE 2: The Examination (Interactive Dialogue)**

This is the review itself. It is an interactive dialogue between the SuR and other states and is confined to a 3.5 hour limit. The SuR makes an initial presentation on the human rights situation and may also reply to questions put to it by other states prior to the review. It also has to opportunity to present voluntary pledges or commitments, including those undertaken when presenting their candidature for election to the Human Rights Council.

Participating states pose questions about the implementation of human rights and make recommendations to the SuR in order to address the challenges it faces. At the conclusion of this interactive dialogue a 20 pages report is prepared, containing a summary of the discussions and a list of all the recommendations put to the SuR.

The SuR then has the obligation to give its opinion on these recommendations, stating those it accepts and those it does not. This must be done at or prior to the third phase of the review. Without doubt this is one of the strong points of the review. In fact, rejecting a recommendation publicly can sometimes be embarrassing, whilst undertaking to implement it means that the State will later have to give an account as to what it has done to keep its word.

### **PHASE 3: Adoption of the Report**

Two or three months later, during a regular session of the Human Rights Council, the draft UPR report for the SuR is adopted. One hour is given to this phase during which the SuR responds further to the questions and recommendations posed during the Interactive Dialogue. If not already done, it declares its position on the recommendations received, identifying those which enjoy the support of the State. In the words of the Resolution: "Other recommendations, together with the comments of the State concerned thereon, will be noted. Both will be included in the outcome report to be adopted by the Council" (OHCHR, 2006, A/HRC/RES/5/1).

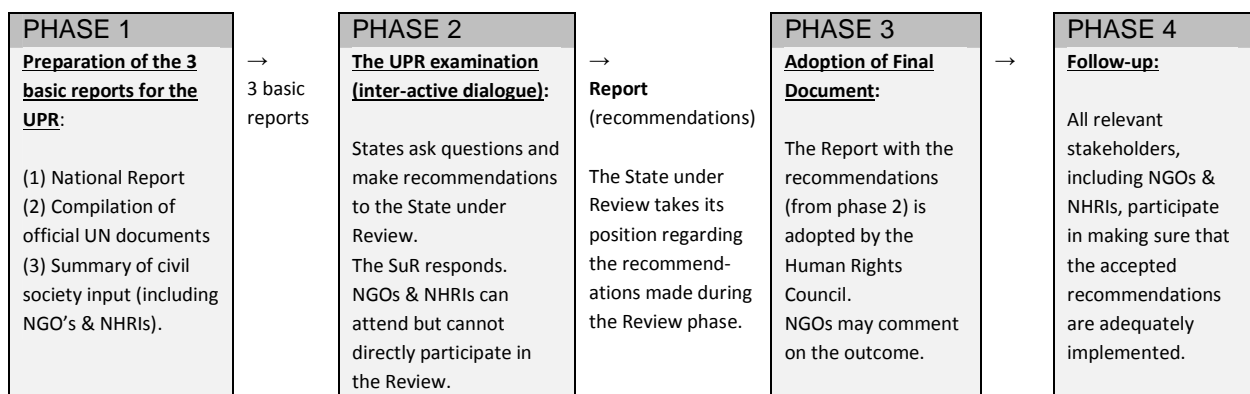
During the allotted one hour given to this phase, states that participated in the review as well as civil society are given time to express their views on the process. This is the only occasion in the process that NGOs can speak at the review to express their views on the recommendations accepted or rejected by the SuR.

## PHASE 4: The follow-up

This is the 4½ year time span between reviews. The SuR has the responsibility to implement the recommendations it accepted at its review. It is an opportunity for recommending states that had their recommendations accepted to monitor their implementation. NGOs also have a role to monitor the State and, if the opportunity arises, to work cooperatively with the State during the implementation phase.

Many have commented that this is the weakest phase of the UPR as it has no structure to guide the State, other than the suggestion to provide a mid-term report to the HRC.

The following diagram summarizes the four phases of the UPR.



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## 1.6 UPR Voluntary Fund for Financial and Technical Assistance

Another aspect to the UPR is its Voluntary Fund for financial and technical assistance for states needing help. In 2007 the HRC established this new financial mechanism called the *Voluntary Fund for Financial and Technical Assistance* (OHCHR, 2007, A/HRC/RES/6/17) with a view to provide, in conjunction with multilateral funding mechanisms, a source of financial and technical assistance to help countries implement recommendations coming out of the UPR, in consultation with, and with the consent of, the country concerned. The OHCHR, the coordinator of the Voluntary Fund, recorded 67 states requesting assistance by the end of the first cycle (<http://www.ohchr.org/EN/HRBodies/UPR/Documents/VPUFinancialRequest.pdf>).

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## 1.7 The Role of NGOs in the UPR Process

NGOs are singled out for special mention here because the UPR is unique in that it gives recognition for NGO participation in the process, unlike many other human rights monitoring mechanisms (OHCHR, 2006, A/HRC/5/1).

Those interviewed for this research were asked: "How significant is NGO participation in the UPR?" All were extremely positive in their response. In fact they regarded NGO involvement

as absolutely vital for the success of the UPR. A summary of their responses to this question can be found in Appendix 2.

With respect to NGOs, Salama (2009) notes that a unique feature of the UPR is its three-dimensional approach to reviewing human rights on the ground: the State under Review (SuR) gives its own assessment in a national report, UN treaty bodies provide information and recommendations in another report, and civil society can do the same in a third report. Salama's view is that these features make the UPR an unprecedented system of monitoring compliance with human rights obligations. Whilst other UN monitoring mechanisms are carried out by a team of experts, such as with treaties, or by special rapporteurs, with the UPR civil society gets a seat at the table as well. What follows is a brief look at how non-government organizations (NGOs) can take advantage of this opportunity.

Although the UPR is a state-driven exercise and despite a limited role during the interactive dialogue (Phase 2), NGOs have many opportunities to participate and to influence the UPR process. Six ways of doing this are listed here:

1. engage in national consultations held by the SuR as it prepares its national report;
2. provide information on the human rights situation in the country through a report of their own which is summarized in the 3<sup>rd</sup> official document of the Review;
3. lobby participating states through their embassies in the country of the SuR and through their permanent missions in Geneva one or two months prior to the interactive dialogue phase;
4. take the floor at the Human Rights Council during the adoption of the report;
5. monitor the implementation by the SuR of the UPR recommendations accepted and participate in a cooperative manner with the State concerned; and
6. encourage recommending states to monitor their own recommendations put to the SuR during phase 4 of the UPR.

An example of how NGOs can become involved in another way is demonstrated by the initiative of *UPR Info* (an NGO established solely to monitor the UPR) to organize a series of Pre-Session UPR meetings for NGOs to present their submissions to representatives from permanent missions in Geneva. The first of these meetings was held prior to Session 13 in March-April 2012. *UPR Info* extended an open invitation to all states to attend and several took up the invitation. The initiative was a success and so was repeated once again in August 2012 for 14th Session of the UPR. At that series of meetings an average of fourteen or fifteen representatives from permanent missions attended to hear from a group of NGOs.

Another opportunity for NGOs to make their issues known is to conduct 'side-events' during the Review sessions, although ISHR's Quarterly (2012, 2) claims that only a few NGOs have taken up this opportunity to date. The Quarterly says that these side events can assist delegations with extra information to help them make last minute adjustments to their statements on the floor of the UPR meeting room. The Quarterly article was critical about the lack of promotion these events have received and hence have had limited attendance. Yet they claim such side-events can provide a useful context and background to the formal review. The Quarterly article commented that NGOs underutilize the media to inform the wider public about the UPR, particularly when it is in session.

Appendix 1 provides a diagrammatic timeline for NGO involvement with the UPR.

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## CHAPTER II

### Methodology for engaging in research on Child Rights in the UPR

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#### Chapter Summary

Chapter II outlines the methodology used in this research. The context of the field of study is presented, namely a study of the UPR from the perspective of Children's Rights and both the problem statement and the research question are re-introduced. It presents the concept design and methodological context for the research and the methods used. The tools and research material for the study were official UN documentation around the UPR, literary works of other scholars and the database of *UPR Info*, an NGO established to track the development of the UPR. The final section to this chapter details the various methods used for gathering the qualitative and quantitative data and their analysis. The concluding paragraph notes the constraints and limits for this study.

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#### 2.1 Background Information

In 2007, as part of its 'Institution-building' package, the Human Rights Council established the *Universal Periodic Review*, a peer review system where states review the human rights record of other UN member states. It is unique both in structure and process since it is based on a 'peer review' system and it brings three groups of actors together for this review, namely the states themselves, UN bodies such as Treaty Monitoring Bodies and Special Rapporteurs, and the third party is civil society. The rules for the review are the same for every state, no matter its size or political influence (OHCHR, 2007, A/HRC/RES/5/1).

There are no legal obligations as such imposed by the UPR mechanism for states to accept any of the recommendations put to them. Such obligations lie outside the UPR. They are found in treaties, conventions and other human rights obligations to which they are a party. Salama (2009) praises the mechanism through his observation that "for the first time, the UPR brings together the right to criticise and an obligation to co-operate on practical steps to establishing better human rights in a given country". The UPR has thus brought into play a new dimension to the realization of human rights around the world.

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#### 2.2 Research Design

The UPR was the focus of this research, from the perspective of Children's Rights. With the first cycle of reviews completed, it was the opportune time to analyse the UPR's performance as

a tool of the HRC for “promoting universal respect for the protection of all human rights and fundamental freedoms for all” (UN General Resolution, 2006, A/60/252). The research design for this study was to gather and analyse various sources of information about the UPR. The data source came from documentation generated by the UPR itself, commentaries from various sources about the UPR and a number of research papers that had already been conducted on this new mechanism. These papers provided valuable insights into the UPR and informed the research for this study. To supplement these sources, several people were interviewed in order to collect qualitative data about the UPR. These people came from different sectors of the UPR, namely UPR experts from Permanent Missions in Geneva, representatives of NGOs who have submitted several UPR reports on children’s issues and active in various phases of the UPR process, and a specialist in children’s rights from a UN agency.

The research design was systematic, analysing first of all the UPR as a mechanism of the HRC. Once that had been done, one could turn to collecting data about children’s rights and analyse the UPR from this perspective. The main source of information for this came from the recommendations about children that were proposed at the review sessions of the first cycle and the database of *UPR Info*. The collected data was tabulated and evaluated in order to identify emerging trends or themes. Finally, a more detailed analysis was conducted on four states that had undergone their second review. This yielded data on the follow-up phase and the state’s second review. It enabled an evaluation of what activities had occurred since their first review.

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### **2.3 Methodological Context**

In summarizing her article on *Public Policies and Child Rights: Entering the Third Decade of the Convention on the Rights of the Child*, Marta Murras (2011) writes:

After 20 years of implementation of the Convention on the Rights of the Child (CRC), it is increasingly clear that states bear the responsibility to promote, guarantee, respect, and fulfil the realization of children’s rights by all members of the national and international communities. An initial emphasis on legal reforms to adapt national law to the CRC – absolutely necessary but not sufficient – need to give space to changes in other important areas of public action: economic policy, and financing; social policy and administration; and public participation, including that of children.

It was within this context that research for this thesis was conducted, namely to examine the UPR to determine how it has promoted and protected children’s rights thus far not only through law reforms but also in economic and social policy and administration. The evaluation of the four states yielded data on these areas.

Regarding legislation, Murras (2011) calls for a “bottom-up approach to legislative reform [...] driven by public concerns and an increasing consensus for the protection of children linked to broader policy”. Given that the UPR encourages participation by civil society, the opportunity presents itself for NGOs and NHRIs to embrace a ‘bottom-up’ approach in the promotion of children’s rights at the UPR. NGOs were discussed in this context so as to give an example of how one group from civil society could engage with the UPR.

Another context for the study was the perception of Child Rights, informed by various images of the child and an understanding of childhood. A literary review engaged in an interdisciplinary consideration of several images of the child as proposed by Holzscheiter (2010) and of global childhood or multiple childhoods proposed by Nieuwenhuys (1998). These brought into focus the sense that there are different perceptions or images of both the child and of childhood which could influence how children and Child Rights are viewed around the UPR table. Moreover, a consideration of the child in the political context was included in the study, raising further questions on what may influence a state when considering the rights of children in this particular forum. A discussion on cultural relativism was also considered in order to provide an example of other possible influences and attitudes towards children at the UPR.

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## **2.4 Methods**

Data for the research was collected from five main sources: (1) official UN documents, (2) other research studies, (3) articles written about the UPR, (4) the database of the NGO '*UPR Info*', and (5) interviews. Internet searches were carried out to access general information about the UPR and to download articles on the topic.

### **2.4.1 Official UN Documents**

Information about the institution of the UPR was gleaned from UN General Assembly documents. Data from the reviews of states participating in the UPR was collected by accessing their on-line documents, this included national reports and reports of the Working Group, including 'questions in advance' and addendums to the Working Group reports.

### **2.4.2 Other Research Studies**

Since the UPR is relatively new, not many articles or research documents were available. The following publications and articles were used: Cultural Relativism in the Universal Periodic Review of the Human Rights Council (Roger Blackburn, 2011), Herding Cats and Sheep: Assessing State and Regional Behaviour in the Universal Periodic Review Mechanism on the United Nations Human Rights Council (Edward McMahon, 2010), Universal Periodic Review: The Status of Children's Rights (Ed Renshaw, 2010), and Evaluating the Implementation of UPR Recommendations: A Quantitative Analysis of the Implementation of Nine UN Member States (David Frazier, 2011).

### **2.4.3 UPR Info Database**

*UPR Info* is an NGO dedicated to monitoring the UPR and has the following website: <http://www.upr-info.org/>. It provided an extensive array of material about the UPR, including regular news updates. Its main tool is the database for analysing specific states and sessions of the UPR.

This was the main research tool used to collect quantitative data on themes, trends and specific states, on human rights issues in general, and on children's rights in particular. There was no other database available. This tool placed all human rights issues put at the UPR into 54 categories, the Rights of the Child being one of them.

#### **2.4.4 Interviews**

Eight people were interviewed for this research. This number was considered sufficient to give a range of views from the questions asked in the survey. Those selected were actors from a cross-section of the UPR mechanism and who had shown an interest in Child Rights, namely:

- three representatives from permanent missions in Geneva who are directly involved in the UPR mechanism, including one from a state that has had its second review;
- four from Non-Government Organizations that promote children's rights and who have been active in the UPR process; and
- an expert from one of the UN agencies.

The names of interviewees and the names of the states from which the Permanent Mission representatives came are not used - for reasons of confidentiality. All were asked the same questions so as to obtain different perspectives. A few of the questions put to expert from the UN agency were modified to make them more relevant for that situation. The standard questions posed were these:

1. How seriously are the states taking the UPR? Why so?
2. What or who influences a state about the recommendations it makes?
3. How can this mechanism help promote children's rights?
4. Which states, in your view, favour children's rights in their recommendations? Why is this?
5. What sway do children's rights have in the political debate when competing with other priorities of governments?
6. What are the shortcomings of the UPR?
7. How significant is NGO participation in the UPR process?

The questions were devised to expand on the research question, namely, "Will children's rights be better promoted and protected as a result of the UPR, and as a result, children be better off?" The questions were also designed to help determine how seriously the UPR is being regarded by the different actors and how children's rights were being promoted.

Each interview lasted between 30-40 minutes and the interviews were recorded in writing and for most they were also recorded on tape. Interviewees were provided with these details, along with the questions, in advance of the interview. A summary of their responses is found in Appendix 2.

#### **2.4.5 Qualitative and Quantitative Data Collection and Analysis**

The qualitative data came mostly from those interviewed and also from UPR documents, such as mid-term reports, national reports and reports of the Working Group. The interviewees came from different sectors of the UPR so as to obtain different perspectives on the mechanism and on how children's rights feature in the process. The official UN documents of the UPR provided information on recommendations about children's rights such as the type of issues being raised and the force of the recommendations – namely, whether they were calling for specific actions in concrete, measurable terms, or simply asking the state to continue what it is already doing. Mid-term reports, both from the SuR and others, provided data about the follow-up phase as well.

The quantitative data came from the database of *UPR Info* and the reports of the Working Group. *UPR Info's* database yielded a collection of figures that could be analyzed and



tabulated. For example, it enabled the compilation of a numerical summary of recommendations in the 1st cycle of the UPR, a listing the top five states that received the most recommendations, the top five 'recommending states' and the top five human rights issues raised. The database also enabled an analysis on children's rights such as how frequently they occurred in comparison to other rights.

The *UPR Info* database yielded detailed information on the UPR's entire 1st cycle. Data from the 13th Session, however, was not available on its database and so the data was collected manually, based on the same criteria used by *UPR Info* in categorizing recommendations.

The follow-up stage of four states was analyzed with respect to the rights of children received during the Interactive Dialogue. This was a critical section to the data collection as it provided information on a state's activities since its review. The documents used for this were the Working Group Reports for the States' 1st and 2nd cycle, along with their national report for the second review. Two states produced a mid-term report and these were also used to help determine what action had been taken during the follow-up phase.

#### **2.4.6 Criteria for selecting the four states examined for the Follow-up Phase**

The four states selected for closer scrutiny were the United Kingdom, Netherlands, South Africa and the Philippines. These states were chosen because each had undergone a second review, which meant that they had completed the full cycle of the UPR. Out of the fourteen states to have had their second review, these were the ones that had the most number of children's rights recommendations put to them during the Interactive Dialogue.

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### **2.5 Limitations of the research**

In order to evaluate the effect of the UPR on children's rights it was necessary to undertake an analysis of those states that had completed the full cycle of the review. Fourteen states satisfied this criterion. These were the first group to be reviewed under the UPR system, and as such there were relatively few recommendations put to them in comparison to later reviews. There were even fewer recommendations about children. Consequently there was not a large pool of data to collect and evaluate. Nonetheless, there was sufficient to inform the findings of the research and for a number of conclusions to be drawn.

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## CHAPTER III

### Children's rights in the political forum of the UPR

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#### Chapter Summary

Chapter III looks at children's rights within the political domain of the UPR. How political is the UPR? Professor Edward McMahon's comments respond to this question. Children's rights are but one category of rights among many others. How do they compete? Politics and economy are intricately linked and depending on a government's views on children, may influence how it responds to children's rights both politically and in the nation's budget. If the political will is there, then more than likely the government will find the money to implement the required policies and programs needed to fulfil its obligations towards children.

Do children get a fair hearing at the UPR or are they sidelined because of other more pressing human rights or development priorities? To consider this question, the chapter investigates images of childhood, the global/universal child and multiple childhoods and looks at how these different images may impact on the way that states could respond to recommendations put to them. To give an example of other possible influences, Cultural Relativism is examined alongside Universalism to ascertain whether cultural relativist states respond differently to the more dominant universalist view of children's rights.

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The aim of this chapter is not to enter into a major discourse on children's rights and politics but rather to consider the images of the child in international relations and thus how children's rights stand up against other competing human rights concerns on the floor of the UPR chamber.

#### 3.1 The Language of Children's Rights

The language of rights is a particularly forceful device in both moral and political debate (Birnbacher, 2009). The UPR, being a peer review of states by other states, has provided a welcomed opportunity for human rights, including children's rights, to be promoted by an interactive dialogue that is based on the principles of cooperation and equal treatment of all States, and conducted "in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner" (OHCHR, 2007, A/HRC/RES/5/1). McMahon (2010), in conducting one of the earliest analysis of the UPR makes encouraging statements about its potential for freeing up the 'alliance mentality' that exists, for example, in the General Assembly. He says that "a frequently expressed statement amongst observers and participants in the UPR process is that by 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” (McMahon, 2010)

An inference in McMahon’s comment is that the UPR has the potential of being less political in nature than any other UN mechanism produced thus far, which, presumably, gives greater potential for human rights to be respected and implemented on the ground.

The UPR also at first glance seems to have gained significant moral force for compliance. The fact that not one state has reneged on its review speaks volumes about the peer pressure this new mechanism has generated. Comments made by the representatives of three permanent Missions interviewed for this research support this viewpoint. Many delegations of SuRs have been headed by ministers along with a sizeable team of specialists to assist with the State’s response to questions posed during the interactive dialogue. Sen (2011) notes that the largest Commonwealth delegation was Malaysia with a team of 32 members. Such attention gives support to the view that there is a strong moral force felt by states to ‘perform well’ on the UPR stage.

Within the UPR framework, one could expect children’s rights to hold significant prominence, given the virtual universal ratification of the Convention on the Rights of the Child ([http://en.wikipedia.org/wiki/Convention\\_on\\_the\\_Rights\\_of\\_the\\_Child#cite\\_note-untreaty-0](http://en.wikipedia.org/wiki/Convention_on_the_Rights_of_the_Child#cite_note-untreaty-0)). Does this stand up in practice? Because the main objective of the UPR is to improve human rights on the ground, using the Charter of the United Nations, the UDHR and human rights instruments to which states are party to, then children’s rights certainly have a legitimate place in the review agenda.

Nonetheless, at the political level, children’s rights have to compete with other needs and priorities - both civil and social - especially when it comes down to a financial allocation in a nation’s budget. The debate can be even more intense for poorer countries that experience pressure from powerful international money lenders such as the International Monetary Fund (IMF) and the World Bank, influenced by neo-liberalist ideologies, to prioritize development over social needs (Hart, 2008). Hart claims that

the indebted governments of poorer nations have found themselves on the receiving end of measures imposed by the International Monetary Fund that have often required them to open up their economies to Western capital and to surrender a large degree of control over budgetary allocation, including two areas such as health and education.

In such situations, this cannot be a favourable developing context for the children and their related human rights. Consider the case of Malawi. At its UPR, Malawi rejected several recommendations similar to Mexico’s (“*Make primary education compulsory, in conformity with article 28 of the Convention on the Rights of the Child*”, (OHCHR, 2011, A/HCR/16/4)) that called for both free and compulsory primary education. Yet it accepted softer forms of recommendations that did not insist on education being free and compulsory, such as the one from the Holy See to “*make education one of its top priorities, and reinforce equitable access to higher education - based on academic and educational standards*” (OHCHR, 2011, A/HCR/16/4). Here we see a state caught between the call for legal compliance of article 28 of the CRC, which it has rejected, and the moral pressure to ensure its population is well educated. Without knowing the details of why it rejected the calls for free and compulsory primary education, one can guess that the poverty of the country would be a key factor – it simply cannot afford to do so. Malawi ranks among the world’s most densely populated and

least developed countries and its economy depends on substantial inflows of economic assistance from the IMF, the World Bank and individual donor nations. Since 2009 it has experienced a general shortage of foreign exchange, which has damaged its ability to pay for imports and struggles to pay for major infrastructures within the country such as transport and electricity (Malawi - CIA - The World Factbook, 2012). It seems, then, that Malawi has rejected calls that it knows it will find almost impossible to deliver at this present time but nonetheless it still sees its obligation to improve the situation of education for its citizens. The state's decision to reject free and compulsory primary education appears to be both pragmatic and realistic. We see here the interplay between politics and the economy and perhaps even outside pressures influencing its decisions in this matter.

Hart (2008) contends "the inseparability of politics from economics is central to the notion of political economy". That is to say, he does not see politics and economics as two distinct fields but rather as two aspects of power, the workings of which are bound up in each other. He notes that Jonathan Nitzan and Shimshon Bichler have argued against a dualist or interconnected view of politics and economics but goes on to say that "it takes no great imagination to envisage situations in which the acquisition and exercise of political power involves economic power in some form".

Hart's view is that politics and economics go hand in hand when it comes to policy making and implementation. If there is congruence between political will and the economy, then it is more likely that policies and programs will be implemented. Thus, if children's rights hold prominence with government, it is more likely that they will be properly respected through policies and adequate budgetary allocation.

Before going further, it is pertinent to consider the social construct of childhood with a view to seeing what images of children prevail in the political arena. As already noted, if the image is one that is treasured, the greater is the potentiality for children's rights to be respected. The reverse can be true as well.

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### **3.2 Images of the Child**

Holzschleiter (2010) maps out three historical images of childhood: the *unruly/irrational* child, the *immanent* child and the *innocent* child. The image of the unruly or evil child constructs the child as an immature and irrational human being in terms of morality, sin and guilt, full of mischief and violence whereas parents and public authorities represent the authority to tame these children and to lead them towards a state of reasoned behaviour and civilized conduct.

The image of the immanent child, according to Holzschleiter, can be traced back to the writings of John Locke and his concept of the *immanent child* – "a human being with potential, incomplete, yet-to-be – which is utterly ignorant and unreasonable and moves towards reason while becoming an adult" (Holzschleiter, 2010). In a similar way, Achard refers to Locke's writings, seeing children as "the recipients of an ideal upbringing, citizens in the making, fledgling but imperfect reasoners and blank sheets filled by experience" (Achard, 2004). Holzschleiter says that "both the immanent child and the evil child images share an understanding of children as largely human beings who should be guided towards adulthood, responsibility and rationality as quickly and straightforward as possible".

Concerning these first two images, James (2009) draws our attention to the division often drawn between adult 'human beings' and children 'human becomings', namely that children's lives and activities in the present are envisaged mostly as a preparation for the future:

Prior to the 1970s it was precisely such a view of children that predominated within the social sciences. The study of children as individual social actors was simply not yet part of its agenda and children were studied predominantly as representatives of a category whose significance lay, primarily, in what they reveal about adult life.

James (2009) lays this particular concept of the child as a 'human becoming' at the door of developmental psychology. He notes that the study of children had long been its special province and expertise as far back as the late nineteenth century.

With the third image, that of the innocent child, Holzscheiter (2010) recalls Achard's view that differentiates itself from the first two which considered the child as needing to be guided towards adulthood. This third image looks on the child as 'being' in his/her own right as distinct from the first two that are images of 'becoming'. Achard (2004) calls it "seeing children as children, that is not as adults, and as having certain qualities in virtue of being children". Holzscheiter recalls that this image of 'being' was brought to public awareness particularly by Rousseau through his book *On Education* or *Émile*, first published in 1762, which held the perception that the child was essentially good, angelic and without sins – a reverse view of the first two images which held 'adulthood' as the ideal. Whereas the *innocent* child claims childhood as being the ideal - children are blessed with a natural goodness that is lost in adulthood. Holzscheiter summarizes by noting that "all three images of the child still find their contemporary counterparts in Western societies today."

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### **3.3 Emergence of the child into the international political arena**

A significant milestone, marking the emergence of the child into political awareness, was the Geneva Declaration of the Rights of the Child by the League of Nations in 1924 (<http://www.un-documents.net/gdrc1924.htm>). Whilst, in fact, the Declaration carried no rights of children as such, but rather a list of five principles necessary for the care and protection of children, the fact that its title referred to children's rights brought a new political awareness to the understanding of the child and the image of childhood. Moreover, Holzscheiter (2010) notes that

[c]hildren, in fact, were chosen as the 'most important rallying object of the future work [of the League of Nations] towards international harmony'. This all the more so since children were seen as some kind of neutral terrain on whose protection all State Parties to the League of Nations could agree.

This view that children are seen as 'neutral territory' still holds sway today, providing opportunity for children's rights to be advanced within the political and diplomatic forum of the UPR, particularly when viewed as needing special care and protection. This view is supported by the comments made by several of those interviewed for this research paper. They were asked: "What sway do children's rights have in the political debate when competing with other priorities of governments?" The responses, on the whole, supported the view about neutrality on children's issues:

- Children's rights are politically safe – even safer than women's issues!
- States are much more open to talking about children's rights, they are a safe area to talk about, much safer than hot topics: torture for example.
- There is no hierarchy of human rights in the UPR. Child Rights are on a par with others. It depends on the issues relating to the SuR and the priorities of the recommending state. There is good acceptance of children's rights though.

Children, in general, are regarded as needing special care and attention. They need the protection of the State.

However, along with her other three images of the child already mentioned, Holzscheiter (2010), introduces a fourth image of the child, that of the *evolving* child. Here she notes that this image emerged with the civil rights movement of the late 1960s, where child liberationists brought to the surface the idea that children should be seen as fully-fledged citizens, claiming that children should have control of their own lives and be able to participate in society – not just be seen as objects, but as subjects in their own right. James (2009) refers to this to as a 'paradigm shift' in childhood image and a break with tradition.

At around the same time, Holzscheiter (2010) recalls that there was public outcry regarding the issues of child abuse and neglect within the family, which led to greater intervention in family affairs by government regulatory bodies. Following this intrusion into the privacy of the family, there emerged calls for a greater emancipation of the child and for an active participation in decisions by the child concerning his/her best interests (Holzscheiter). This image brought with it a new dimension to children's rights, a group of rights that includes freedom of expression and involvement in decision-making, that children should be given 'voice' in decisions being made about them. James (2009) gives an example of children having 'agency' in decisions that affect them:

In their research on children's experience of abusive families in Australia, Mason and Fallon (2001) reveal children exercising agency in the form of choice – that is choosing not to reveal their experiences to agencies. This 'choice' similarly reflects children's understanding of familial care, which serves to balance out the inequalities associated with the exercise of power and control.

Thomas (2007), in his writings on politics and sociology, draws attention to the distinction between 'participation' and 'consultation' when it comes to children's involvement, noting that *participation* can refer generally to taking part in an activity, or specifically to take part in decision-making, whereas in *consultation* children's views are sought but do not participate at the stage where decisions are actually made. He quotes research by Kirby et al. (2003) where 146 organizations involved with children's activity were surveyed. Thomas draws attention to their report, which suggests that

most participation is locally based and in small organizations or agencies, and is most likely to involve generic youth work or community regeneration than other areas; that a very wide range of children and young people are involved ... but the most common age group is 12-16 year olds; and that most participation focuses on service development or delivery with less attention given to policy or strategic development.

In other words, children's participation is seen mostly at the local level and in small organizations. Thomas (2007) notes that the engagement of children with central or local government is more along the lines of consultation, to 'listen' to children and young people when developing policy or planning services, rather than participation. In another research conducted by Kirby, Thomas recalls the conclusion that "young people were having little impact on public decision-making, although there was evidence that good participatory work improved young people's confidence and skills as well as giving them opportunities to make friends". This was certainly true with the following example.

Here we see children's agency through participation, in the context of UPR. It centres around a submission prepared by a group of children in India in 2011, under the guidance of the NGO "Edmund Rice International". A group of young people were guided through the process on how to prepare a submission, identifying for themselves the issues they wished to bring forward in their submission. Just prior to India's review in May 2012, three young people representing the whole group that prepared the submission came to Geneva and met with several Permanent Missions to lobby for their recommendations. As well, they met with representatives from the Permanent Mission of India and engaged them in a 2-hour discussion. One member of the children's delegation was mute and so was accompanied by an interpreter for her sign language. At first the Indian delegation took a polite but condescending view in their discussions with the young people but as their responses were met with more questions and informed comments by these young people, the tone of the meeting moved from one of simply 'listening' to one of fruitful and engaging dialogue. It was an enriching experience both for the children and the adults who were privileged to meet with them (NINEISMINE, 2012).

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### **3.4 Analysing children's rights in the political context**

An analysis of how certain Child Rights issues at the UPR are treated may provide insight into political, religious or cultural influences within the forum of the UPR. A sample of recommendations on children's issues is taken to provide a basis for this analysis.

Research for this study reveals that 83.3% of children's rights recommendations in the 1st cycle were accepted by states - well above the 73.1% for all recommendations accepted. An observation is that this seems to reflect a high level of respect for children's rights in this context. Nonetheless, closer scrutiny of recommendations rejected by states may offer insight into the more contentious issues among children's rights. Are they contentious across the board or are they more culturally or ethnocentrically based? Such a consideration may also help one understand cultural differences and hence the varying viewpoints applied to children's rights that states bring to the floor of the UPR.

Renshaw's study (2010) on the status of children's rights in the first seven sessions of the UPR revealed that the most rejected Child Rights issues are *Corporal Punishment*, *Juvenile Justice*, *Children in Armed Conflict*, and *Ethnic Minority Groups*. All these are significantly ahead of any other category of rejected recommendations about children and all of them are rights that are contained in the CRC. Analysis of the first three reveals that there is a different group of 'rejecting' states for each of these issues; that is to say, it is not just the same states that are rejecting these recommendations. For example, recommendations relating to *Juvenile Justice*

were rejected the most by Asian states<sup>4</sup>; whereas states from the Latin American and Caribbean Group<sup>5</sup> were well ahead of others in rejecting *Corporal Punishment*. Concerning *Recruitment into the Armed Forces/Children in Armed Conflict*, the rejecting states were fairly evenly spread across African, Asian and Western states<sup>6</sup>.

To take the issue of corporal punishment, by way of example, the NGO “Global Initiative to End All Corporal Punishment of Children” has released its ‘Progress Report 2012’ on the situation of corporal punishment in the Caribbean. The report claims that while substantial progress has been made on banning corporal punishment in situations outside the home, no state or territory in the Caribbean has yet achieved prohibition in the home (Prohibiting corporal punishment of children in the Caribbean – Progress Report 2012). It further notes that “despite high levels of corporal punishment experienced by children and high levels of approval of corporal punishment expressed by adults, research also shows some ambivalence in adult attitudes towards corporal punishment.” It seems that this ambivalent attitude among adults does not help the cause for banning corporal punishment in the region. The report also provides more detail about the issue of corporal punishment in the UPR for Caribbean nations, stating that

of the 14 Caribbean states reviewed, recommendations to prohibit corporal punishment were made to 13. The recommendations were accepted by two states but rejected by eight (though two of these acknowledged that laws allowing judicial corporal punishment should be repealed); one state partially accepted the recommendation; in three states the recommendations were not formally accepted or rejected.

The question surfacing from this analysis is to ask: “Is it different social, cultural or even religious norms that influence these decisions by states?” At the very least the data here tells us that children’s rights are not universally ‘apolitical’ but in fact are judged to be politically and morally potent, as certain rights seem to be treated differently in different parts of the world.

Nonetheless, it is pertinent to recall that the vast majority (83.3%) of all children’s rights recommended during the 1st cycle of the UPR were accepted, including issues dealing with corporal punishment, juvenile justice, children in armed conflict and ethnic minority groups. So whilst particular children’s rights are not accorded the same favour or respect by some states, clearly most are taken seriously given that well over 80% of Child Rights’ recommendations enjoy the favour of SuRs.

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### **3.5 Global Childhood, Multiple Childhoods and the UPR**

The brief study above about children’s rights in politics prompts the question ‘how do states view childhood?’ What makes one state ensure that corporal punishment is outlawed where

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<sup>4</sup> The Asian states rejecting or making no response to juvenile justice recommendations were Iran, Jordan, Lebanon, Oman, Qatar, Pakistan, Singapore and Kiribati.

<sup>5</sup> The Latin American and Caribbean states rejecting corporal punishment recommendations were Antigua & Barbuda, Bahamas, Barbados, Grenada, St Lucia, St Vincent & the Grenadines, Trinidad & Tobago and Surinam.

<sup>6</sup> The African nations were Chad, Eritrea, Ethiopia, Rwanda and Mozambique. The Asian states were DPRK, Myanmar, Sri Lanka and Thailand. The Western and Other nations (WEOG) were Malta, San Marino, Austria and USA.



another state considers it acceptable? Whilst it is not the aim of this paper to give an in-depth discourse on an understanding of the 'global child' and the alternative view of 'multiple childhoods', nonetheless it is necessary to touch on the topic, it being relevant as to how some states may view certain recommendations presented to them during their Review which seem contrary to a more universal view. If a particular society sees children and childhood differently from the more widely accepted concept of the 'universal child', then it may give reason to why they respond differently to recommendations put to them about children's rights.

Anthropologist Olga Nieuwenhuys (1998) proposes that there are multiple childhoods, not just one form, and that the dominance of the North in defining the 'universal child', mostly through developmental childhood studies that are predominantly Northern, has robbed an understanding of childhood as being shaped by cultural differences which portray childhood in many forms. Nieuwenhuys claims that the UN Convention of the Rights of the Child of 1989 is the most detailed instrument developed to assess and recognize the rights of children. However, she warns that it is not culturally neutral, but rather, it is

grounded in the assumption both of the superiority of the childhood model as it has evolved in the North and of the need to impose this model on a global scale. As this global project denies the possibility of diverse childhoods, it not only underscores the superiority of the Northern ideal but also condemns "other" styles of upbringing as a "lack", or, to use the popular expression, of being "outside childhood".

She emphasizes that "in spite of its impressive ideological success, even its most staunch supporters have acknowledged its Eurocentric bias" (Nieuwenhuys, 1998).

This could explain why some Non-Western states hold reservations to articles of the CRC, on cultural, societal or religious grounds. For example, on ratification of the CRC, Afghanistan declared: "The Government of the Republic of Afghanistan reserves the right to express, upon ratifying the Convention, reservations on all provisions of the Convention that are incompatible with the laws of Islamic Shari'a and the local legislation in effect."

([http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en#EndDec](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en#EndDec))

This is likely why Afghanistan has repeatedly rejected all recommendations calling on it to cease using the death penalty (OHCHR, 2009, A/HRC/12/9) and why Iran similarly has refused to accept several recommendations to eliminate cruel punishment, including juvenile execution and stoning (OHCHR, 2010, A/HRC/14/12). In a similar vein Antigua & Barbuda has rejected several recommendations to prohibit corporal punishment in all settings (OHCHR, 2011, A/HRC/19/5), in spite of this being in contravention of the CRC.

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### **3.6 Child Rights and Cultural Relativism in the UPR**

To consider the complex issue of global childhood vis-a-vis multiple childhoods a little further and how it may influence a state's response to recommendations at the UPR, the last section of this chapter considers cultural relativism and universalism, in relation to children's rights in the UPR. Blackburn (2011) raises the issue of cultural relativism, signalling why states may respond differently to an identical recommendation put to them. His research sets out, not to show that cultural relativism exists, but rather to determine whether or not there are different

forms of cultural relativism. This paper then, uses his findings to consider how they may affect decisions about children.

Blackburn (2011) proposes that while 'universalism' is based on the equality, indivisibility and universality of all human rights (generally accepted as Western values), cultural relativist countries contend that human rights are dependent on the context in which they are applied. An interpretation of this can be to say that from the viewpoint of cultural relativism, not all rights are necessarily universal.

In clarifying that universalism is defined as asserting that culture is irrelevant to the validity of moral rules and thereby reaffirming the universality, indivisibility, equality and interdependence of all human rights, Blackburn (2011) reminds us of the 1947 American Anthropological Society's caution to the UN Commission on Human Rights about the danger of erasing cultural diversity. This caution was delivered during the time the Commission was drafting the Universal Declaration of Human Rights (UDHR). The Society pointed out the West's history of 'ascribing cultural inferiority' to non-European peoples and warned that human rights must also take into account the individual as a member of the social group of which he/she is part (Blackburn). Furthermore, Blackburn stresses that cultural relativists make alternative claims to universal Truth that have their foundations in non-European cultural traditions.

Blackburn takes China, Viet Nam, Myanmar, Iran, Pakistan, Indonesia and Malaysia as the Asian group of countries for his study, principally by looking at their national UPR reports to see if cultural relativism is evidenced. He does the same with Iraq and Yemen for the Middle East and Columbia, Mexico and Cuba for the Latin American and Caribbean Group of countries.

In his conclusions, Blackburn (2011) asserts that cultural relativism appears to be divided into two categories. One is based on political factors and/or revolutionary discourse (China, Viet Nam, Myanmar and Cuba) and the other is an Islamic form of cultural relativism, principally seen in Yemen, Iran and Pakistan. Moreover, he identifies a different positioning coming from countries with diverse communities who tend to present a model of diversity to ensure self-determination for its populations. He sees this in Indonesia, Columbia and Mexico.

According to Blackburn (2011), *revolutionary cultural relativism* is expressed in practices of torture, murder and repression of opposition, the denial of political plurality as well as censorship of the media and condemnation of foreign dominated religions. He sees these displayed in the reviews and submissions on China, Viet Nam, Cuba and Iran. Whereas he determines that *Islamic cultural relativism* is connected with Islamic political discourse, evidenced in Islamic Republics. Here Blackburn notes disagreement between this kind of cultural relativism and international human rights law apparent through the denial of the principle of equality for men and women in some Islamist states. He notes that the conflict between Sharia norms and human rights can also be seen in other countries that have Islamic influences, mentioning Mauritania and several states in Africa, Asia and the Middle East. He does not put Indonesia or Malaysia into this category but rather speaks of them as displaying a lesser form of cultural relativism. Nonetheless, Blackburn indicates that both categories of cultural relativism seem to give considerable importance to health and education. Thus, at least the fields of health and education will more than likely be treated with universal acceptance for children.

The table below takes a group of Non-Aligned Movement of States (NAM), all of which display one or other forms of cultural relativism noted by Blackburn (2011), alongside a randomly selected group of Western states which profess universalism of human rights. The purpose of

the table is to see if there are any trends, themes, alignments or emerging directions in relation to children’s rights within each group and/or between the two groups. That is to say, are there any differences or similarities in the way children’s rights are treated by cultural relativist states compared to those that purport the universality of human rights.

By examining the bottom line of the table, it can be seen that the Non-Aligned Movement of States received a relatively low number of Child Rights recommendations (9.0%) compared to the overall number of recommendations they received. One interpretation of this is that these states may have had other more pressing human rights issues needing attention - from the perspective of recommending states. Whereas all the other figures at the bottom of the table come fairly close to the percentage of Child Rights put as recommendations throughout the 1st cycle of the UPR, namely 16.1%.

**TABLE 1 A comparison of Child Rights recommendations ‘received’ and ‘put’ between a group of Non-Aligned (cultural relativist) States and some Western (universalist) States**

NON-ALIGNED MOVEMENT (NAM)				WESTERN STATES			
Session/Year	State	Received	Put	Received	Put	State	Session/Year
2/2008	Pakistan	7/101	10/198	9/35	58/647	UK	1/2008
4/2009	China	4/138	5/78	8/114	121/908	Canada	4/2009
4/2009	Cuba	8/148	31/270	10/72	88/371	Germany	4/2009
4/2009	Malaysia	22/147	81/340	10/73	33/206	NZ	5/2009
5/2009	Yemen	19/153	5/33	18/117	105/734	Norway	6/2009
5/2009	Viet Nam	6/172	12/84	19/140	94/698	Spain	8/2010
7/2010	Iran	26/212	52/268	36/280	64/464	USA	9/2010
10/2011	Myanmar	22/197	3/17	21/162	51/332	Australia	10/2011
<b>Total</b>		<b>114/1268</b>	<b>199/1288</b>	<b>131/993</b>	<b>614/4360</b>		
<b>Average in %</b>	Child Rights	<b>9.0%</b>	<b>15.5%</b>	<b>13.2%</b>	<b>14.1%</b>		

The data suggests that children’s rights do not fare so well with cultural relativist states, whereas they hold their own alongside other human rights issues with most other states. There could be a number of reasons for this: for instance Western states are seen to pose the greater number of the recommendations and focus on other more serious rights abuses with regards the NAM Group, to the detriment of children’s rights. However, with the evidence presented here this would only be speculation.

The other conclusion that can be drawn from the table is that Western states make significantly more recommendations at the UPR (4360) than do the NAM Group of states (1288). Perhaps there is a reluctance by these cultural relativist states to engage fully in the UPR on issues where they hold differing views from most other states aligned with universalism.

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## CHAPTER IV

### The UPR: A champion for human rights or just another UN bureaucratic structure?

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#### Chapter Summary

This chapter examines the performance of the UPR by studying various aspects of its 1st cycle. It begins with clarifying the role of the UPR within the framework of the Human Rights Council and considers the question: "How seriously are states taking the UPR?" It then undertakes an analysis of the 1st cycle, including a statistical summary of recommendations made, listing the top 5 states receiving recommendations, the top 5 States putting recommendations and the issues being raised more frequently than others. Whilst lauding the first round, a number of weaknesses are identified, some of which have been picked up in the HRC's review of the UPR in 2011. The role of NGOs and NHRIs in Phase 4 of the UPR is also addressed.

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#### 4.1 Is the UPR being taken seriously?

Following the General Assembly's debate in 2005-06 to address the shortcomings of the Commission on Human Rights, GA Resolution 60/251 established the Human Rights Council in March 2006. In the same Resolution this new Human Rights Council was mandated to strengthen the United Nations human rights machinery, with the aim of ensuring effective enjoyment by all of all human rights: civil, political, economic, social and cultural rights, including the right to development. In the package of programs and structures for the HRC to carry out this mandate, the General Assembly included the Universal Periodic Review, thereby instructing the Council to:

*Undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session (UN General Assembly, Resolution 60/251, 2006)*

There was much conjecture as to whether such a mechanism would really be a champion for human rights or be just another bureaucratic instrument. Sen (2009) remarks that many parties, both states and stakeholders, found the new process unfamiliar and confusing. During an interview connected with this research the expert on children's rights from a UN agency commented that people thought initially it would not succeed - given the track record of reporting

to treaty bodies wasn't good. Others interviewed felt that states were taking the UPR seriously, with comments similar to these:

- States see it as an opportunity for self-diagnosis and it helps their international prestige.
- The high level delegation of the States speaks for itself; for example 80% of delegations had ministerial representation.
- Everyone is demonstrating their commitment and it is strongly supported.

The signs coming out of the UPR after its 1st cycle support these views. McMahon (2010), for instance, comments on 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" (McMahon).

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#### **4.2 Full participation by UN Member States in the 1<sup>st</sup> cycle of the UPR**

The first cycle of the UPR concluded in October 2011, with all 193 Member States<sup>7</sup> participating in the review. This is a remarkable achievement, given that it was introduced untried and untested. It got off to a slow start, with an average of only 29 recommendations per state in the 1st session. However, as Member States learned how the system worked, more and more recommendations were presented from the floor. The 2nd round averaged a total of 53 recommendations per state - nearly double the number in the 1st round; the 3rd round averaged 83 and the 4th reached an average of 113 per state (<http://www.upr-info.org/database/>).

In the early stages there was uncertainty as to how the State under Review would respond to recommendations put to it in such a public forum. After all, one of the innovations of this mechanism was that each session was to be webcasted live for all to see. Nonetheless, based on the global statistics provided by *UPR Info*, at the end of the 1st cycle a total of 21353 recommendations were made; of these 15613 were accepted, 3181 rejected, 1383 were of a general response<sup>8</sup> and 1176 had no response from the states under review. This is an encouraging sign, with nearly 75% of all recommendations being accepted by states. These figures will be examined in more detail later in the chapter.

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#### **4.3 The 1st Cycle – promising signs?**

Theodor Rathgeber (2012) comments that the UPR has been widely acknowledged as a substantial improvement in addressing human rights situations within the UN institutional context. He says that "most States have been cooperative with the Working Group and have actively participated in the interactive dialogues". Sen (2011), in an analysis of the first two years of the UPR, claims that states displaying an honest and open approach to the UPR have gained most from the Review. She adds that

it would be a considerable achievement if states felt able to share with their peers not only the areas in which implementation has moved forward well, in co-

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<sup>7</sup> South Sudan, the 193rd Member State, was included with the review of Sudan in May 2011.

<sup>8</sup> See Appendix 3 for an explanation of the four categories used by *UPR Info* in classifying a State's response to recommendations put to it.

operation with stakeholders or with technical support, but also to say when and where this has been problematic. (Sen, 2011)

A shining light in this regard has been Timor Leste. The International Service for Human Rights (ISHR) Quarterly Magazine's commentary on the UPR (2012, 1) has praised Timor Leste as an exemplar of good practices, praising its ready acceptance to acknowledge areas where it can improve its performance in human rights. Moreover, the State's willingness to receiving recommendations during the Interactive Dialogue led to a fruitful discussion between participating states and Timor Leste. In particular, as the ISHR Quarterly notes, Timor Leste showed genuine acceptance of constructive comments made by Indonesia and Portugal, despite their difficult past.

On the other hand, Syria's UPR did not match up to the General Assembly's expectations for the UPR to promote and protect human rights based on the principles of cooperation and genuine dialogue. Here ISHR's Quarterly (2012, 1) speaks of the Syrian delegation being heavily critical of Western interference and of certain states being bent on discrediting and weakening the Syrian Arab Republic, reporting that

much of the address from the Syrian delegation was political and accusational against several states (particularly the United States and Israel) and the media. Comments from the Syrian delegation on its human rights situation were limited to promoting what it described as a positive human rights record, and on rejecting claims made in the media and by other states about human rights violations.

While the tone of the UPR certainly wasn't one of 'cooperation and genuine dialogue' the review was also marred by political interventions from a few states that contributed excessively to this sort of unhelpful dialogue (ISHR Quarterly (2012, 1)). Clearly these exchanges are not examples of best practice.

Nonetheless, a simple review of Haiti and Kiribati indicates the seriousness with which states, on the whole, are addressing the UPR. Haiti was unable to present for its Review on the scheduled date in May 2010 due to the devastating earthquake a few months earlier. Not to be deterred, Haiti expressed its keenness to participate and so it was rescheduled for the final session of the 1<sup>st</sup> cycle in October 2011, which was held successfully.

(<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9993&LangID=E>)

A different situation arose with Kiribati, a small island State in the Pacific Ocean. It had difficulty in sending a delegation half way around the World to attend the adoption session of its Review. However, with the help of the Troika, the OHCHR and others, Kiribati responded to the draft report electronically in time for the Human Rights Council to adopt the report at its plenary session on 1st October 2010

(<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10406&LangID=E>).

Here we see an encouraging trend where two states that have gone to extraordinary lengths to ensure that they participated in the review process.

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#### **4.4 Analysis of recommendations**

This section carries out a general analysis of the recommendations to SuRs in the 1<sup>st</sup> cycle.

#### 4.4.1 Statistical summary

The table below gives a numerical summary of the recommendations made during the 1st cycle of the UPR. The data comes from the database of *UPR Info* (<http://www.upr-info.org/database/>).

**TABLE 2: UPR Recommendations – numerical summary for the 1st Cycle**

Session	Year	States	Recommendations received	Average	Group	average
1	2008	16	430	29	55	85
2	2008	16	855	53		
3	2008	16	1335	83		
4	2009	16	1804	113	115	
5	2009	16	1670	104		
6	2009	16	2038	127		
7	2010	16	2147	134	134	137
8	2010	15	2107	140		
9	2010	16	2051	128		
10	2011	16	2306	144	141	
11	2011	16	2176	136		
12	2011	17	2434	143		
<b>Total</b>		<b>192</b>	<b>21,353</b>	<b>111</b>		

The total number of recommendations made during the 1st cycle of the UPR was 21,353. This represents an average of 111 recommendations per state. As previously noted, states reviewed in the earlier sessions scored lower than this while those coming near the end of the cycle averaged considerably higher. If there is no significant change to this trend, it is likely that the average number of recommendations for the 2nd cycle will be even higher. In fact, the average number of recommendations in Session 13 (the first round of the 2nd cycle) was 149 (see Chapter V).

#### 4.4.2 The Top 5

*UPR Info's* statistical summary highlights the top five states receiving recommendations, the top five states that put recommendations and the top five issues raised, as seen here.

**TABLE 3: Scoreboard for UPR Recommendations: Top 5**

Top 5 receiving states		Top 5 recommending states		Top 5 Issues	
USA	280	Canada	908	International Instruments <sup>9</sup>	4231 (19.8%)
Iran	212	Norway	734	Women's Rights	3693 (17.3%)
Sudan	200	France	704	Children's Rights	3442 (16.1%)
Myanmar	197	Spain	699	Torture and other CID treatment	1743 (8.2%)
Nepal	193	Brazil	693	Justice	1563 (7.3%)

*UPR Info's* statistical summary also reveals that 39 states did not make any recommendations during the 1st cycle (<http://www.upr-info.org/database/statistics/>). These countries make up 20% of the United Nations. Without their participation the effectiveness of the UPR is potentially

<sup>9</sup> For example, recommendations to ratify certain treaties or conventions.

diminished, since they are not contributing to the promotion of human rights around the world in this forum.

The top 5 receiving states had a broad range of both CPR and ESCR issues to attend to as a result of the 1st cycle. They included the death penalty, racial profiling and calls to ratify core treaties for the USA; to ratify and respect core treaties, freedom of religion and freedom of expression as well as the death penalty in Iran; releasing political prisoners, ratifying core treaties, allow freedom of movement, free political prisoners for Myanmar; abolition of the death penalty, to ratify some core treaties and a wide range of social and cultural rights, including calls for prevention of discrimination against women in Sudan. Many recommendations to Nepal related to national reconciliation including to quickly establish a Truth and Reconciliation Commission, to cooperate with international human rights bodies and to strengthen the independence of the NHRC, as well as issues over violence, freedom and discrimination.

Sen (2011) makes an interesting comment in relation to the full range of human rights that are being aired through the UPR process. Her comment enlightens the discussion about the uniqueness of the UPR. "The UPR arena", she says, "has allowed ESCRs to be raised frequently in international discourse and has afforded the two sets of rights [i.e. CPR and ESCR] a place on the same platform. This can only serve to reduce the lower status long given to ESCRs and address more fully the rights concerns of poorer states". Here we see one of the positive outcomes of the UPR process whereby all human rights are treated on an equal footing.

Regarding the top recommending states, Canada leads the way in using the UPR process to improve human rights around the world, along with Norway, France, Spain and Brazil. The first four are part of WEOG (Western European and Other States Group) which has consistently given a strong showing in making recommendations at the UPR. Brazil leads the way for the GRULAC states (Group of Latin American and Caribbean States) which could be seen as an indication of Brazil's emergence as a developing political world power.

Most states have participated in various sessions of the UPR and, at meetings between NGOs and Permanent Missions in Geneva, several states have declared their intention to submit recommendations at every review. As noted previously, only 39 states did not present any recommendations during the 1st cycle. Given that some states do not have a Permanent Mission in Geneva, it is understandable that their participation could be reduced. However, during Human Rights Council sessions and other significant meetings, such as the UPR, most send representatives to attend and neighbouring states assist them with the logistics while in Geneva.

When looking at participation from the perspective of Children's Rights, there is a different list of countries in the top five recommending states. This is analysed in Chapter V.

On the question of how frequently certain issues are raised, the figures show that there is a strong call for states to ratify international instruments such as conventions and treaties. Women's issues and Children's Rights also occur frequently. The call to ratify international instruments is always a safe recommendation to make, seeing it is an objective for all states to sign up to conventions and treaties.

Concerning women's rights, many issues are raised under this banner, including provision for equal opportunity for women in professional training programs, recommendations to prevent all forms of violence against women, trafficking of women and girls, take initiatives to strengthen gender mainstreaming and women's rights, equal pay for women in the labour force and more



opportunities for basic education. Given the breadth of issues, one can see that there is much to be done to ensure women's rights are given proper attention by governments. Some examples include:

- *Take all appropriate measures to address violence against women effectively and more specifically to eliminate FGM, including by making its performance a criminal offence* (Austria to Sierra Leone; OHCHR, 2011, A/HRC/18/10);
- *Intensify its efforts to counter discrimination against women based on whatever grounds* (Slovakia to Costa Rica; OHCHR, 2011, A/HRC/13/15);
- *Adopt the measures necessary to stop domestic violence, in particular with regard to the rights of women, and take measures aimed at protecting the victims of domestic violence* (Palestine to Belarus; 2010, A/HRC/15/16)
- *Reduce underrepresentation of women, including in the labour market* (Azerbaijan to Chile; OHCHR, 2009, A/HRC/12/10)

Children's rights have also performed strongly at the UPR. Several stakeholders interviewed for this research paper noted that it is politically safe to talk about children's rights in preference to some other human rights issues. This could be one reason for their good performance, not to diminish the fact that several states are making children's issues a priority when formulating their recommendations. The interviewees noted that:

- It is politically safe [to talk about children's issues], even safer than women's issues;
- states under Review are much more open to talk about children's issues than hot topics;
- naming children's rights are less sensitive than other issues, but also there is a genuine commitment by some states to children's rights.

Some examples of children's rights are given for illustration:

- *Reconsider its position about the continued legality of corporal punishment against children* (Sweden to the United Kingdom; OHCHR, 2008, A/HRC/8/25).
- *Introduce school programmes for children with learning difficulties* (Canada to Dominica; OHCHR, 2010, A/HRC/13/12)
- *Increase the age of criminal responsibility* (Trinidad & Tobago to Jamaica; OHCHR, 2011, A/HRC/16/14)
- *End the recruitment of children and their participation in armed groups* (Honduras to Thailand; OHCHR, 2011, A/HRC/19/8).

Justice issues and torture feature quite frequently as well. Whilst these are politically sensitive for some countries, they are fiercely defended by others. It is not surprising that they have gained frequent mentions at the UPR and some examples on justice issues and torture include:

- *Take appropriate legislative and practical measures to prevent racial bias in the criminal justice system* (Austria to the USA; OHCHR, 2011, A/HRC/16/11);
- *Step up its efforts to prevent arbitrary detentions, and to investigate all cases involving arbitrary arrest, detention and torture and bring to justice those responsible* (Azerbaijan to Angola; OHCHR, 2010, A/HRC/14/11)
- *Ensure the independence and impartiality of the judiciary, and independent and impartial investigations of all allegations of human rights violations* (Australia to Turkey; OHCHR, 2010, A/HRC/15/13);

- *Establish independent and impartial investigations into all allegations of torture and other ill-treatment and bring perpetrators to justice* (Denmark to Cambodia; OHCHR, 2010, A/HRC/13/4)

When looking at the full range of the 21,353 human rights recommendations listed in Appendix 4, what is surprising is the low number related to basic survival rights, such as the right to food (145), housing (104) or water (62)<sup>10</sup> – these are all essentials for life, yet they come at the very bottom of the table. Are these issues too politically sensitive or is there not much call on them as they are already fulfilled? Certainly in many countries of the South dire poverty has been the cause for denying these rights to millions. Above these on the tally of recommendations is a number of more politically sensitive issues, such as asylum seekers/refugees (394), the death penalty (920), freedom of association and peaceful assembly (313), freedom of opinion and expression (568) and human rights violations by state agents (329). Such recommendations are often raised by states that have made it their priority to pursue these issues at the UPR. These figures temper Sen’s remarks (2011) earlier about economic, social and cultural rights being afforded a place on the same platform with civil and political rights. Certainly some of these economic and social rights are still struggling to be adequately recognized at the UPR to date.

#### **4.4.3 Categorization**

The database used for categorizing and analyzing the recommendations comes from the NGO ‘*UPR Info*’, which uses 54 different human rights’ categories. These are listed in Appendix 4, along with the number of recommendations attributed to each of these categories. These categories provide a useful list of human rights which enables one to see the range of issues being raised at the UPR.

When it comes to analyzing children’s rights, anything to do with children is listed in the single category ‘Rights of the Child’. A limitation with this is that there are no subcategories to enable one to analyze them further. Under the guidelines for classification, when a recommendation clearly mentions children or is obvious that it relates to children in its wording, it is listed as a Child Right, such as juvenile justice. But if a recommendation that refer to both adults and children without specifically mentioning minors, it is not listed as a Child Right in the database. ‘Corporal Punishment’ is an example, which is not given a category of its own by *UPR Info*. If a recommendation refers to violence at school or in the home then it is listed as both a child rights’ issue and as ‘torture’. Moreover, if children are not mentioned outside those two situations, even if the intent is there to include them, it is only listed as ‘torture’. Whereas Renhaw (2010) has ‘Corporal Punishment’ in his top nine most frequently occurring children’s issues in the UPR. Since the *UPR Info* database is being used as a major tool in this research, it is pertinent to mention it here and to note its shortcoming in this respect.

#### **4.4.4 Quantity: a rapid rise in recommendations**

A key element to the UPR is the opportunity of states to present recommendations to the SuR to improve human rights on the ground in that country. As mentioned above, the table shows a small number of recommendations in the first session. This reflects an initial uncertainty about the UPR and, as Sen (2009) mentions, a lack of familiarity with the process. However, the number of recommendations rose steeply in the ensuing sessions, with an average of 115 recommendations per state for Sessions 4, 5 and 6. The second half of the 1st cycle saw this rise to an average of 137. The question may then be asked: will too many recommendations diminish the quality of follow up? This can only be answered by what will happen in the future.

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<sup>10</sup> See Appendix 4

As stated, the last six sessions averaged 137 recommendations per state, with the highest number going to the USA (280) in Session 9, more than double this average. Looking at the list of countries in the top 5 one can allude to the political play that can go on in this arena with states taking advantage to put recommendations without risking much backlash. The UPR forum provides a uniqueness not seen before, where states present themselves to the scrutiny of all other states on equal footing and this seems to be contributing to the potential success of the mechanism, in spite of the occasional politicking that surfaces from time to time.

#### **4.4.5 Clustering**

To implement a large number of recommendations prior to the next review can be a daunting task for any state. For the USA, Iran and Sudan – all of which received 200 or more recommendations – the task could be overwhelming. In the rules of the UPR there is no mention of a limit to the number of recommendations that can be put but ‘quantity’ has become a topic of discussion. To this end, a group of 39 states have banded together and committed to raising only one question and putting a maximum of two recommendations each during the interactive dialogue for the 2nd cycle. Furthermore they agreed to “always give ‘high quality recommendations’, meaning these should be ‘precise, practical, constructive, forward looking and implementable” (ISHR Quarterly, 2012, 2).

It must be noted, though, that recommendations are often repeated, if not word for word by other states, the intent of the recommendation is the same. Where this happens, it can lessen the burden of quantity by clustering them. ISHR Quarterly (2012, 2) recalls that

during the first session, the UK received 35 recommendations. However, taking into account repetition this amounted to only 28 discrete recommendations. Amongst the 280 recommendations made to the US, there was a considerable amount of duplication, including 26 to ratify CEDAW and 15 to introduce a moratorium on the death penalty.

It is for this reason that the new modalities for the second and subsequent cycles recommend thematic clustering of recommendations (OHCHR, 2011, A/HRC/RES/16/21), with the permission of the SuR and the recommending states. As already demonstrated by the example above, with clustering there can be a significant reduction in the issues a state needs to deal with in the follow up. An observation by the Ambassador for the Bahamas is pertinent here. He reported that “we received some 67 questions or recommendations. However, when clustered they amount to 24” (Sears, 2011).

It is worth noting here that whilst repetition brings an issue to everyone’s attention, it does not necessarily give the issue more weight in terms of follow-up. Under the rules of the UPR, one recommendation is enough. If the State accepts it, then there is the same obligation to fulfill that recommendation as it would have if it were raised ten times.

#### **4.4.6 Recommendations Accepted or Rejected**

States are not compelled to accept the recommendations put to them at their review. Article 32 of the Annex to HRC’s Resolution 5/1 simply notes:

Recommendations that enjoy the support of the State concerned will be identified as such. Other recommendations, together with the comments of the State concerned thereon, will be noted. Both will be included in the outcome report to be adopted by the Council (OHCHR, 2007, A/HRC/RES/5/1).

It is helpful, though, to see what proportion of recommendations are accepted and rejected, thereby giving an impression of the seriousness with which states enter into the process. An analysis of accepted and rejected recommendations, below, shows that 73.1% of all recommendations presented during the Interactive Dialogue were accepted by states. Only 14.9% were rejected outright. 6.5% made up a 'general response' where the state did not commit itself one way or the other, although McMahon (2010), the designer of this field of analysis, notes that general responses "appear to be designed to reject a recommendation without going on the record to do so" (McMahon). 5.5% of all recommendations received 'no response' from the state. The table below reflects these details.

**TABLE 4: Summary of recommendations accepted, rejected, general or no response**

<b>Response<sup>11</sup></b>	<b>Number of Recommendations</b>	<b>Percentage of total</b>
Accepted	15613	73.1%
Rejected	3181	14.9
General Response	1383	6.5
No Response	1176	5.5
<b>TOTAL</b>	<b>21353</b>	<b>100.0</b>

It is encouraging to see that around 3 out of every 4 recommendations are accepted - a sign that states are committed to improving their human rights record.

#### **4.4.7 Quality of recommendations**

ISHR's Quarterly (2012, 2) points out that the nature of recommendations made during the 1st cycle varied widely. Many lacked specificity and began with "Consider ...", "Continue to ..." or "Strengthen efforts to ..." without requiring any clear purposeful action by the state. An example of each is provided:

- *Consider the possibility of strengthening focused social assistance to poor families with children* (Belarus to Latvia, OHCHR, 2011, A/HRC/18/9);
- *Continue its efforts to eliminate violence against women* (Azerbaijan to Jamaica; OHCHR, 2011, A/HRC/16/14);
- *Strengthen its efforts to ensure access to education – and to health care – for all its citizens, including those with disabilities, regardless of ethnicity, religion, tribal affiliation or economic status* (Australia to Afghanistan, OHCHR, 2009, A/HRC/12/9).

ISHR Quarterly (2012, 2) uses this last example to explain what it means by lack of specificity: "This recommendation suggests a goal to be achieved, but does not specify what actions should be taken. This allows Afghanistan to interpret the recommendation as it wishes, thus making assessment of its implementation impossible."

These generalized recommendations can give the State a release from extending its obligations yet it presents well by accepting them. This is in contrast to much tighter recommendations, noted in ISHR's Quarterly (2012, 2) regarding a recommendation made to Albania by Argentina (OHCHR, 2010, A/HRC/13/6) to "*prohibit by law the practice of corporal punishment of children*

<sup>11</sup> See Appendix 3 which clarifies how recommendations are placed in one or other of these types of responses.

*as a disciplinary method.* In this case the required action is concrete and if Albania does not enact such a law it will be evident that the recommendation has not been implemented". Similarly, New Zealand's recommendation to Australia to "*establish a National Children's Commissioner to monitor compliance with CRC*" (OHCHR, 2011, A/HRC/17/10) and Austria's recommendation to Croatia to "*enact legislation to ensure that imprisonment is used only as a last resort when sentencing all juvenile offenders, ensure that they are held separately from adult offenders*" (OHCHR, 2011, A/HRC/16/13) evoke specific actions from governments and provide measurable outcomes. All of these are examples of well-formulated recommendations. Overall, the UPR Info database classifies 7365 (34.5%) recommendations out of the total of 21,353 as requiring specific action from the State. This percentage clearly needs to be increased.

To this end, there has been a call from some Member States and NGOs to make recommendations more tightly framed in the 2nd cycle, even to suggest a timeline for the State to follow. In support of this, we recall that a group of 39 states have committed to giving high quality recommendations, that is to say that they are precise, practical, constructive, forward looking and implementable (ISHR Quarterly, 2012, 2). This will certainly help reduce concerns about loosely-worded recommendations, especially if others follow their example. Unfortunately, however, many recommendations put during the first round of the 2nd cycle still contain open-ended recommendations and still lack specificity – such as "*continue efforts in enhancing the welfare of all segments of society and protect their rights*" (Nepal to UK, OHCHR, 2012, A/HRC/21/9) and "*continue the authorities' efforts to prevent and combat torture both at the federal and state levels*" (Indonesia to Brazil, OHCHR, 2012, A/HRC/21/11). Spain's recommendation to Brazil is however much more specific: "*Revise the human rights training programmes for security forces, emphasizing the use of force according to the criteria of necessity and proportionality and putting an end to extra-judicial executions*" (OHCHR, 2012, A/HRC/21/11). Norway also proposed a tightly-worded recommendation to the same country: "*Pass legislation, without undue delay, to confirm the official status of the National Programme for the Protection of Human Rights Defenders, and give priority to its wide implementation*" (OHCHR, 2012, A/HRC/21/11).

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## **4.5 Strengths and weaknesses in the UPR process**

This last section of this chapter examines some identifiable strengths and weaknesses in the process, phase by phase.

### **4.5.1 Phase 1**

The rules of the UPR mechanism allow the SuR to present a report of up to 20 pages, submitted preferably 6 weeks prior to the review in order to have them translated into the six official languages of the UN (English, French, Spanish, Russian, Chinese and Arabic) in time for the review. The other two reports are each 10 page summaries of submissions from individual organizations as explained in Chapter I and are due around 5 months ahead of the review (OHCHR, 2007, A/HRC/RES/5/1).

Strengths: The tight timeframe and limit to the number of pages for the reports are positive aspects of the UPR which does not exist in most other human rights reporting systems. The brevity of the reports ensures that key issues are presented in a succinct manner.

The timetable for each of the sessions and list of states for the reviews have been published well in advance which provides all interested parties ample notice to prepare their submissions. This requires forward planning on their part to ensure they do the groundwork on gathering the data before writing their report.

Weaknesses: The deadlines for submitting reports favour the SuR as their submission date is much later than those for UN bodies, NHRIs and civil society. It is acknowledged that reports need to be submitted in sufficient time for the OHCHR Secretariat to translate them into the other official languages of the UN but there seems no reason why they could not all have the same submission deadline.

In preparing the State Report the SuR is encouraged to involve NHRIs and civil society but is not compelled to do so. Often enough the State does not advertise its public meetings very well or keeps their consultation to a chosen few. This is a weakness in the process. For example, Andrew Koo, Chair for the Human Rights Committee of the Malaysian Bar Council, reported that

some of the Malaysian NGOs were not included in the discussions of the national report, nor had they been privy to much of the content of the report, as it was embargoed until its actual submission to the Human Rights Council. This limited the level of engagement of NGOs in contributing to the national report through highlighting contradictions or asking for clarifications from the state (Koo, 2011).

#### **4.5.2 Phase 2**

Strengths: The tight timeframe of the review ensures that discussions are kept brief and to the point. All states are treated equally under this system: large and small states alike get the same amount of time on the floor as do those states entering into the interactive dialogue.

Weakness: Certainly in the early stages of the UPR quite a bit of filibustering was happening. The SuR would negotiate with friendly delegations to sign up early to the speakers' list so as to prevent less friendly states the opportunity to take the floor during the review. Koo (2011) recalls witnessing Malaysia's review where friendly missions to Malaysia began queuing up at 5.45a.m. on the day of the review to register to speak. He notes that some 83 countries were able to register for Malaysia's review but time constraints only allowed for 60 to take the floor. Of these, 44 were members of either the Association of Southeast Asian Nations (ASEAN), the Organization of the Islamic Conference or the Non-Aligned Movement (NAM). Koo describes these 'friendly' states as using up a considerable time of the review, thereby preventing other states the opportunity to speak and put their recommendations.

An amendment: Sen (2011) argues that the speakers' list has been a victim of its own success in the sense that more states were signing up to speak than could be catered for. Several states voiced their concern over the form of power play raised by Koo (2011) and the problem of over-subscription. This issue has been subsequently addressed in the new modalities for the 2nd cycle, whereby all states that sign up are given equal time - the time being divided up according to the number of states registering to speak (OHCHR, 2011, A/HRC/DEC/17/119). For example, for the Philippines' second review in May 2012, 64 states took the floor and 1 minute 52 seconds was allotted to each. For Algeria 77 states participated in the dialogue, with each delegation being given 1 minute 35 seconds. The list no longer begins with the first delegation to sign up as was the case for the 1st cycle. Now the listed states are placed alphabetically according to their name in English, a name is then drawn by lot and from there on

the list follows alphabetically (OHCHR, 2011, A/HRC/DEC/17/119). This was instituted to stop states queuing up early in the morning so as to be first on the list.

#### **4.5.3 Phase 3**

The 3rd phase is where the draft report of a State under Review is adopted by the Human Rights Council during its plenary session following the review. One hour is given to this. The reviewed State responds to the recommendations presented and declares whether it accepts or rejects them (if not already declared), sometimes providing further information that clarifies the situation in its country.

Strengths: During the two months or so between the interactive dialogue and the acceptance of the report, there is opportunity for recommending states and civil society to lobby for their particular issue to be accepted by the state, if it has not already declared so. This interim period is useful, enabling further lobbying where it may be required.

Whilst the UPR is a peer review, the opportunity is given at the end of the process for NHRIs and NGOs to comment on the process. This, at least, gives these institutions a voice to pass on their views about the recommendations put and about the State's response to them.

Weakness: Some states do not make their intention clear regarding their acceptance or otherwise on the recommendations or say that the recommendation has already been implemented. The regulations around this point could be tighter, ensuring that clear positions are declared, as well as giving reasons for non-acceptance. Under the present rules, this is not required. Those recommendations that do not enjoy the favour of the State simple have to be noted (OHCHR, 2007, A/HRC/RES/5/1).

A concern around this matter has been raised by the ISHR's Quarterly (2012, 1) article, regarding Syria. At the adoption of Syria's draft report, Syria claimed that 27 of the 179 recommendations received had already been implemented. However, a number of states, including the UK and the USA, objected to this claim. Norway, too, stated that it considered its recommendation *to immediately release all those arbitrarily detained in Syria*, had not been implemented. Here ISHR's Quarterly warns against the practice of states accepting recommendations on the claim that the issue is being or has already been implemented when there is clear evidence to suggest otherwise. It highlights a significant weakness in this part of the UPR process.

When a state does not declare its position on a recommendation, it is hard to know if it intends to do something about it or not. An example is with the Democratic People's Republic of Korea. The DPRK's review was held in Session 6 (December 2009) and the State received 167 recommendations. At the time of adopting the report, the State rejected 50 of these recommendations and gave no clear position on the remaining 117. A News bulletin by *UPR Info* on 19th March 2010 remarked that before the adoption of the report Norway requested clarification on which recommendations the State has accepted. A break was called for, then on resumption, the delegation from the DPRK restated that it was taking note of these 117 recommendations without further explanation (<http://www.upr-info.org/+DPRK-first-and-only-State-to+.html>). Hence no recommendation at all had been identified by the DPRK as being accepted. Likewise, Lawrence Mushwana, the Chairperson for the South African Human Rights Commission (SAHRC), noted that South Africa gave no clear response to any of its recommendations (Mushwana, 2011). Clearly there seems to be a lack of accountability at this juncture of the proceedings and this sort of response by the DPRK signals a weakness in the process.

#### 4.5.4 Phase 4

This is a critical phase in the UPR process and so far it has been relatively untested. It is the 4½ year period between reviews. An analysis of some reports from Session 13 (i.e. the second round of the UPR) in the next chapter examines this aspect. Unless close monitoring of UPR recommendations occurs during this phase, the danger is that not much will happen and states will go about their business as usual.

Strengths: The fact that there is only just over four years to fulfill the recommendations accepted by the State has the potential of addressing many human rights issues more quickly than has happened in the past. States would want to give a good report card when they come for their next review and so this short timeline is seen as a positive element in the mechanism to make things happen quickly.

This implementation phase also has the potential for governments, NHRIs, NGOs and civil society to work together to effect change, as well as bringing like-minded NGOs together to work as a coalition in monitoring the government's efforts of implementation. Such a case can be seen with the South African Human Rights Commission. Mushwana (2011) outlines his Commission's plan: "The SAHRC is engaging in post-UPR activities [by] encouraging the state and civil society to engage with the UPR and the international human rights system; main streaming UPR recommendations into the Commission's overall work, and aligning its work and programmes with specific UPR recommendations".

#### Weaknesses:

As already mentioned, this phase is yet to be fully tested, so it is not clear how effective the UPR will be in speeding up the implementation of human rights on the ground. At this point in time, the UPR is not widely known by the general public in many countries. More media attention needs to be given to make it better known. As well, there is no obligation for states to work with civil society in the follow-up. Sultana Kamal, Executive Director of the NGO *Ain o Salish Kendro*, Bangladesh, informs us that

unfortunately, the Bangladesh Government categorically only accepts information and/or recommendations received through its own channels. It depends on its intelligence agencies and civil servants rather than on citizens' groups or NHRIs. ... the UPR process has failed to create a sense of ownership which should exist amongst the public as well as state authorities (Kamal, 2011).

#### 4.5.4.1 The Role of NGOs and NHRIs in Phase 4

A significant group among monitoring bodies in this follow-up phase are national and international NGOs and national human rights institutions (NHRIs). Initially the UPR was relatively unknown by most NGOs but in the latter days of the 1st cycle there have been encouraging signs of greater NGO awareness and involvement in the process. NGO monitoring of UPR recommendations can play a major role in the 4th phase and provides the opportunity for NGOs to collaborate closely with the government. An NGO can establish good relationships with its local MPs or with the ministers who are responsible for an area that concerns them.

In terms of monitoring, there are various ways this can happen. The research conducted by Renshaw (2010) involved interviewing several national and international NGOs. In response to a question about ways of monitoring the implementation process, he quotes one NGO as saying: "*We will be following up through a systematic analysis of progress (policies and*



practices) regarding thematic issues brought up in its review. We will be monitoring the indicators and meeting with the government.”

Another NGO reported that:

*Each year, we produce a ‘State of Children’s Rights’ report, which monitors the government’s progress on implementing the most recent Concluding Observations from the UN Committee on the Rights of the Child. The report covers changes in the law or national policy; new statistics and major research findings; conclusions and recommendations (where explicitly relevant) from a human rights monitoring body or parliamentary committee; legal judgments, the views of children, and so on. The UPR recommendations affecting children are all picked up here (Renshaw, 2010).*

NHRIs can also have a prominent role in promoting the success of the UPR at the follow-up stage. In a publication by the Danish Institute for Human Rights on the 1st cycle of the UPR, Christoffer Badse (2010) claims that NHRIs are in a unique position in that they are state funded entities established by an act of the state but at the same time independent from the government, making them a natural focal point at the national level by linking several actors such as state and civil society to work together on the accepted recommendations. Badse makes the suggestion that NHRIs should appoint a UPR Liaison officer among staff at the NHRI and make that person the focal point for inquiries and dissemination of information about the UPR and its follow-up.

#### 4.5.4.2 Mid-term Reporting

In the resolution adopted by the General Assembly on the review of the Human Rights Council there is encouragement for states to submit a mid-term report to the HRC but it is not mandatory (General Assembly Resolution 281, A/RES/65/281, 2011). Some states have taken up this initiative and it is hoped that more will follow their example. Unless there is some self-monitoring as well as external monitoring of accepted recommendations, the concern is that not much will happen during Phase 4.

Some NHRIs and NGOs have adopted this practice as well. An examination of some mid-term reports – either by the states themselves or by NGOs – provides different perspectives. For example, Bangladesh accepted the recommendation from Australia to “*take measures to ensure the independence of the judiciary*” (OHCHR, 2009, A/HRC/11/18). Bangladesh has not submitted a mid-term report but some NGOs have. In this instance the NGO ‘*UPR-HR Forum*’ notes some improvements as well as its concerns:

The government has established judicial service commission to appoint judges for the lower judiciary, appointed number of judges both for the higher and lower judiciary. The higher judiciary has taken some initiative for rapid hearing of long pending cases. Submitting the wealth statement by 17 judges of the High Court including the former Chief Justice is a welcome step. However, independence of judiciary is still not fully functional as no separate secretariat has been established for the judiciary and thus appointment; transfer etc. of the judges of lower judiciary is still administered by the Law ministry. Serious controversy arose in appointing judges for the High Court including the Chief Justice bypassing seniority. Controversy arose due to withdrawal of cases on political consideration, where in the process followed he claimed to be transparent. President's clemency to the convicted in murder cases due to political

consideration also seriously undermined the rule of law. (<http://www.upr-info.org/followup/index/country/bangladesh>)

Another recommendation from Australia, accepted by Bangladesh, was to *“take steps to further strengthen the National Human Rights Commission and the Anti-corruption Commission to ensure that they will be able to operate independently and effectively”* (OHCHR, 2009, A/HRC/11/18). In its mid-term report, the NGO ‘Unrepresented Nations and Peoples Organization’ (UNPO) claims that:

While the creation of the NHRC and its role in fact-finding missions is a positive step, indigenous communities affected by targeted violence (including arson attacks) feel that little practical help has been offered to victims. NGOs are concerned that the Bangladeshi government has not followed up with full and impartial investigations to such attacks. This includes repeated threats of violence towards individuals who submit complaints (or attempt to) and the apparent uncooperative behaviour of police, whose impunity exacerbates the situation for indigenous peoples (<http://www.upr-info.org/followup/index/country/bangladesh>).

Clearly, Bangladesh has made efforts to act on these recommendations but the steps don’t go far enough, according to the above two NGOs. Such mid-term reports would give the government a timely reminder about its responsibilities towards implementing the recommendations accepted at the UPR.

States that submit a mid-term report show a genuine effort to implement the recommendations made at their Review. Often enough where reports are also received from NGOs, there is general congruence with each other’s view. Take Norway for example. On the issue of juvenile justice, Mauritius recommended Norway to *“face up to the challenges and establish appropriate measures to deal with the situation of children in the juvenile justice system, taking fully into account the best interest of the children concerned and ensuring their smooth reintegration into society”* (OHCHR, 2010, A/HRC/13/5). Norway has provided an extensive comment in its mid-term report on this issue:

The Government’s goal is that no minors shall be imprisoned, and efforts are under way to increase the use of alternatives to imprisonment. This is in accordance with the provisions of the Convention on the Rights of the Child stating that children may only be deprived of their liberty as a measure of last resort, when all other alternatives have been considered and found to be inadequate.

In order to reduce the number of juveniles in prison, the Government proposed a bill in summer 2011 to introduce a new sanction for juveniles aged 15 to 18 years who have committed serious or repeated crimes, the “juvenile sentence”. In such cases the sanction will be implemented locally, in the community where the convicted person lives. Social control, in the form of close follow-up, will then replace the physical control that would be exercised in prison. The juvenile sentence will involve close contact between the offender, their personal network, various levels of the justice sector and other public bodies, all of which will be part of an individually adapted follow-up programme. The victim may also be involved if he or she is willing. For the youngest offenders, maximum use is to be made of the community sentence system. The amendment was passed by the Storting in December 2011, but has not yet entered into force.

In the above-mentioned bill the Government also proposed several other legislative amendments to strengthen the legal rights of juveniles in conflict with the law. The following amendments entered into force in January 2012:

- Minors may only be remanded in custody in cases where it is “compellingly necessary”.
- A shorter time limit for bringing a juvenile before the court has been introduced: in the case of minors whom the police consider should be remanded in custody the minor must be brought before the court as soon as possible and at the latest on the day following their arrest.
- The police now have a duty to notify the municipal child welfare service if it is considered necessary to apply for remand in custody of a person under 18 years of age.
- A representative of the child welfare service must attend the remand hearing and provide information on the appropriate measures and their preparation.
- The conditions for remanding a minor in custody must be reviewed at least every two weeks.

In order to avoid the imprisonment of juveniles together with adults and to ensure better detention conditions for this group, a trial project is currently being conducted in which separate prison units are being established for young offenders. Two separate units are to be established, with a total of 10 places. One of these, in Bergen, has been operational since 1 September 2009 and the other, in eastern Norway, is being planned. The project will be evaluated during and after its completion. (<http://www.upr-info.org/followup/index/country/norway>)

On the same issue the Norwegian Ombudsman for Children (BOC) submitted his own mid-term report. His comments follow.

Partially done. The Government has made several changes regarding juvenile justice. New legislation has already taken effect and is expected to take further effect during 2012. This legislation's aim is amongst others to reduce the number of juveniles in prison. Where prison is the only opportunity, Norway is developing alternative units for convicted juveniles, "juvenile units". In these units the juveniles are separated from the adults, they are given proper care and education, activities and therapy. The prison in Bergen has one such unit with 2 places. Bergen is supposed to have 4 places, and we are waiting for the remaining 2. We are also waiting for the remaining unit, which is supposed to be located in the South-East of the country. This unit will have 6 places. (<http://www.upr-info.org/followup/index/country/norway>)

In spite of the above-mentioned reports, the Norwegian Centre for Human Rights (NCHR) in its mid-term report claims that “Norway still places children in police arrests with stripped cells - too often, too long and without considering the best interest of the child. Norway still have challenges also in creating better solutions for the children placed in custody and serving time in jails” (<http://www.upr-info.org/followup/index/country/norway>). So while there is concurrence with a state’s mid-term report by NHRIs or NGOs, there are also views that can offer a different picture. Such reports contribute to healthy monitoring during this phase.

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## CHAPTER V

### Children's Rights in the UPR

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#### Chapter Summary

This chapter analyses the UPR from the perspective of Child Rights. It considers an overview of children's rights in the 1st cycle of the UPR, making reference to those which are most commonly raised and the states that champion children's rights. The quality of recommendations is then considered, ranging from those that are very general to those that are sharp and call for specific actions from the SuR. The proportion of children's rights accepted, rejected or 'no clear position taken' is examined and a comparison is made between the number of Child Rights recommendations from the 1st Session with those in the 13th Session. As well, some regional groups are examined to see if there are any differences between regions over children's rights.

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The previous chapter studied the 1st cycle of the Universal Periodic Review as a new mechanism of the HRC and evaluated how states have responded to it. Overall, there have been encouraging signs emerging. As a 'peer review' the UPR has enabled states to put recommendations in a cooperative way with the end goal being to promote and protect human rights on the ground. All states are reviewed and this is a savory aspect of the review – everyone knows that they will have their turn! This element adds to the view that it seems to be treated respectfully and with all seriousness.

This chapter considers the UPR from the perspective of Children's Rights to determine whether or not Children's Rights are significantly weighted within the human rights agenda of the UPR. An investigation is done to see whether any states prioritize Children's Rights over other rights and to identify them since it would be these states that will help bring about change for children on the ground. NGOs would also want to know who these states are so as to collaborate with them in raising Children's Rights at the UPR.

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## 5.1 Children’s Rights in the 1<sup>st</sup> cycle

As noted in Chapter IV, Children’s Rights constitute 16.1%<sup>12</sup> (i.e. 1/6th) of all rights raised in the 1st cycle, just behind *International Instruments* (19.8%) and *Women’s Rights* (17.3%). Whilst 16.1% may not seem all that high, in fact it shows that Child Rights feature very strongly among the vast range of human rights issues raised at the Review. If ‘Child Rights’ were given equal hearing among the list of 54 different human rights categories provided by *UPR Info’s* database, then they would count for only 1.9% of mentions, where as it is more than 8 times this amount. The table below provides the total number of recommendations presented for each session of the 1st cycle as well as those specifically relating to Children’s Rights.

**TABLE 5 Children’s Rights in the 1<sup>st</sup> Cycle of the UPR**

Session	States	All Recommendations		All Child Rights Recommendations	
		Total number	Average Per State	Total number	Average per State
1	16	430	29	50	3
2	16	855	53	118	7
3	16	1335	83	165	10
4	16	1804	113	247	15
5	16	1670	104	270	17
6	16	2038	127	400	25
7	16	2147	134	300	19
8	15	2107	140	340	23
9	16	2051	128	360	23
10	16	2306	144	354	22
11	16	2176	136	360	23
12	17	2434	143	389	23
<b>TOTAL</b>	<b>192</b>	<b>21,353</b>		<b>3442 (16.1%)</b>	

### 5.1.1 A rapid rise in the number of Child Rights’ recommendations per session

The number of children’s rights increases dramatically from Session 1 to Session 6, then they plateau. Taking Session 8 as an example, we see that Child Rights recommendations were put 340 times, an average of 23 per SuR. This is quite substantial. It shows that children are getting a good hearing at these reviews. It is to be noted, though, that the figures in the table do not give any indication as to how many times a particular issue is repeated by other states – as is sometimes the case. An example of this comes from the UPR of Kiribati (Session 8) where the same issue is presented twice, by different delegations:

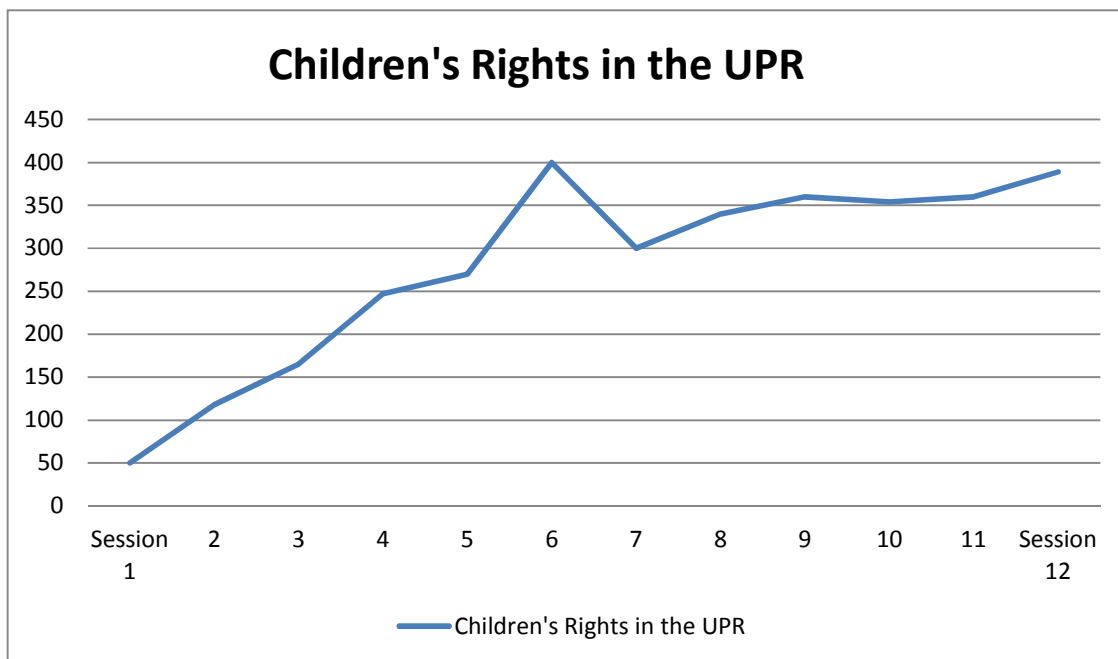
- Prohibit the corporal punishment of children at home, at school, in penal institutions, in alternative-care settings and as a traditional form of sentencing (Slovenia);

<sup>12</sup> See Table 3.

- Explicitly prohibit, in all fields, corporal punishment for children and adolescents, particularly in view of section 226 of the Penal Code, which permits “reasonable punishments” in penal institutions and by decree of Island Councils (Chile) (OHCHR, 2010, A/HRC/15/3).

The graph below provides a visual picture of the rapid growth in the number of Children’s Rights Recommendations in the UPR, especially from Session 1 to Session 6.

**GRAPH 1 Children’s Rights in the UPR**



The graph shows a substantial rise in children’s rights from one session to the next. This is in line with a similar rise in the overall number of recommendations in progressive sessions. The spike in Session 6 is a little difficult to explain except to say that five states in this session received considerably more recommendations about children than normal. Cote d’Ivoire (44 recommendations) and the Democratic Republic of Congo (47 recommendations) received more than double the number than most other states. For both countries, there was a very high recurrence of recommendations relating to sexual violence, especially of girls, including Female Genital Mutilation and along with these issues, the DRC also received a high number about child soldiers. Eritrea and Ethiopia each received 34 recommendations about children – again, considerably higher than the average. The issues most often raised were sexual violence, FGM and children in armed conflict. Albania received a high number as well – 33 recommendations in all – but the issues were spread over a wide range of topics. The majority were African states and the issues were quite similar: sexual violence and child soldiers.

\* \* \*

## 5.2 Children’s Rights Issues in UPR recommendations

The Right to Education, a right for all children (Article 28 of the CRC), is the Child Right that occurs very frequently in the UPR. *UPR Info’s* database shows that it makes up 4.1% of all

recommendations presented at the UPR. This is about one quarter of all the children's rights issues raised. What are some of the other more frequently-raised issues about children? Renshaw's research (2010) on Child Rights, based on the first 7 sessions of the UPR, reveals nine types that feature prominently, along with education:

<b>Education (817)</b>	<b>Ethnic Minority Groups (498)</b>	<b>Child Labour (287)</b>
<b>Violence (773)</b>	<b>Juvenile Justice (476)</b>	<b>Corporal Punishment (258)</b>
<b>Health (507)</b>	<b>Child Trafficking (320)</b>	<b>Children in Armed Conflict (196)</b>

Renshaw's analysis (2010) does not simply consider the number of recommendations made about children's rights but rather he bases his findings on the total number of 'mentions' an issue gets during the process. For his analysis he used the official reports of the reviews, namely the state reports, UN compilations, NGO compilations and recommendations in the final report. He then added up the total number of mentions about each issue to get the final figures. These are shown in brackets next to the issue, resulting in his top nine issues that figured most prominently in the first seven sessions of the UPR. Renshaw points out that education is the most prominent children's rights issue in the UPR, with violence against children second, then there is a big gap to health in third place.

An analysis of Children's Rights for this paper was undertaken for Session 12 and it confirms that *Violence (103)*, *Juvenile Justice (44)*, *Education (43)*, *Trafficking of Children (25)*, *Child Labour (25)*, *Health (23)* and *Corporal Punishment (22)* are still the most frequently raised, with Violence against Children (including sexual abuse) numbering more than double any other Child Rights' issue. However, *Ethnic Minorities (5)* and *Children in Armed Conflict (4)* in Renshaw's list do not get many mentions in Session 12, whereas others not mentioned by him but occurring frequently are *Children with Disabilities (25)*, *Children's International Instruments (29)*, *Exploitation of Children (17)* and *Children as part of Vulnerable Groups (14)*. Many other issues are raised as well, including Discrimination against Children, the Right to Birth Registration, Street Children and the Rights of Migrant Children. These figures, though, are based solely on the number of recommendations put, and not on Renshaw's criteria of the number of 'mentions'.

Quite often the issues raised are country-specific. For example, Tanzania received many recommendations about protection of children against violence:

- Prohibit all violence against children, including corporal punishment (Sweden)
- Allocate adequate resources to ensure the effective implementation of the National Action Plans to combat Violence Against Women, Violence Against Children and Female Genital Mutilation (Hungary)
- Redoubling efforts to protect women and children against all forms of violence, including the use of FGM (Netherlands)
- Step up its efforts to protect women and girls from sexual violence also in marriage (Norway) (OHCHR, 2011, A/HRC/19/4).

By contrast, Antigua & Barbuda received six recommendations relating to the minimum age of criminal responsibility – four are given here:

- Raise the age of criminal responsibility (Brazil)
- Lift the age of criminal responsibility (Germany)
- Raise its crime responsibility threshold to comply with international standards (Slovakia)
- Raise the minimum age of criminal responsibility and establish detention facilities exclusive for minors, separate from those for adults (Spain) (OHCHR, 2011, A/HRC/19/5).

This seems to indicate that participating states are well informed about issues needing attention within the SuR.

\* \* \*

### 5.3 Action Categories for UPR Recommendations

It is encouraging to see Children's Rights claiming prominence in the UPR system. However, the question must be asked: How seriously do states treat these recommendations and how well worded is a recommendation such that it encourages specific action? *UPR Info's* database provides a unique tool that can analyze the second part to this question. The first part can only be answered by the State itself, evidenced through its feedback to the Working Group at its next Review.

Regarding the second part to the question above, by using 'Action Category' in *UPR Info's* "advanced search and tools" section of the database, an analysis can be done on the type of action required. But first - an explanation of the system's analysis tool is necessary, as provided by *UPR Info*:

The Action Category is a unique feature of *UPR Info's* Database of UPR Recommendations.

Developed by Professor Edward R. McMahon of the University of Vermont (US) with the support of UPR Info, it creates a new approach to recommendations by looking into the action requested. This new and exclusive feature analyses the first verb and the overall action contained in the recommendation and ranks it on a scale from 1 (minimal action) to 5 (specific action).

#### **Categories**

- 1 – [*Minimum Action*] Recommendation directed at non-SuR states, or calling upon the SuR to request technical assistance, or share information (Example of verbs: call on, seek, share).
- 2 – [*Continuing Action*] Recommendation emphasizing continuity (Example of verbs: continue, maintain, persevere, pursue).
- 3 – [*Considering Action*] Recommendation to consider change (Example of verbs: analyze, consider, envisage envision, explore, reflect upon, revise, review, study).



- 4 – [*General Action*] Recommendation of action that contains a general element (Example of verbs: accelerate, address, encourage, engage with, ensure, guarantee, intensify, promote, speed up, strengthen, take action, take measures or steps towards).
- 5 – [*Specific Action*] Recommendation of specific action (Example of verbs: conduct, develop, eliminate, establish, investigate, undertake as well as legal verbs: abolish, accede, adopt, amend, implement, enforce, ratify).

### **Principles**

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

When a recommendation is starting with two verbs, the second one is taken into account. Ex: “*Continue and strengthen..*” -> category 4.

When a recommendation starts with a general action but then provide examples of specific actions, it is considered as category 5. Ex: “*Improve women’s rights by amending the family code*” ([http://www.upr-info.org/IMG/pdf/Action\\_Category.pdf](http://www.upr-info.org/IMG/pdf/Action_Category.pdf))

An example of each type of action is provided here for clarity:

#### 1. Minimal Action:

*“Share with the members of the international community its best practices regarding human rights, particularly on the new policy on domestic violence and persons with disabilities”* (Accepted: Moldova to Slovakia) (OHCHR, 2009, A/HRC/12/17)

#### 2. Continuing Action:

*“Continue its efforts to ensure that children with disabilities exercise their right to education to the fullest extent possible and facilitate their integration into the general education system”* (Accepted: Uruguay to Hungary) (OHCHR, 2011, A/HRC/18/17)

#### 3. Considering Action:

*“Study the possibility of developing and adopting in the near future a national action plan on the rights of the child”* (Accepted: Belarus to Guinea) (OHCHR, 2010, A/HRC/15/4)

#### 4. General Action:

*“Protect the children and families of migrants and refugees”* (Accepted: Ecuador to the United Kingdom) (OHCHR, 2008, A/HRC/8/25)

#### 5. Specific Action:

*“Enact legislation and take effective measures to protect and promote women’s rights, especially with regard to forced marriages, honour killings and access to education for girls”* (Accepted: Austria to Afghanistan) (OHCHR, 2009, A/HRC/12/9)

Based on the categories of 1 – 5, *UPR Info's* database proposes the type of action each recommendation requests from the SuR. The following is the result of such a search on their database for the 1<sup>st</sup> cycle of the UPR with regards Children's Rights:

<u>ACTION TAKEN</u>	<u>C.R. RECOMMENDATION</u>	
1. Minimal Action	45	1.3%
2. Continuing Action	412	12.0%
3. Considering Action	250	7.3%
4. General Action	1615	46.9%
5. <u>Specific Action</u>	1120	32.5%
TOTAL of Child Rights Recs.	3442	100.0%

Nearly 80% of the recommendations fall into category 4 or 5, with nearly 50% belonging to category 4. Whilst these percentages are encouraging, it is desirable for recommendations to be specific, action-oriented and accountable, i.e. category 5. Category 4 recommendations call for actions that are of general nature and in fact Frazier (2011) would put it more akin to categories 1, 2 and 3 rather than being close to category 5. On this score, much more work needs to be done by states to sharpen their recommendations to ensure there is measurable action implied in what they are recommending. It is the responsibility of those wishing to see a full and fruitful implementation of their recommendations to frame them so that they require unambiguous action by the state that can be clearly evidenced.

\* \* \*

#### **5.4 'Reviewing States' that favour Children's Rights**

It has been noted that 1/6th (i.e. 16.1%) of all recommendations voiced at a state's review are Children's Rights. Who are these countries that are raising these rights - or is there no one in particular? Referring once again to Renshaw's research (2010), he lists the ten most active UN Member States that are promoting Children's Rights in the UPR mechanism. This is important information, particularly for Children's Rights NGOs looking for support to have their recommendations presented at the UPR. Renshaw's 'top ten'<sup>13</sup> are derived from an analysis of the first seven sessions of the UPR's 1st cycle. The data gathered and evaluated for this paper included all twelve sessions of the 1st cycle, resulting in a different list from Renshaw's, both in states and in ranking (see Table 6 below).

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<sup>13</sup> Renshaw's 'top ten' states, in order, issuing the most children's rights recommendations overall in the first seven sessions of the UPR are: Slovenia, Italy, Brazil, Algeria, Czech Republic, Mexico, Canada, Malaysia, Germany, Chile.

**TABLE 6 Top 10 recommending states on Children’s Rights in the 1st Cycle**

	Top Ten States	No. of Recommendations
1.	SLOVENIA	164
2.	BRAZIL	134
3.	CANADA	121
4.	NORWAY **	105
5.	SLOVAKIA **	103
5.	MEXICO	103
7.	ITALY	100
8.	AUSTRIA**	98
9.	URUGUAY**	97
10	SPAIN**	94
** These states do not appear in Renshaw’s list of ‘top ten’ states		

Further analysis of the recommendations put by these states reveals that some issues were raised more frequently by some states than by others. A summary of this evaluation is provided in the following table:

**Table: 7 Child Rights’ issues prioritized by certain states**

Child Rights Issue	States prioritizing this issue
Ratification or compliance with International treaties	Slovenia, Brazil, Canada, Norway, Slovakia, Mexico, Italy, Uruguay, Spain
Domestic violence, including sexual violence	Slovenia, Brazil, Canada, Norway, Slovakia, Mexico, Italy, Austria, Uruguay, Spain
Trafficking and exploitation of children	Slovenia, Brazil, Canada, Norway, Slovakia, Mexico, Uruguay
Juvenile Justice	Slovenia, Canada, Slovakia, Mexico, Austria
The Right to Education	Slovenia, Canada, Norway, Slovakia, Mexico, Italy,
Corporal punishment	Slovenia, Brazil, Italy, Uruguay, Austria, Spain
Child labour	Slovenia, Brazil, Slovakia, Italy, Uruguay, Spain
FGM and other harmful cultural practices	Slovenia, Brazil, Canada, Norway, Italy, Spain

Child soldiers	Slovenia, Canada, Austria, Uruguay
Birth registration	Uruguay
Discrimination against children, especially girls	Brazil, Mexico
Minimum age of criminal responsibility	Brazil, Slovakia
Alternative care for children	Brazil, Austria
Child protection (general)	Italy, Austria
Children with disabilities	Canada, Spain
Children's and maternal health	Norway

Other related Child Rights issues raised by some of these states are children of a parent in prison (Slovenia), street children (Slovenia and Uruguay), removal of the death penalty for minors (Brazil, Canada, Italy and Uruguay), include children in a state's national action plan (Slovakia, Mexico, Austria and Uruguay), discrimination against Roma children (Spain), appointing a Children's Ombudsman & a complaints mechanism (Norway and Slovakia), raising the minimum age of marriage (Norway), migrant and refugee children (Slovenia and Uruguay) and seeking assistance in drafting legislation for children (Uruguay).

It has already been noted that the Right to Education constitutes 4.1% of all recommendations put to SuRs in the 1st cycle. Analysis of this issue provides a different picture to the one above and shows that Algeria, Malaysia and Finland are the top 3 states championing the Right to Education. Slovenia, Norway, Slovakia, Mexico, Italy and Canada were below these three states. Table 8 gives the results of this analysis.

**TABLE 8 Top 3 Member States supporting the *Right to Education* in the UPR**

	State	No of Recommendations
1.	ALGERIA	49
2.	MALAYSIA	29
3.	FINLAND	25
-----	-----	-----
	SLOVENIA	19
	NORWAY	17
	SLOVAKIA	17
	MEXICO	17
	ITALY	16
	CANADA	15

Thus, while Algeria, Malaysia and Finland do not appear in the ‘top ten’ for Child Rights recommendations in Table 6, they feature quite strongly in promoting the Right to Education. Moreover, Slovakia has taken the lead to champion the ratification of the 3<sup>rd</sup> Optional Protocol of the CRC (Communications Protocol) by putting this recommendation to no less than 9 out of the 14 States reviewed during the most recent session of the UPR (Session 13).

\* \* \*

## 5.5 What influences a state in the recommendations it proposes?

It has been shown that certain states favour putting Children’s Rights at the UPR. What influences a state to do this? The following question was put to all eight interviewees for this research: *What or who influences a state about the recommendations it makes?* First of all a summary of the responses from the interviewees of the three permanent missions is provided here:

- It is important that the recommendations made have a chance of being implemented;
- One’s own country’s priorities has a major influence;
- Central government often influence what is finally put and it is guided by its own policies on the issue, i.e. it generally will not recommend anything where it has a poor record itself;
- The recommending state’s own foreign policy on children;
- The recommending state’s relationship with the SuR;
- Having an embassy in country of the SuR helps the state know what some of the major issues are;
- Input from NGOs is very pertinent and also what NHRI’s say – particularly if they have submitted a report themselves;
- Treaty Body and Special Rapporteur reports help inform a state in formulating its recommendations.

The responses from the other five interviewees are given below:

- The relationship that the recommending state has with the SuR;
- Civil society;
- The priorities of the recommending state;
- Information coming from the state’s foreign affairs office;
- the permanent mission in Geneva gets its instructions from its Capital;
- The recommending state’s own human rights priorities;
- Influences of lobbying groups such as NGOs;
- The three official documents used for the UPR.

One can see that there is a strong correlation with both sets of responses. There is not one factor that necessarily stands out, but rather a combination of many that seem to assist with finalizing the recommendations presented at the Interactive Dialogue. From the perspective of children’s rights, a combination of the following seems to help: for the recommending state to have a strong history of defending children’s rights, that it is open to listening to lobby groups and that it has a good relationship with the SuR.

\* \* \*

## 5.6 Regional differences regarding children’s rights at the UPR

As noted earlier in this paper, McMahon (2010) claims that the UPR is not regionally driven but rather, states make their recommendations largely on an individual basis. His contention is that “by contrast to other functions of the HRC and UN General Assembly where regional affiliations and loyalties ‘lock-in’ North-South conflict, the UPR recommendations process emphasizes bilateral, state-to-state relations.” McMahon’s view is that states have greater freedom to make decisions and act apart from regional affiliations. This is a positive aspect to the UPR.

Nonetheless, are there any differences between regions regarding children’s rights in the UPR? Below is an analysis that considers this question. Table 9 summarizes an analysis of the data and shows the number of Child Rights recommendations received per region (column 2), the average number of Child Rights recommendations per region (column 3), and the number of recommendations put per region (column 4).

**TABLE 9 Regional Groups and Children’s Recommendations at the UPR**

REGION	SuR	Recommendations received per SuR	Recommending States
Africa	1186 (34.5%)	22	332 (9.7%)
Asia	886 (25.7%)	16	515 (15.0%)
EEG <sup>14</sup>	375 (10.9%)	16	633 (18.4%)
GRULAC <sup>15</sup>	580 (16.9%)	18	647 (18.9%)
WEOG <sup>16</sup>	415 (12.1%)	15	1280 (37.2%)
Observer States <sup>17</sup>	0		35
TOTAL	3442		3442

The percentage of UN member states that belong to each regional grouping have been provided by McMahon (2010) in his commentary, namely:

- Africa = 53 countries, approximately 28% of the UN membership
- Asia = 54 countries, approximately 28% of the UN membership
- GRULAC = 33 countries, approximately 17% of the UN membership
- WEOG = 28 countries, approximately 23% of the UN membership
- EEG = 23 countries, approximately 12% of the UN membership

An analysis of these figures shows that the African group receives considerably more Child Rights recommendations than the other groups, an average 22 per state, and that this group makes the least number of Child Rights recommendations compared to the other regional groups. On the other hand, the Western European and Other Group of States (WEOG) puts the most number of Child Rights recommendations – more than twice the number for any other group. A number of deductions can be drawn here:

<sup>14</sup> EEG = Eastern European Group of States.

<sup>15</sup> GRULAC = Group of Latin American and Caribbean States.

<sup>16</sup> WEOG = Western European and other States Group.

<sup>17</sup> Observer States = Palestine and the Holy See.

- that African nations have more Child Rights issues than the other groups;
- that African nations are less inclined to make Child Rights recommendations at the UPR, perhaps because they are reluctant to make recommendations to other states on issues that are a concern in their own country;
- that WEOG States are much more inclined to put Child Rights recommendations than any other group;
- that Apart from the African Group, all other groups receive about the same number of Child Rights recommendations as each other.

What conclusions can be drawn from this? Whilst McMahon claims that states do not align within regional groups in the UPR process, the results show that WEOG, as a group, leads the way in championing children’s rights, well ahead of the other groups. One could conclude that WEOG members are more inclined to promote and protect children’s rights than others.

Another conclusion that could be drawn is that there are more children’s rights issues in African states than for other groups. Given that many African states are amongst the poorest in the world and that there are situations of unrest in a number, this finding is not surprising, since poverty and internal conflict affect the most vulnerable amongst the population, namely, women and children.

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## 5.7 Children’s Rights Accepted, Rejected or No Clear Position Taken

An analysis of the total number of children’s rights put as recommendations in the 1st cycle shows that they are more likely to be accepted than other categories. During the 1st cycle, 73.1% of all recommendations were accepted, whereas 83.3% of Children’s Rights were accepted. Only 7.5% were rejected as against 14.9% of all recommendations rejected. One reason for this could be that Children’s Rights are politically safer issues to present as recommendations to SuRs.

The table below provides a summary of *accepted, rejected, or no clear position given*, with respect to Child Rights’ recommendations compared to the total number of recommendations put during the 1st cycle.

**TABLE 10 State Responses: A comparison between Child Rights’ recommendations and the total number of recommendations put during the 1st cycle**

1 <sup>st</sup> Cycle	All Recommendations		Child Rights Recommendations	
Accepted	15613	73.1%	2867	83.3%
Rejected	3181	14.9%	259	7.5%
No Clear Position	2559	12.0%	316	9.2%

Renshaw's studies (2010) show that among children's rights corporal punishment is the one either most rejected or where no clear position is given. In many countries corporal punishment is still widely accepted and in such cases it can be difficult to impose an outright ban. International pressure, however, is prompting these states to think more seriously about it. Renshaw points out that of the 72 recommendations made on this issue during the first seven sessions, only 50% were accepted and 30% were rejected. Whereas, in contrast, he notes that of the 257 recommendations proposed on education, only 4 % were rejected. This data seems to support the conclusion that corporal punishment is a challenging issue for a number of states.

\* \* \*

### 5.8 Children's Rights: An examination of *States under Review* a second time round

Session 13 saw the beginning of the 2nd cycle of reviews, in May 2012. A decision of the HRC was that the order of review would remain the same as for the 1st cycle but with only fourteen states reviewed per session instead of the original sixteen, due to the extension of each review from 3 hours to 3½ hours (OHCHR, 2011, A/HRC/DEC/17/119). The last two states from Session 1 (Czech Republic and Argentina) have been moved to Session 14, due in October 2012.

**TABLE 11 A comparison between Session 1 (2008) and Session 13 (2012) for the same group of States**

State under Review (In order of review)	Participating States		Recommendations put (*CR = Child Rights)			
	Session 1	Session 13	Session 1		Session 13	
			Total	CR*	Total	CR
1. Bahrain	36	67	12	2	176	22
2. Ecuador	33	73	12	1	136	42
3. Tunisia	65	77	28	0	164	20
4. Morocco	55	91	16	0	156	31
5. Indonesia	46	74	13	2	179	44
6. Finland	21	43	17	1	86	26
7. United Kingdom	38	60	35	9	132	35
8. India	42	80	30	1	169	54
9. Brazil	44	78	15	0	170	29
10. Philippines	41	64	24	4	159	36
11. Algeria	46	77	36	3	168	36
12. Poland	26	45	33	3	124	26
13. Netherlands	37	49	52	6	119	35
14. South Africa	45	77	29	6	151	43
<b>Total Recs put</b>			<b>352</b>	<b>38</b>	<b>2089</b>	<b>479</b>
			<b>(10.8%)</b>		<b>(22.9%)</b>	
<b>Average per State</b>	<b>38</b>	<b>68</b>	<b>25</b>	<b>3</b>	<b>149</b>	<b>35</b>



Table 11 provides a comparison between Session 1 and Session 13 for the same SuRs. It provides data about the number of states that took part in the Interactive Dialogue (Phase 2), the number of recommendations put by these states and how many of these are Child Rights' recommendations.

The difference in the number of recommendations received by SuRs in their second review, compared to the first, is remarkable. The 1st Session in 2008 was totally untested and Member States were quite unaccustomed to this new process. This is reflected in the relatively few recommendations received by these states at that time. However, the table reveals that many reviewing states have made up lost ground during Session 13 in relation to the human rights issues needing attention in those countries.

The data shows that nearly double the number of states participated in the Interactive Dialogue in Session 13 than in Session 1 and the number of Child Rights issues have soared from an average of 3 to 35 per state - nearly 23% of all recommendations put. This number far exceeds the average of 23 achieved in the last five sessions of the 1st cycle (c.f. Table 5). Based on this data alone, it seems that Children's Rights are now firmly on the agenda in the UPR process.

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## Chapter VI

### Children's Rights in the Follow-up Phase of the UPR

An analysis of four States:

United Kingdom  
Netherlands  
South Africa  
Philippines

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#### Chapter summary

This chapter examines four states in relation to the Child Rights' recommendations they received in the 1st Session in 2008 and looks at what has happened in the follow-up phase since that time. This analysis is possible since these states have had their second review. As a consequence, the research seeks to determine whether children are better off or not through the UPR. Child Rights issues raised at their 2nd review are also examined to see if there is a repetition of those proposed in 2008 or are there new issues being presented? The states examined are the United Kingdom, Netherlands, South Africa and the Philippines.

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The revised modalities for the 2nd and subsequent cycles of the UPR stipulate that "the review should focus on, inter alia, the implementation of the accepted recommendations and the developments of the human rights situation in the State under review" (OHCHR, 2011, A/HRC/16/21). The following four states are examined in regard to the follow up that has occurred since their first review, from the perspective of recommendations that relate to children's rights.

#### 6.1 United Kingdom

At the adoption of the Draft Report in 2008 the UK delegation responded to most of the recommendations put to it. There were nine that referred to children. Details and responses to these recommendations follow.

General Comment: It has become the practice of many states to provide a written response to the recommendations received during the HRC session at which the final draft of the report is adopted. These are usually recorded in an Addendum to the Report of the Working Group on the outcomes of the review. The UK was one of the first states to adopt this practice. Where the State has responded through an Addendum, a summary of these responses have been included in the 4<sup>th</sup> column in the accompanying tables.

**TABLE 12 UNITED KINGDOM - Children's Rights Recommendations Received in 2008**

\*\* RS = Recommending State

<b>Recommendation</b> (OHCHR, 2008, A/HRC/8/25)	<b>RS**</b>	<b>Response</b>	<b>Comments by the SuR</b> (OHCHR, 2008, A/HRC/8/25/Add.1)	<b>Action taken</b>
1. Address the high incarceration rate of children, ensure that the privacy of children is protected.	<b>Algeria</b>	Accepted	UK undertakes to work towards implementation. The Government is currently legislating to put a new community sentence for young people under 18 to provide a wider range of sentencing options, including community interventions.	YES
2. Put an end to the so-called "painful techniques" applied to children (in custody).	<b>Algeria</b>	Rejected	The Government considers restraining young people in custody who endanger others as necessary but the existing techniques are being reviewed and allegedly involves only momentary discomfort.	YES
3. Protect the children and families of migrants and refugees.	<b>Algeria Ecuador</b>	Accepted	The delegation noted the UK's support for the protection of children of migrant families and refugees.	Unknown
4. Accede to the International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families (ICMRW)	<b>Algeria Ecuador Egypt</b>	Rejected	In the UK the rights of children and family members of migrants and refugees are already protected by UK legislation, including the Human Rights Act of 1998.	NO
5. Provide further information with regard to efforts to reduce poverty among children in half by 2010.	<b>France</b>	Accepted	Already implemented and the Government will monitor it. In March 2008 the Government published 'Ending Poverty: Everybody's Business', detailing the Government's strategy.	YES
6. Withdraw its reservation to the Convention on the Rights of the Child, concerning the provision that detained children be separated from adults while in detention, as well as the reservation concerning refugee and asylum-seeking children	<b>Indonesia</b>	Rejected	Reservations to Article 22 which deals with refugee children and 37(c) which refers to children in custody with adults, are currently under review, noting that with regards Article 37(c) there are separate legal systems in England-Wales, Scotland and Northern Ireland and any departure from the current position requires agreement from these three jurisdictions.	YES

7. Consider removal of its reservations to the Convention on the Rights of the Child and the Optional Protocol on the involvement of children in armed conflict.	<b>Russian Federation</b>	Accepted	Reservations to Article 22 and 37(c) are currently under review. Regarding the OP-AC, the explanation given is that the Government does not hold any reservations to this Protocol – theirs is an interpretive statement rather than a reservation.	YES
8. Consider further measures in order to address the problem of violence against children, including corporal punishment.	<b>Italy France</b>	Accepted	The Governments accepts considering going beyond current legislation if the need arises to protect children from violence, but denies the implication that it is failing in this regard through the application of its policy on corporal punishment and makes it absolutely clear that no child should be subjected to violence or abuse.	Unknown
9. Reconsider its position about the continued legality of corporal punishment against children.	<b>Sweden</b>	No Response	Whilst not responding directly to this recommendation, there is an implicit response in the previous comment. Nonetheless the 'Addendum' notes that corporal punishment has been banned in both state and independent schools and other educational settings and further restrictions are placed on parents who physically injure their children.	Unknown

In terms of actions taken, 5 recommendations have been followed up, 1 has not and 3 remain in doubt (see Column 5 in the table above).

## Follow Up

### 6.1.1 Mid-term Progress Report

During the regular session of the HRC in March 2010 the UK provided a Mid-term Progress Update on the recommendations received at its Review. This is recognized as an example of 'good practice' ([http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/GB/UKmid\\_term\\_report2010.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/GB/UKmid_term_report2010.pdf)). However, as of September 1, 2012, only 25 states have submitted mid-term updates.

Concerning the first and second recommendations in the table above, in its Mid-term update the UK referred to an independent Joint Review of Restraint in Juvenile Secure Settings. This report was published in December 2008. The Mid-term update indicated that Government has accepted almost all its recommendations and was "pressing ahead with their implementation" (UK Mid-term progress update, HRC 13th Session). It also reported that progress has been made in relation to reducing incarceration rates of children.

Referring to recommendation 5 above, put by France, the Mid-term Report provided data to support its activity in this regard. It referred to 'The Child Poverty Bill' progressing through Parliament at that time and gave an update on developments in Scotland, Wales and Northern Ireland.

In relation to the Convention on the Rights of the Child (Recommendation 7 above), the report noted that its two reservations, Article 22 and 37c, were formally removed in November 2008. Furthermore, the UK has had a change of heart to its initial rejection of Indonesia's call to withdraw its reservation on the provision that detained children be separated from adults while in detention, as well as its reservation concerning asylum seeking children. During the second review, the delegation informed the Working Group that there had been significant developments since 2008, noting that it had ended the detention of children for immigration purposes in 2011. ((OHCHR, 2012, A/HRC/21/9). The implication is that even though a state may reject a recommendation, the possibility remains for it to reverse its decision later. Pressure from the recommending state and/or NGOs and NHRIs has the potential to bring about a change of heart by a government that initially may say a recommendation does not enjoy the favour of the government.

The Mid-term Report also referred to the issue of corporal punishment, reaffirming the Government's stance that no child should be subjected to violence or abuse. It acknowledged that there were concerns over physical punishment in some education and other learning centres that fall outside its current legal framework banning corporal punishment. However, it did not give concrete evidence that progress was being made in these areas and simply referred to existing legislation in England and Wales, Scotland and Northern Ireland.

### **6.1.2 The Second Review**

The UK's National Report (OHCHR, 2012, A/HRC/WG.6/13/GBR/1) for its second review carries an update on many of the recommendations accepted in its initial review and says that it should be read in conjunction with its Mid-term update. Regarding children's rights, it refers to the following:

- the Government has set up a Ministerial Working Group to look into ways to tackle inequalities experienced by Gypsies and Travellers in England in such areas as health, education, housing, employment and the criminal justice system. All of these areas affect children. A progress report is due sometime in 2012;
- whilst lifting its reservations to the two articles of the CRC, the Government has also ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, reporting to the UN in May 2011 on progress in this area;
- various Action Plans for promoting the rights of children and young people are noted for Scotland, Wales and Northern Ireland;
- various measures on combating child poverty were aired;
- the Government says it is committed to legislating to give the Children's Commissioner an explicit role in promoting and protecting children's rights in line with the CRC and to make the Commissioner more independent from Government and more accountable to Parliament;
- corporal punishment is mentioned, however, there seems to be no further development here apart from a number of the Territories now have legislation that prohibits the use of corporal punishment in schools; and
- an update is given on "painful techniques" applied to children in custody, pursuing the recommendations of the *Independent Review of Restraint in Juvenile Secure Settings*

(IRR) in 2008, noting that a new system of restraint has been developed, yet acknowledging that its application does involve a controlled amount of pain.

Analysis of the nine recommendations received in 2008 reveals that substantial activity has happened in following up these recommendations, although no further action has occurred with one and it was unclear as to any substantial action taken for another three (see column 4 above).

### **6.1.3 Questions in Advance**

Slovenia, Norway and Sweden provided the UK with 'Questions in Advance' concerning support for children of incarcerated parents (Slovenia), the eradication of child poverty by 2020 (Norway) and issues surrounding freedom from physical punishment and other forms of violence and neglect in accordance with the CRC (Norway and Sweden). The delegation referred to these questions during its opening remarks at the Interactive Dialogue. However, it simply reiterated what it has already stated in its mid-term update of 2010 without adding anything new.

### **6.1.4 Interactive Dialogue at the Second Review**

The following information has been gleaned from the Report of the Working Group on the Universal Periodic Review of the UK (OHCHR, 2012, A/HRC/21/9). In all, sixty delegations made statements and there were approximately 35 recommendations put to the UK relating to children during the Interactive Dialogue. Russia followed up on its recommendation in 2008 over its concern with the UK's interpretive statement involving children in armed conflict and this was similarly supported by recommendations from Slovakia and Uzbekistan.

Sweden followed up its 2008 recommendation about corporal punishment, as the UK has not satisfied it that there is sufficient legislation to fully comply with the CRC. Norway and Finland raised the same concerns in their recommendations.

There were no further follow up questions or recommendations to those put in 2008. Either the reviewing State was satisfied with progress made with the recommendations it presented in 2008 or it has made little effort to track progress. However, several new Child Rights issues were put to the UK during its second review dealing mostly with issues of discrimination in various settings (e.g. education), trafficking and proposals to raise the minimum age of criminal responsibility, which currently stands at the age of 10. Overall, children's rights fared well in mentions, questions and recommendations. The UK reaffirmed its firm support for children's rights and reported on progress in the areas raised.

Summary: The UK has made tangible efforts to carry out action on the recommendations put to it in 2008. The mid-term report has provided an informative update and is an indication that the UK is taking follow-up to the UPR seriously. It also showed that it was open to reconsidering recommendations that initially it had rejected.

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## 6.2 Netherlands

In 2008 The Netherlands received six recommendations relating to children during its Review, as listed below. Netherlands accepted four and rejected two at the adoption of the Report.

**TABLE 13 NETHERLANDS - Children's Rights Recommendations Received in 2008**

RS\*\* = Recommending State

<b>Recommendation</b> (OHCHR, 2008, A/HRC/8/31)	<b>RS**</b>	<b>Response</b>	<b>Comments by the SuR</b> (OHCHR, 2008, A/HRC/8/31/Add.1)	<b>Action taken</b>
1. Undertake an in-depth study on trafficking and exploitation of children, particularly with regard to sexual abuse, child prostitution and child pornography, as a basis for urgent remedial action in this regard.	<b>Algeria</b>	Accepted	The Netherlands considers this recommendation already implemented, referring to a number of studies undertaken with child victims of trafficking being given attention in annual reports by the National Rapporteur for Human Trafficking.	YES
2. Ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.	<b>Brazil</b>	Accepted	The Government has already started the national process for ratification of this Protocol and expects it to be completed in early 2009.	YES
3. Set clear time frames in regard to the ratification of the Optional Protocol ... to the CRC on the involvement of children in armed conflict, and that the Human Rights Council be informed accordingly.	<b>Russian Federation</b>	Accepted	The Report refers readers to its response to the Brazilian recommendation above.	YES
4. Consider withdrawal of reservations with respect to the Convention on the Rights of the Child.	<b>Russian Federation</b>	Rejected	The Government's response is that its reasons for holding reservations to Articles 26 which concerns the child's right to benefit from social security, 37(c) which refers to children in custody with adults, and 40 which relates to children in conflict with the law, remain relevant and so cannot support this recommendation.	YES
5. Promote and strengthen the foundation of the family and its values among the society	<b>Iran</b>	Accepted	The Government considers that this matter already gets all necessary attention, saying that the Government's role is to create the right conditions for families to play	YES

			their role successfully and that since 2007 the Netherlands has had a Ministry for Youth and Families.	
6. Accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMRW)	Egypt Peru Algeria	Rejected	The Netherlands says it is opposed in principle to rights that could be derived from it by aliens without legal residence rights.	NO

In terms of action taken, 5 recommendations have been followed up and 1 has not (see Column 5 in the table above).

## Follow up

### 6.2.1 Mid-term Progress Report

The Netherlands published a Mid-term Report in April 2010. In its opening statement, the Report notes that “The Netherlands considers the UPR to be an important mechanism and an ongoing process, complimentary to the work of treaty bodies and special procedures. The UPR process contributes to a permanent focus on promoting and protecting human rights at the national level” ([http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/NL/Netherlands\\_Interim\\_report.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/NL/Netherlands_Interim_report.pdf)). This statement proffers strong support for the UPR.

In relation to the recommendation by Algeria about trafficking, the report referred to the most recent report from the National Rapporteur on Human Trafficking, outlining some success in reducing the number of underage trafficked Nigerian victims to the Netherlands and also referred to a Nigerian trafficking gang being arrested and prosecuted.

On recommendation 2 and 3 above, the report advises that the OP-AC to the CRC came into force in The Netherlands in May 2009. Furthermore, the report noted that whilst The Netherlands rejected Russia’s recommendation (No. 4 above) to withdraw its reservations on the CRC, the Government is now considering this recommendation and said it will inform the treaty body about its progress in the next CRC report.

In relation to the recommendation from Iran about the family, the Mid-term Report repeated what was said at the time of adopting its UPR Report in 2008 but also added that it had published a policy document ‘The Strength of the Family’ in November 2008 where the Minister announced his ambition to make The Netherlands more family-friendly and outlined how he would go about achieving this goal.

Finally, the Report simply reiterated its stance about rejecting the recommendation to accede to the International Convention on the Protection of All Migrant Workers and Their Families (ICMRW).

### 6.2.2 The Second Review

Children received several mentions in the State’s National Report (OHCHR, 2012, A/HRC/WG.6/NDL/1) to the UPR. It noted the appointment of a Children’s Ombudsman in April 2011 who advises Parliament and organizations and is also responsible for raising the



consciousness of children and young people regarding children's rights. Education in Aruba, an autonomous country within the Kingdom of The Netherlands, has been made compulsory for all children aged 4 to under 17 and on St Maarten between the ages of 4 – 18. Child Rights education is to be part of the curriculum in both primary and secondary, without any specific program in the curriculum as such. Noticeably though, the idea of child participation in developing the curriculum is not mentioned. The Child protection service on Curaçao receives a mention as a 'best practice' as well as the Youth Care Team set up in 2009.

Whilst reiterating the Government's stance on its reservations to the CRC and not to accede to the ICMRW, an exception is noted for the education of children of migrant workers who are of compulsory school age. This exception also extends to their need for acute medical emergencies and legal assistance. The Netherlands ratified OP-CRC-AC in September 2009.

Children also receive a mention in relation to youth unemployment and schemes to assist them to secure a foothold in the labour market, a softening of penalties in the juvenile justice system for children under 16 in the country of Curaçao and are part of the Government's policies to combat domestic violence, child abuse, child pornography, trafficking and child sex tourism. Reference was made to the Government's action plan against child abuse for the period 2012 - 2016.

### **6.2.3 Questions in Advance**

Three countries posed questions in advance to The Netherlands. The only one to mention children was Sweden, in the context of The Netherlands' ratification of OP-CAT. Sweden asked about the State's interpretation of the Protocol which focuses only on people in criminal detention, thereby excluding groups such as those in youth detention. The head of the delegation at the Review responded briefly to this question in her opening address, clarifying that the Protocol was applicable regardless the grounds of detention.

### **6.2.4 Interactive Dialogue at the Second Review**

Forty nine delegations made statements at the Interactive Dialogue with The Netherlands and many welcomed the appointment of a Children's Ombudsman.

In relation to follow-up to recommendations made in 2008, Russia renewed its call for The Netherlands to lift its reservations to the CRC. There was no need for follow-up on the recommendations to ratify the OP-AC to the CRC since this has been done.

In relation to children, the main focus of discussion centred on child sex tourism and exploitation, children of illegal immigrants or asylum seekers and violence against children. Children featured in more than one in every four recommendations put to The Netherlands.

Summary: Five out of six recommendations received in 2008 were given attention by The Netherlands and more children's rights were raised at its second review. It appears that the Government has followed up on many aspects of the recommendations it received in 2008 and, interestingly, whilst it rejected Russia's call to withdraw its reservations to the CRC, the Government is now reconsidering its position on this.

\* \* \*

### 6.3 South Africa

South Africa was the only country not to submit a written National Report prior to its Review in 2008. Instead, it delivered a report orally at the beginning of the 3-hour Interactive Dialogue session.

The adopted Report of South Africa lists six Child Rights recommendations. These are provided below, along with the recommending State. South Africa elected not to give a response to any of the recommendations made during its Review. This left the Human Rights Council wondering how the State would treat them. However, the opening paragraph of the State's National Report for its 2nd Review announced that "progress [has been] made in the implementation of the 22 recommendations emanating from the 1st Cycle of the UPR" (OHCHR, 2012, A/HRC/WG.6/13/ZAF/1).

**TABLE 14 SOUTH AFRICA - Children's Rights Recommendations Received in 2008**

RS\*\* = Recommending State

<b>Recommendation</b> (OHCHR, 2008, A/HRC/8/32)	<b>RS**</b>	<b>Response</b>	<b>Comments by the SuR</b>	<b>Action taken</b>
1. Further intensify its efforts to decrease the HIV-AIDS prevalence in the context of its National Health Charter, with a special focus on teenagers.	<b>Algeria</b>	No Response	Nil	YES
2. Continue its efforts to promote and facilitate school attendance, particularly among children from economically disadvantaged families.	<b>Angola</b>	No Response	Nil	YES
3. Recommended that concrete measures be taken to improve the handling by police of rape cases and to curb rates of violence, particularly against women and girls.	<b>Canada</b>	No Response	Nil	Unknown
4. Commit not only to removing the defence of reasonable chastisement but also to criminalizing corporal punishment with the concomitant pledges towards raising awareness and providing the necessary resource to support parents in adopting positive and alternative forms of discipline.	<b>Slovenia</b>	No Response	Nil	YES

5. Follow up on the recommendation made by the Committee against torture to adopt all necessary measures to prevent, combat and punish violence against women and children.	<b>Switzerland</b>	No Response	Nil	Not clear
6. Persevere in its efforts to promote the rights of education	<b>Tunisia</b>	No Response	Nil	YES

In terms of action taken, 4 recommendations have been followed up while 2 remain in doubt (see Column 5 in the table above).

## Follow up

### 6.3.1 Mid-term Progress Report

South Africa did not submit a mid-term update on its progress of implementation and so no formal assessment could be made regarding how seriously the State was treating the UPR mechanism until its second review.

### 6.3.2 The Second Review

It was with much relief that members of the Working Group heard the opening remarks of the Head of the South African delegation, confirming the State's respect for the mechanism and its process. The delegation numbered 20, underlining the seriousness of the Government's view towards the UPR.

The State's National Report (OHCHR, 2012, A/HRC/WG.6/13/ZAF/1) gave an insight to developments since its 1st Review, including

- the establishment of the National Youth Development Agency;
- a new Department of Women, Children & People with Disabilities to promote, facilitate, coordinate and monitor the realization of the rights of women, children and people with disabilities;
- new separate Departments of Basic Education and Higher Education & Training to focus on universal access to quality primary education and the acquisition of knowledge;
- the Child Justice Act, 2008 (Act No. 75 of 2008) to establish a criminal justice system for children in conflict with the law;
- an acceleration of the goal to provide universal primary education (claiming that UPE is already effectively a reality and that there is a gender balance in schools);
- a stepping up of social grants such that child support grants now reach 10.3 million children.

The Report also noted future challenges, including the need to improve the *quality* of basic education, reduce further child mortality, especially where it is related to HIV/AIDS. Health and Education are among the Government's five key national priorities for 2009 – 2014. These are all encouraging signs that the UPR is influencing more respect for human rights on the ground.

### 6.3.3 Questions in Advance

Eight states presented South Africa with questions in advance (OHCHR, 2012, UPR South Africa). Those relating to children were from Denmark, Netherlands, Slovenia, the UK and Iceland. Their questions/statements relating to children were these:

#### Denmark

- How is South Africa planning to further combat the high prevalence of sexual violence against women and girls in a systematic way?

#### Netherlands

- The Netherlands commends South Africa for the results obtained in promoting equality for women and fighting discrimination. However, concerns remain about high levels of sexual violence against women and girls. Could you elaborate on the efforts made by the Government of South Africa to combat violence against women?

#### Slovenia

- What measures has the Government taken so far in order to address the recommendation from the first UPR cycle on the full abolition and criminalization of corporal punishment?

#### United Kingdom

- Please could you share with us what steps you plan to take to tackle the high maternal and infant mortality rates in South Africa?

#### Iceland

- South Africa has been identified as a country of origin, transit and destination of child victims of trafficking, Iceland recommends South Africa to take all necessary measures to eradicate trafficking in children by means of, inter alia, guaranteeing the immediate adoption and full and effective implementation of the Prevention and Combating of Trafficking in Persons Bill.

### 6.3.4 Interactive Dialogue at the Second Review

Seventy seven states engaged in the Interactive Dialogue with South Africa and put around 150 recommendations for its consideration – a far cry from the 29 made in 2008.

Slovenia followed up on its recommendation in 2008 about the abolition of corporal punishment. In the closing remarks for the session, in response to the Questions in Advance by Slovenia, the head of the South African delegation responded with the clarification that “the courts have outlawed corporal punishment as an infringement of the right to be free from inhuman treatment or punishment” (OHCHR, 2012, A/HRC/21/16). The delegation also gave a response to the other Questions in Advance on sexual violence against women and girls, saying that the government had adopted measures that focused on the prevention, combating, and punishment these forms of violence. Switzerland followed up on its recommendation from 2008 by recommending the State to “adopt all necessary measures to prevent, fight and punish any violence against women and children” (OHCHR, 2012, A/HRC/21/16). The delegation also responded to the Question in Advance from the UK on the high maternal and infant mortality rates, acknowledging that they were unacceptably high and referred to some improvements in this area.

Concerning the Child Rights recommendations put in 2008, all of these were mentioned again by various states: decrease the prevalence to HIV/AIDS among children, improve school attendance and promote the right to education. All of these issues had been addressed in the State's National Report.

Of the 40 or so recommendations relating to children during the Interactive Dialogue, the most common were to pursue the goal towards universal quality basic education, protection of children against violence, reduce maternal and child mortality; and eliminate barriers that impede birth registration. As with The Netherlands, more than one in four of recommendations presented were related to children.

Summary: It appears that South Africa has made progress on most of the Children’s Rights issues raised during its first review and many more new issues have surfaced in the second review. Whilst South Africa gave negative signs about the UPR in 2008, it has followed up on the recommendations it received and has given a report to the UPR Working Group on its activities since that time. This supports the view that the UPR is having a positive impact on the lives of children in South Africa.

\* \* \*

## 6.4 Philippines

Out of 24 recommendations made to the Philippines Government at its first review, 4 related to children. At the adoption of the Report, the Philippines indicated that it accepted two and noted the other two (OHCHR, 2008, A/HRC/8/28/Add.1). It gave no explanation to any of the recommendations it received but simply stated its position on the recommendation. The table below conveys these responses in column 4. During the review, the Philippines announced the voluntary commitment “to continue to develop domestic legislation for further protection of the rights of the child” (OHCHR, 2008, A/HRC/8/28).

**TABLE 15 PHILIPPINES - Children’s Rights Recommendations Received in 2008**

RS\*\* = Recommending State

<b>Recommendation</b> (OHCHR, 2008, A/HRC/8/28)	<b>RS**</b>	<b>Response</b>	<b>Comments by the SuR</b> (OHCHR, 2008, A/HRC/8/28/Add. 1)	<b>Action taken</b>
1. Protect children in the womb, notwithstanding undue pressure from certain groups.	<b>Holy See</b>	Noted	The Government indicated that it has noted this recommendation and that it will be the subject of further study.	NO
2. Address legislative gaps in the field of children rights in order to fully comply with the 2005 recommendations of the Committee on the Rights of the Child.	<b>Italy</b>	Accepted	The Government indicated that this recommendation enjoys the support of the Government and offered no further comment.	YES
3. Recommend that National legislation and customs and traditional practices should be further harmonized with the Convention on the Rights of the Child and the Convention on the	<b>Mexico</b>	Noted	Same as number 1 above.	YES

Elimination of All Forms of Discrimination against Women.				
4. Continue to develop a gender-responsive approach to issues of violence against women and continue to build supportive environment for women and children within the judicial system. This environment should take into account the special needs for rehabilitation and post-conflict care of women and children in vulnerable situations and conflict areas.	<b>New Zealand</b>	Accepted	Same as number 2 above.	YES

In terms of action taken, 3 recommendations have been followed up, 1 has not (see Column 5 in the table above).

## Follow up

### 6.4.1 Mid-term Progress Report

The Philippines Government did not submit a mid-term update on its progress of implementation.

### 6.4.2 The Second Review

During the Interactive Dialogue, 64 delegations made statements. None of the four delegations that put Child Rights recommendations in 2008 followed up with an inquiry or recommendation on these issues at the second review. In the opening statement presented by the Head of the Philippine delegation, several references were made to children in relation to actions taken since the first review in 2008, many of which relate to the recommendations it received then:

- a quadrupled budget for the 'Pantawid Pamilya Program' for poor households to keep their children at school and healthy;
- a strengthening of the Maternal, Newborn and Child Health and Nutrition program;
- attention to provide access to quality education;
- the *Philippine National Action Plan for Education for All* that provides for compulsory kindergarten plus a 12-year formal basic education;
- several new laws have been passed to ensure consistency with the CRC such as the Act providing for the legitimation of children born to parents below marrying age and an anti-child pornography Act;
- a greater gender-sensitive handling of violence against women and children by local officials and government employees, including police;
- the National Action Plan for Children to improve the quality of life which, coincidentally, caters for active participation in decision making;
- juvenile justice issues, including implementation of the Juvenile Justice Welfare Act of 2006 with the setting up of youth homes for children in conflict with the law (OHCHR, 2012, A/HRC/21/12).

In its National Report to the UPR (OHCHR, 2012, A/HRC/WG.6/PHL/1), the Government responded specifically to the recommendation put to it in 2008 to address legislative gaps in children's rights and to fully comply with the CRC's 2005 recommendations. It referred to proposed legislation on basic education of children and to several bills on child development and protection in the House of Representatives but did not specify if any of those bills have been enacted. Thus their response did not give adequate details so as to determine how much has actually been done. In this sense, the response is ambiguous and unsatisfactory.

### **6.4.3 Questions in Advance**

Eight states submitted questions in advance to the Philippines – three referred to children. Iceland expressed its concern over the large number of reported trafficking, sexual exploitation and violence against children and recommended an increase in efforts to combat these matters. Norway posed three questions: one about the high drop-out rate in schools, another about how is the Government effectively implementing the Juvenile Justice Welfare Act of 2006, and a third asked how does the Government ensure that victims of trafficking are recognized as such and provided with protection and assistance. The United Kingdom asked questions about the elimination of sexual exploitation of children, the protection of children in situations of conflict and about infant mortality. Many of the issues raised through these questions in advance relate back to, and could be regarded as follow-up by these states to recommendations 2, 3 and 4 in the table above (<http://www.ohchr.org/EN/HRBodies/UPR/Pages/PHSession13.aspx>).

### **6.4.4 Interactive Dialogue at the Second Review**

In her opening remarks, Secretary of Justice, Hon. Leila De Lima, informed of several new laws that were passed to ensure consistency with the CRC, relating to legitimacy of children born to parents of below marrying age, anti-child pornography Act and for the adoption process of children (OHCHR, 2012, A/HRC/21/12). As well, she responded to the Questions in Advance by Iceland, Norway, and the UK, without referring to their questions directly, but covered their issues on protection against trafficking, violence against children and indicated that the government was implementing the Juvenile Justice Welfare Act of 2006. Improvements to the education system were also mentioned, which would include Norway's concern about the high drop-out rates in schools. The prosecution of traffickers and rescue operations for trafficked victims was again raised in the concluding remarks by the delegation.

During the interactive dialogue, children were mentioned by at least 15 countries and 36 recommendations on children's rights were put to the Philippine delegation. The Report (OHCHR, 2012, A/HRC/21/12) detailed the children's issues and recommendations raised, including child pornography, child labour, concern about a lack of quality education and equal access to education, children with disabilities, children working or living on the street, newborn and child health care issues, child trafficking for sexual exploitation, concern about the possibility of lowering the minimum age of criminal responsibility and other juvenile justice matters. Corporal punishment was raised several times in the recommendations.

Whilst follow up on the 2008 recommendations by the Philippines Government seems to have happened by way of new laws, development of a National Action Plan and budgetary increases, many more child rights issues have been raised, as noted above.

Summary: Once again, it appears that the UPR has had the effect of reminding the Philippines Government of its duty to promote and protect human rights on the ground and it has speeded up implementation in a number of areas.

## Chapter VII

### Main Findings, Conclusions and Future Research

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#### Chapter Summary

The final chapter looks at the main findings from the research. It begins by considering whether the UPR been taken seriously by member states and where children's rights fit within this mechanism. The research question is reiterated and the uniqueness of this new mechanism is summarized. It then summarizes the main findings of the research, firstly from the perspective of the mechanism itself, then from the perspective of children's rights. Conclusions are drawn and the chapter finishes with some suggestions for further research that came to light during the writing of this paper. Along the way a number of recommendations are proposed that may assist the mechanism with its goal of promoting human rights on the ground, and therefore children's rights as well.

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#### 7.1 Revisiting the focus question of the Research Paper

Juvenile incarceration, the death penalty for minors, child soldiers, children as refugees, victims of trafficking, the right to a quality education, the right to a birth certificate, sexual violence against children, corporal punishment and FGM – all these and more have been raised at the UPR over the last five years. What impetus, then, has the UPR brought to the promotion and protection of children's rights around the globe? This was the focus question for the research paper. The problem being that, because it was a completely new mechanism for monitoring and promoting human rights, nobody really knew how effective it would be. Thus a preliminary investigation was to determine whether it was being taken seriously. Following that, the focus turned to considering how children's rights had fared alongside other human rights issues and then finally, considered what the UPR's potential is for making a difference with respect to human rights, in particular children's rights, into the future. Findings from this research offer an assessment on these questions.

It became apparent after its first year of operation that the UPR has become the major instrument of the Human Rights Council for promoting human rights around the world. It has gained virtually universal favour within the UN system. Based in Geneva and operating under the auspices of the Human Rights Council, the UPR examines every Member State of the UN on a cyclic basis every four and a half years. Its uniqueness is that states review each other, and given that no state has reneged on the process to date, there seems to be a strong moral force to participate. Also, whilst the State under Review has no obligation to accept all or any of the recommendations it receives at its review, strong acceptance of the process is reflected in the fact that an average of three out of every four recommendations put to SuRs were accepted in the 1st cycle (cf. Table 4). Children's rights sit within this framework.

\* \* \*



## **7.2 Main Findings**

The research examined the workings of the UPR and how it has been used to raise human rights concerns with member states. An analysis of the 1st cycle reveals a number of findings. Since the main purpose of the research was to analyse the UPR from the perspective of children's rights, a detailed analysis of children's rights within the UPR followed. Several findings have emerged from the research. They are provided in the sections below.

### **7.2.1 Main findings about the UPR mechanism**

One of the most obvious findings to emerge from this study is that the UPR is being taken very seriously by the member states. A number of factors have led to this conclusion. For example, there was a 100% scorecard for participation in the process for the 1st cycle – no country reneged on its review. In fact, some went to great lengths to ensure they had their turn, in spite of unforeseen difficulties such as those experienced by Haiti. Anecdotal evidence from those interviewed for this research supported this view, along with positive views from the literature associated with the research, commenting about its acceptance and the strong display of goodwill in the participation. Many delegations of the SuR were headed by government ministers who were accompanied by a large contingent of professionals to assist with the responses during the Interactive Dialogue. This is further evidence of the seriousness with which states have been taking the UPR.

Contributing factors to its success have been its succinctness - short reports, a disciplined timeframe at the Interactive Dialogue, the tripartite involvement of actors (states, United Nations bodies and civil society), the uniqueness of the 'peer review' process, its universality and its cyclic nature where states report back to the Working Group every 4½ years. All these have contributed to the high level of acceptance of the UPR and to its success thus far.

The UPR has generated a large number of recommendations for each SuR (up to 200 or more for some states). However, since many tend to be repetitions of the same issue, once they have been clustered together, the outcome is more manageable. The case of the Bahamas was cited in the research where a total of 67 questions or recommendations were received, but after clustering they were reduced to be only 24 separate issues. This is a significant finding.

Another significant finding is that the weight of numbers for a particular issue does not mean it has a greater force in its call for action. A particular human rights' concern only needs to be raised once in a recommendation for it to be considered by the State. This is a positive aspect of the mechanism as it means that issues, once raised, require a response from the SuR. In other words, there is no hierarchy of rights for the UPR, all are on an equal footing. In fact Sen (2011) notes this as one of the successes of the UPR where ESCRs are on an equal footing with CPRs, which, as she says, is not always the case with other human rights monitoring mechanisms.

The research for this paper has revealed that the quality of recommendations needs attention. Many of them do not place any extra demands on a state and only 34.5% of all recommendations put in the 1st cycle lead to specific actions by states in their follow-up that are measurable in terms of implementation. This is a concern. Several delegations have noted this weakness and have committed to making their recommendations in the 2nd cycle more tightly scripted. It is recommended that this issue be placed on the agenda of the HRC's next review of the UPR.

It has been noted that follow-up phase is seen to be a crucial part of the UPR process since this is where laws and reforms are carried out to improve the human rights record for a state. It offers a unique opportunity for governments and civil society to work together on implementing the recommendations received at the UPR. Mid-term reporting is one aspect of the follow-up phase that improves the quality of the UPR. Whilst only a handful of states have submitted mid-term reports to date, such reports give strong signals that they are serious about following up the recommendations they have accepted. Along with SuRs, NGOs and NHRIs have also submitted mid-term reports which provide alternative perspectives on the State's follow up. Such reports are also reminders to the State that its follow up is being monitored. Mid-term reporting is considered a significant aspect to the process and so it is recommended that it be made compulsory for states, as part of the UPR process.

It has been found that the UPR is still relatively unknown among the general public in many states and more effort needs to be made to make it more widely and better known. The media can play an important role here by publicizing the various phases of a state's review as it happens, especially with regards to the recommendations accepted at the Interactive Dialogue. NGOs and NHRIs can also contribute to making it better known in their country through their own engagement in the process and involving others along with them. NGOs and NHRIs can also engage the media to help the UPR better known.

Another finding from this study reveals a weakness in the system regarding a state's response to the recommendations put to it at the Interactive Dialogue. States are not obliged to explain recommendations that do not enjoy their favour, they simply are asked to note them. This has led to a weakening of accountability in the process. Moreover, a practice has crept in whereby states are declaring that they consider a recommendation already implemented or is in the process of being implemented but it seems that they are using this wording as a way of rejecting a recommendation without actually declaring their position as such. It is recommended that this issue be addressed by the HRC at its next review of the UPR where states should be required to explain why they have rejected particular recommendations. Through this the integrity of the process is kept intact.

\* \* \*

### **7.2.2 Main findings about Children's Rights within the UPR mechanism**

A major finding from the research is that children's rights perform strongly at the UPR: Children's rights are the third most frequently mentioned category of rights among the recommendations put to states, just behind women's rights and calls for governments to ratify International Human Rights Instruments. They make up 1/6th of all recommendations put during the review sessions and in the second half of the 1st cycle, they averaged 23 recommendations per state (Table 5). Furthermore, the analysis carried out on children's rights for Session 13 show that the average is even higher.

Moreover, whilst the overall acceptance rate of recommendations stands at 73.1%, children's rights recommendations have scored an 83.3% acceptance rate (c.f. Table 9). This is strong evidence that children's rights fare well in the UPR. It also implies that children's rights ought to feature strongly in the follow up phase, given the high frequency and high acceptance rate of these recommendations.

However, whilst children's rights are amongst the most frequently raised issues, a finding is that only 32.5% of all children's rights recommendations fall into category 5<sup>18</sup> which is the category that calls for specific activity by the state in the follow up. The implication here is that the majority of Child Rights recommendations are much harder to measure in terms of implementation. The formulation of Child Rights' recommendations needs to be much tighter for the SuR to be made more accountable when reporting back on the actions it has taken in the follow-up phase. This finding suggests that states, NGOs, NHRIs and UN bodies need to push for more tightly worded recommendations in future UPR sessions.

A significant finding is that there appears to be differences among regions over Child Rights issues, both in terms of the type of issues in the recommendations put to states and the way states respond. For instance, African states which make up 28% of UN membership, have attracted 34.5% of all children's rights recommendations. This is considerably higher than the other regional groups (see Table 8). Also as a group, African states made the lowest number of recommendations on children's rights - only 9.7%. Whereas the reverse was the case for the Western European and Others Group (WEOG), who received only 12.9% of Child Rights recommendations yet put 37.2% to other states. The implication is to be aware, that while children's rights are performing strongly at the UPR, one needs to be attentive to these differences and sensitivities when raising their concerns.

In a similar vein, it has been found that Child Rights' issues are not spread evenly across all states, but rather, certain ones are targeted towards particular states. For example, one state may attract several recommendations on violence against children (corporal punishment for example), whereas another may attract a large number of recommendations on juvenile justice, child exploitation or the right to education. This indicates that 'recommending states' are knowledgeable about particular children's issues needing attention by certain SuRs. This is important information since, when it comes to the abuse of children's rights, the international community appears to be well aware of them and is using the UPR mechanism to encourage a state to address them.

Further to the question of diversity among Member states is the image that states may hold of children and childhood, which in turn could influence the way they present or receive recommendations about children on the floor of the UPR. The research paper discussed the complex issue of 'global childhood' alongside the concept of 'multiple childhoods' which brought to the fore the realization that there can be significant biases, or at least different viewpoints, when it comes to the topic of Child Rights within the UPR. It is widely acknowledged that the Convention on the Rights of the Child has a strong Eurocentric bias (Nieuwenhuys, 1998), thereby muting the sense that there can be different childhoods, rather than a universal childhood. In many cultures of the South in particular, the notion of childhood is often shaped by cultural practices and norms within a particular society, leading to different understandings of childhoods. That is to say, there can be multiple childhoods. The research looked at this by checking to see if there were any differences between a group of cultural relativist nations and a group that ascribes to universalism. A finding was that for the group of cultural relativist states, Child Rights did not fare so well, receiving noticeably fewer Child Rights recommendations than the average number per state overall. At the same time, the Western Group of states showed to be much more forceful in promoting Children's Rights, putting forward a higher number than the overall average. Whilst not the topic of this research, this finding could open up a new area of research regarding different influences on children's rights at the UPR.

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<sup>18</sup> Refer to Chapter V , item 5.3 for the explanation of the five Action Categories.

Another significant finding is that there are states that champion children's rights at the UPR ahead of other categories of rights (see Table 6 and 7). Further to this finding, these states do not prioritize all children's rights as a whole but focus on particular issues within the broad range of children's rights, such as corporal punishment, trafficking of children or FGM and other harmful cultural practices. Being aware that states prioritize certain issues can help NGOs with particular interests within the field of children's rights to work in collaboration with these states.

### **7.2.3 Main Findings about Children's Rights in the 2nd Cycle**

Fourteen states have undergone their second review under the UPR. Research carried out on four of these states has revealed that significant follow up is taking place. Their reports to the Working Group at the second review has shown that they have enacted new laws, developed new commissions and increased budgetary expenditure, to mention a few actions carried out in the Follow-up Phase.

It appears, too, that some states have put 'Questions-in-Advance' to good use by raising children's issues ahead of a state's review. This signals to the SuR their issues beforehand and puts children's rights clearly on the agenda for the Interactive Dialogue.

Two of the four states analysed in this research provided mid-term reports. Both were positive in terms of actions being taken. It has shown that mid-term reporting helps the SuR focus on its recommendations and it is a timely reminder of what else needs to be done before the State's next review. This finding compliments the comments made earlier in 7.1.1. It also offers opportunities for NGOs to provide monitoring feedback.

Regarding rejected recommendations, the UK's change of heart is noteworthy where it had initially rejected Indonesia's recommendation to withdraw the reservation on the CRC's provision that detained children be separated from adults while in detention, as well as its reservation concerning asylum seeking children but has since withdrawn this reservation. This reversal shows that states can be willing to reconsider their initial decision to reject a recommendation. This finding opens the door for a recommending state and/or NGOs and NHRIs to exert pressure on governments over recommendations of theirs that may have been rejected by a state.

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## **7.3 Conclusions**

The UPR has brought a fresh impetus to the promotion and protection of human rights on the ground. As the 'flagship' mechanism (Sen, 2011) of the HRC, the UPR has so far been a successful tool of the HRC to raise the level respect for human rights around the world. It has also provided a new avenue through which human rights issues can be addressed in a spirit of cooperation and respectful dialogue. In this regard, one can conclude that the UPR has achieve its aims up to this point in time.

To date, children's rights have featured strongly in the recommendations and on the whole they have been well received, with an average 83% acceptance rate. In examining the list of achievements and activities carried out by the UK, Netherlands, South Africa and the Philippines (Chapter VI), one can conclude that the UPR is making a difference to children's lives on the ground through better laws, the inclusion of children in governments' Action Plans,

the withdrawal of reservations on the CRC, appointing or strengthening the role and independence of a Children's Commissioner, greater protection of children against all forms of violence and trafficking, accelerating the goal towards achieving compulsory and free basic education and increased budgetary expenditure on children. The UPR is holding states more accountable to their obligations to uphold and respect all human rights and it has provided a forum within which abuses can be raised and taken notice of.

So to the question of 'has the UPR provided extra impetus for the realization of children's rights around the globe?', one can conclude that it has. To the question on 'what difference has it made so far?', the sample list provided above shows that states are earnestly addressing many of the issues raised at the UPR. Even if they had already planned to do these things, the UPR has had the effect of speeding up their implementation. To the question of 'what is its potential for the future?', one can conclude that there are encouraging signs for the UPR to continue as a forceful tool of the HRC to improve the record of human rights around the world. However, since the 2nd cycle of the UPR has only just begun, it would be appropriate to analyse the effectiveness of the UPR on children's rights at the end of this cycle so as to give a more comprehensive overview of states' responses to the recommendations accepted at their review.

Indeed, if some of the recommendations proposed here are taken up, then the UPR will be an even stronger mechanism for promoting and protecting children's rights along with all other human rights.

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#### **7.4 Future Research**

To conclude this paper, it is opportune to offer a few suggestions for future research, based on a number of findings that have emerged from this paper.

Further analysis of cultural relativism and views of childhood(s) could further inform the Child Rights agenda at the UPR and is worth further study from this perspective.

This research has revealed regional differences with regards the way Child Rights feature in UPR recommendations - with some regions receive a higher number than anticipated and other regions promoting children's issues more strongly than others. Such data suggests further research that could further promote and protect children's rights within the UPR forum.

Renshaw (2010) has undertaken an initial review of children's rights in the UPR and provided a list of states that champion certain child rights issues. There is scope for further research on this question. It would bring a greater awareness to particular Child Rights' issues and would assist those who support the eradication of abuses in those areas.

With regards Phase 4 of the UPR, the Follow-up, there is scope for further research to track how well states have followed up on their accepted recommendations. For Session 13, whilst the states have reported back on their activities in different forms, it was difficult to determine in some instances whether the recommendation had been fulfilled, whether it was in the process thereof or indeed, if no progress was undertaken. A detailed analysis of such follow-up was beyond the scope of this paper. Frazier's (2011) research investigated this question for a selected number of states and further analysis on this question would contribute even more to the monitoring of UPR's 4th Phase, a crucial phase in the process.

## APPENDIX 1

This diagram summarizes a number of areas for NGOs involvement with the UPR.<sup>19</sup>

### THE ROLE OF NGOs AT THE UPR

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UPR Stage	Timeline	What to do
<u>Before the Review</u>	Review (R) – 1 year	<ul style="list-style-type: none"> <li>Take part in <b>national consultations</b></li> </ul>
	R – 6-8 months	<ul style="list-style-type: none"> <li>Submit a <b>report</b> on the human situation in the country</li> </ul>
	R – 3-4 months	<ul style="list-style-type: none"> <li><b>Lobby</b> States through the embassies in your capital</li> </ul>
	R – 1-2 months	<ul style="list-style-type: none"> <li>Participate in <b>UPR Info’s pre-sessions</b></li> <li>Lobby Permanent Missions in Geneva</li> </ul>
<u>During the Review</u>	R	<ul style="list-style-type: none"> <li><b>Attend</b> the review</li> <li>Hold a <b>side event</b></li> <li>Organize a screening of the <b>webcast</b> in your country</li> <li>Hold a <b>press conference</b></li> </ul>
<u>Between the Review and the adoption of the Report at the HRC</u>	R + 1-2 months	<ul style="list-style-type: none"> <li><b>Lobby</b> the State under Review to accept recommendations</li> </ul>
<u>Adoption of the Report at the Human Rights Council</u>	R + 3-4 months	<ul style="list-style-type: none"> <li>Make an <b>oral statement</b></li> <li>Submit a <b>written statement</b></li> </ul>
<u>Between two Reviews</u>	R + 4 to 5 years	<ul style="list-style-type: none"> <li><b>Make</b> recommendations &amp; pledges public</li> <li><b>Monitor</b> their implementation</li> <li>Engage with the Government to <b>participate</b> in the implementation</li> <li><b>Report</b> to the Human Rights Council on the progress made</li> </ul>

<sup>19</sup> Diagram per courtesy of UPR-Info. Printed with permission.

## APPENDIX 2

### Summary of responses from the Interview Questions from 8 interviewees.

Note: If statements/views are repeated by more than one interviewee, the comment has only been recorded once here.

#### 1. How seriously are the states taking the UPR? Why so?

Most seriously. 80% of delegations are headed by ministerial staff. This gives a good indication. States are engaging fully with the UPR. Some countries wanted to do away with 'country mandates' and use the UPR instead. Everyone is demonstrating their commitment and it is strongly supported. Every state has engaged in the process. They created it so they want it to succeed.

It's variable: some are taking it seriously and want it to work, others no so. There was a lot of back-slapping in the early days. Many states have a large number in their delegation and are well prepared for questions at their UPR. There is a lot of good will to make it work. The acid test is what have the states done with implementing the recommendations. If uniform reporting becomes standard, it will be another good indicator.

There appears to be a lot of engagement – a good sign. But there are different levels of engagement by states as well. E.g. Finland has given a lot of detail on how it is implementing the first lot of recommendations, whereas with others we don't see much commitment – they try to appear to be doing things but it is not substantive enough or deep enough.

With the start of the second cycle the evidence will be there on their reporting back about what they have actually done. People thought it would not succeed, given the poor track record of treaty body reporting.

There is self-diagnosis and it helps with international prestige. The proof will be how the reporting goes in the second cycle, but many recommendations are long term and so states need time to implement them.

Very seriously, even more so than the TB system because everybody is examined.

#### 2. What or who influences a state about the recommendations it makes?

Several influences:

- The state's relationship with the SuR;
- The priorities of the recommending state (e.g. their own foreign policies);
- Information/instructions coming in from their capital;
- Civil society, particularly NGOs. The evidence is here – can see word for word recitation of a recommendation of an NGO on the floor of the UPR;
- Whether a state has an embassy in the SuR;
- What NHRIs say.

States seem to prepare their statements and recommendations approximately 1-2 weeks before the session.

The national consultations can also add influence.

If they know an NGO is a reliable source, then it has better chance of success to be listened to.

In theory, it's the 3 official reports but I am not sure about states commitment to analysing the 2<sup>nd</sup> and 3<sup>rd</sup> reports. Often what they say is dictated to them by their Ministry for Foreign affairs.

We hope that there will be a 'spill over' effect into CRC reporting because of the seriousness of the UPR. In the first year of the UPR the quality of recommendations wasn't good and 'friendly' states created problems but this had improved. Would certainly like to see more concrete recommendations – timelines are important in the recommendations.

Of the three official reports, only the OHCHR report gives a neutral approach and gives better understanding.

It is important that recommendations made are actually implementable in the SuR, this can influence what a state puts as a recommendation.

### **3. How can this mechanism help promote children's rights?**

They are like any other right. CR is one of the main rights in the UPR – is 3<sup>rd</sup> highest of rights raised. They are easier to raise but there are too many general recommendations, they need to be more specific. Often CRs are linked to Women's Rights too.

CRs have found a definite place in the UPR – they are the 3<sup>rd</sup> highest recommendations category on the list. I am a bit cautious still about the UPR, it may flatten out to consider only 5 or 6 themes. The political stakes are higher than for reporting to the CRC because states are looking at each other. There seems to be more follow up. There is more frequent reporting back than with treaty bodies. For a number of countries, the UPR is our only hope for children.

It is a useful mechanism because it is a public forum and engages a wider group. States seem to be more willing to take action on children's rights obligations. If a state rejects a recommendation that repeats a CRC recommendation, it does not create a problem for the CRC as the state has to give the Committee a reason why. The UPR is welcomed by treaty bodies as it helps promote their own causes, they are complimentary.

Even if CRs are not mentioned directly, they are often included with other issues, such as health and women's rights. Direct reference to children is always good, especially when CRC recommendations are translated into a UPR recommendation. In general the UPR is making a difference and hence CRs will be better off. Civil society can engage early with permanent missions to get their priority on their list.

### **4. Which states favour children's rights in their recommendations? Why is this?**

Some states at the HRC traditionally lead the way with children's issues and they take the lead at the UPR as well, e.g. Italy, Slovenia. Some target specific issues among children's rights, e.g. trafficking.

Austria, Uruguay, Chile, Mexico, Latin American countries as a group, Germany, Slovakia, Slovenia, Finland, Thailand and Brazil occasionally.

It's hard to be specific, perhaps Austria, Uruguay, Slovenia, Slovakia, ...

### **5. What sway do children's rights have in the political debate when competing with other priorities of governments?**

It depends on the priorities of the recommending state. Naming CRs are less sensitive than other issues but most who raise them have a genuine commitment to improving CRs on the ground.

It is easy to set CRs aside but it is taken seriously by governments. Children are the future, yet there is caution about giving children too many participation rights. Social and cultural rights are costly to implement and there are always competing priorities. Child poverty is mentioned a lot of the time.

The NGO Group for the CRC helps bring a coherence to Child Rights advocacy. The CRC is widely ratified and this has an influence.

Eastern European States like Slovenia and Slovakia have been engaged in developing and adopting the 3<sup>rd</sup> Optional Protocol (to the CRC). We think that our NGO should look more closely at CRs that don't come up in other forms and concentrate on them at the UPR.

Nobody wants to look bad with children's issues, yet there are very few who want to take the lead.



## **6. What are the shortcomings of the UPR?**

States can reject recommendations. A way to overcome this is for NGOs to lobby the state to commit to it. There is a lack of clear responses to some recommendations although it is getting better, i.e. the quality of recommendations. Not sure yet how well states are following up on the recommendations – we will see in the second cycle, but there seems to be lack of follow up so far.

Recommendations are still too general. Need to be more specific with the recommendations. It is easy to call on ratifications of treaties. Homogenization of issues: I suspect that recommendations are being boiled down to just a few main issues.

Too many repetition of recommendations – this is a waste; e.g. maternal and child health care and don't get enough mentions in recommendations.

It is still political – who is friendly with who, and so are cautious about making recommendations to friendly states. It is difficult to assess because of the 'political' language in their reporting – e.g. they can say that they make a law but how effective is it? In the end, some countries are committed to the process, others are not. The national report is the only one of the three official reports that is presented at the UPR and so the other two tend to take a back seat and it relies on the states to actually look at them to raise their concerns.

It is political maneuvering. Will know better half way through the second cycle. There is political point scoring from time to time – this doesn't help. It is an evolving process – more civil society involvement will help. Still has to prove itself but signs are positive. It relies on political good will but this also need prompting by states among each other too.

Same as other mechanisms of the UN: no proper enforcement; they're only doing it to keep their promise. There has been an effort by states, but there is also still room for improvement.

## **7. How significant is NGO participation in the UPR process?**

Tremendously important. Absolutely vital. The UPR is what the state and the NGOs make of it. It is the UPR that has promoted the issues. There are mutual benefits: it pushes governments, follow up by NGOs is also helping on the ground. NGOs have played a role in this. By contacting parliamentarians and providing assistance, giving guidelines to governments – all assist with implementation. NGOs working together helps. NGOs must get involved in the follow ups.

Don't know how much of the NGO submissions are read by states, but 1-page summaries are very helpful to the permanent missions in Geneva.

At the beginning it was limited but now NGO participation has increased enormously. It helps to do advocacy at the national level if you have a presence in the country, and preferably as a coalition – there's strength in numbers. NGOs seem to be taking the lead but cannot speak at the UPR; nevertheless, it is best to keep the UPR as a 'peer review' and NGOs should work with that. NGO participation is one of the most successful outcomes of the UPR, both nationally (it forces states to have meetings with NGOs and civil society can contribute to reports to the OHCHR). There has been an amazing increase in advocacy by NGOs in Geneva because of the UPR's universality. NGOs need to do their homework on what they put to permanent missions in their lobbying so that the states put up what they want. NGOs are significant – they often have a different perspective and their first hand knowledge give good input. Meeting with permanent missions in Geneva helps. NGOs give good input and can speak for the citizen.

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## Appendix 3

### Explanation of *UPR Info* System for categorizing state responses to recommendations

This is a summary of the explanation provided by *UPR.Info* for its methodology for categorizing the different types of responses made by States to the recommendations they received during their Review.

There are four main categories in classifying a State's response: "Accepted", "Rejected", "No clear response" or "Pending". *UPR Info.org* explains that responses to recommendations have evolved considerably over the course of the first cycle, and States under Review (SuR) created three new ways of responding, which include: "Accepted in Part," "Noted" and "Already implemented or in the process of implementation." These new forms are included within the four main classifications already mentioned. Please note that in *UPR Info's* database of UPR recommendations, the category "No clear response" is included into the category "General response" and the response of "Pending" is placed in with the category of "No response".

#### **Accepted:**

A recommendation is considered as "Accepted" when the State under Review (SuR) clearly uses the word "accept". Remarks made by the SuR that are not clearly expressed as an acceptance to a recommendation are considered as "No clear position/ General response".

#### **Rejected:**

A recommendation is considered as "Rejected" when the SuR clearly uses the word "reject" or similar expressions such as "do not accept" or "not in a position to accept". Remarks made by the SuR that are not clearly expressed as a rejection are considered as "No clear position/ General Response".

#### **No clear position/ General Response:**

A recommendation is considered as "No clear position/ General Response" when a SuR responds to a recommendation without clearly using the words "accept" or "reject". Although the statement may give the impression of an acceptance or a rejection, *UPR-Info.org* only acknowledges words that were deliberately used by the SuR. For example, when a SuR provides information on actions taken to address an issue contained in a recommendation, this response is considered as "No clear position/General Response."

#### **Pending/ No response**

A recommendation is considered as "Pending/ No response" when no responses are given by the SuR during the time of the process. For example, when a SuR does not comment or take the floor in the Report of the Working Group (WG), the addendum, as well as, the plenary. However, when a SuR comments on a recommendation but postpones its overall responses, the recommendation is still considered as "Pending/ No response."

#### **Other responses**

- *Accepted in part*: When a recommendation is 'accepted in part', it is considered as accepted.
- *Noted*: When a recommendation is 'noted', it is considered as "Pending/ No response".
- *Already implemented or in the process of implementation*: here, if the recommendation is not accepted, it is considered as "No clear position/ General Response". If the recommendation is accepted but goes on to say that it is already implemented or in the process of implementation, it is considered as "Accepted".

## Appendix 4<sup>20</sup>

Below is the full list of 54 human rights categories used by *UPR Info.org* in its database with the number of recommendations put during the 1<sup>st</sup> cycle of the UPR

<u>Category</u>	<u>No. of Recommendations</u>	
1. Asylum seekers	394	
2. Civil society	430	
3. Corruption	125	
4. Counter terrorism	89	
5. Civil & Political rights - general	404	
6. Death penalty	920	
7. Detention conditions	930	
8. Development	366	
9. Disabilities	366	
10. Elections	155	
11. Enforced disappearances	431	
12. Environment	87	
13. ESC rights – general	610	
14. Extrajudicial killings	151	
15. Freedom of association & peaceful assembly	313	
16. Freedom of movement	67	
17. Freedom of opinion and expression	568	
18. Freedom of religion and belief	425	
19. Freedom of the press	513	
20. General	410	
21. HIV-AIDS	164	
22. Human rights defenders	326	
23. Human rights education and training	928	
24. Human rights violations by state agents	329	
25. Impunity	223	
26. Indigenous peoples	385	
27. Internally displaced persons	109	
28. International humanitarian law	104	
<b>29. International instruments</b>	<b>4231</b>	<b>Highest number of recommendations made</b>
30. Justice	1563	
31. Labour	445	
32. Migrants	833	
33. Minorities	833	
34. National plan of action	275	
35. NHRI	781	
36. Other	508	
37. Poverty	453	
38. Public security	122	
39. Racial discrimination	654	
40. Right to education	875	
41. Right to food	145	
42. Right to health	504	
43. Right to housing	104	
44. Right to land	96	
45. Right to water	62	
<b>46. Rights of the child</b>	<b>3442</b>	<b>3<sup>rd</sup> highest number</b>
47. Sexual orientation and gender identity	494	
48. Special procedures	875	
49. Technical assistance	804	
50. Torture and other CID treatment	1743	
51. Trafficking	637	
52. Treaty bodies	820	
53. UPR process	245	
<b>54. Women's rights</b>	<b>3692</b>	<b>2<sup>nd</sup> highest number</b>
<b>TOTAL:</b>	<b>21,353</b>	

<sup>20</sup> Source: <http://www.upr-info.org/database/statistics/>

## Appendix 5

<b>Human Rights Council Universal Periodic Review: 1st Cycle 2008 - 2011</b>	
<b>1st session (7-18 April 2008)</b>	Bahrain, Ecuador, Tunisia, Morocco, Indonesia, Finland, United Kingdom, India, Brazil, Philippines, Algeria, Poland, Netherlands, South Africa, Czech Republic, Argentina
<b>2nd session (5-16 May 2008)</b>	Gabon, Ghana, Peru, Guatemala, Benin, Republic of Korea, Switzerland, Pakistan, Zambia, Japan, Ukraine, Sri Lanka, France, Tonga, Romania, Mali
<b>3rd session (1-15 Dec. 2008)</b>	Botswana, Bahamas, Burundi, Luxembourg, Barbados, Montenegro, United Arab Emirates, Israel, Liechtenstein, Serbia, Turkmenistan, Burkina Faso, Cape Verde, Colombia, Uzbekistan, Tuvalu
<b>4th session (2-13 Feb. 2009)</b>	Cameroon, Djibouti, Mauritius, Nigeria, Senegal, Bangladesh, China, Jordan, Malaysia, Saudi Arabia, Cuba, Mexico, Canada, Germany, Russian Federation, Azerbaijan
<b>5th session (4-15 May 2009)</b>	Central African Republic, Chad, Comoros, Congo, Vanuatu, Viet Nam, Yemen, Afghanistan, Uruguay, Belize, Chile, Malta, Monaco, New Zealand, Slovakia, The Former Yugoslav Republic of Macedonia
<b>6th session (30 Nov-11 Dec 2009)</b>	Côte d'Ivoire, Democratic Republic of the Congo, Equatorial Guinea, Eritrea, Ethiopia, Bhutan, Brunei Darussalam, Cambodia, Cyprus, Democratic People's Republic of Korea, Costa Rica, Dominica, Dominican Republic, Norway, Portugal
<b>7th session (8-19 Feb. 2010)</b>	Angola, Egypt, Madagascar, Gambia, Qatar, Fiji, Iran (Islamic Republic of), Iraq, Kazakhstan, Bolivia, Nicaragua, El Salvador, Italy, San Marino, Slovenia, Bosnia and Herzegovina
<b>8th session (3-14 May 2010)</b>	Guinea, Guinea Bissau, Kenya, Lesotho, Kiribati, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Grenada, Guyana, Haiti, Spain, Sweden, Turkey, Armenia, Belarus
<b>9th session (1-12 Nov. 2010)</b>	Liberia, Malawi, Mongolia, Panama, Maldives, Andorra, Bulgaria, Honduras, United States of America, Marshall Islands, Croatia, Jamaica, Libyan Arab Jamahiriya, Micronesia, Lebanon, Mauritania
<b>10th session (24 Jan-4 Feb 2011)</b>	Nauru, Rwanda, Nepal, Saint Lucia, Oman, Austria, Myanmar, Australia, Georgia, Saint Kitts and Nevis, Sao Tome and Principe, Namibia, Mozambique, Estonia, Niger, Paraguay
<b>11th session (2-13 May 2011)</b>	Belgium, Denmark, Palau, Somalia, Seychelles, Solomon Islands, Latvia, Sierra Leone, Singapore, Suriname, Greece, Samoa, Saint Vincent and the Grenadines, Sudan, Hungary, Papua New Guinea
<b>12th session (3-14 Oct. 2011)</b>	Tajikistan, United Republic of Tanzania, Antigua and Barbuda, Swaziland, Trinidad and Tobago, Thailand, Ireland, Togo, Syrian Arab Republic, Venezuela (Bolivarian Republic of), Iceland, Zimbabwe, Uganda, Timor Leste, Lithuania, Republic of Moldova

## Appendix 6

<b>Human Rights Council Universal Periodic Review: 2nd Cycle 2012 - 2016</b>	
<b>13th session (21 May-4 June 2012)</b>	Bahrain, Ecuador, Tunisia, Morocco, Indonesia, Finland, United Kingdom, India, Brazil, Philippines, Algeria, Poland, Netherlands, South Africa
<b>14th session (22 Oct-5 Nov 2012)</b>	Czech Republic, Argentina, Gabon, Ghana, Peru, Guatemala, Benin, Republic of Korea, Switzerland, Pakistan, Zambia, Japan, Ukraine, Sri Lanka
<b>15th session (21 Jan-1 Feb 2013)</b>	France, Tonga, Romania, Mali, Botswana, Bahamas, Burundi, Luxembourg, Barbados, Montenegro, United Arab Emirates, Israel, Liechtenstein, Serbia
<b>16th session (22 Apr- 3 May 2013)</b>	Turkmenistan, Burkina Faso, Cape Verde, Colombia, Uzbekistan, Tuvalu, Germany, Djibouti, Canada, Bangladesh, Russian Federation, Azerbaijan, Cameroon, Cuba
<b>17th session (21 Oct-1 Nov 2013)</b>	Mauritius, Nigeria, Senegal, China, Jordan, Malaysia, Saudi Arabia, Mexico, Central African Republic, Monaco, Belize, Chad, Congo, Malta,
<b>18th session (Jan-Feb 2014)</b>	Comoros, Vanuatu, Viet Nam, Yemen, Afghanistan, Uruguay, Chile, New Zealand, Slovakia, The Former Yugoslav Republic of Macedonia, Eritrea, Cyprus, Dominican Republic, Cambodia,
<b>19th session (Apr-May 2014)</b>	Côte d'Ivoire, Democratic Republic of the Congo, Equatorial Guinea, Ethiopia, Bhutan, Brunei Darussalam, Democratic People's Republic of Korea, Costa Rica, Dominica, Norway, Portugal, Albania, Qatar, Nicaragua
<b>20th session (Oct-Nov 2014)</b>	Angola, Egypt, Madagascar, Gambia, Fiji, Iran (Islamic Republic of), Iraq, Kazakhstan, Bolivia, El Salvador, Italy, San Marino, Slovenia, Bosnia and Herzegovina
<b>21st session (Jan-Feb 2015)</b>	Guinea, Guinea Bissau, Kenya, Lesotho, Kiribati, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Grenada, Guyana, Spain, Sweden, Turkey, Armenia
<b>22nd session (Apr-May 2015)</b>	Belarus, Liberia, Malawi, Mongolia, Panama, Maldives, Andorra, Bulgaria, Honduras, United States of America, Marshall Islands, Croatia, Jamaica, Libyan Arab Jamahiriya
<b>23rd session (Oct-Nov 2015)</b>	Micronesia, Lebanon, Mauritania, Nauru, Rwanda, Nepal, Saint Lucia, Oman, Austria, Myanmar, Australia, Georgia, Saint Kitts and Nevis, Sao Tome and Principe
<b>24th session (Jan-Feb 2016)</b>	Namibia, Niger, Mozambique, Estonia, Paraguay, Belgium, Denmark, Palau, Somalia, Seychelles, Solomon Islands, Latvia, Sierra Leone, Singapore
<b>25th session (Apr-May 2016)</b>	Suriname, Greece, Samoa, Saint Vincent and the Grenadines, Sudan, Hungary, Papua New Guinea, Tajikistan, United Republic of Tanzania, Antigua and Barbuda, Swaziland, Trinidad and Tobago, Thailand, Ireland
<b>26th session (Oct-Nov 2016)</b>	Togo, Syrian Arab Republic, Venezuela (Bolivarian Republic of), Iceland, Zimbabwe, Lithuania, Uganda, Timor Leste, Republic of Moldova, Haiti, South Sudan <sup>21</sup>

<sup>21</sup> Granted membership of the United Nations on 14 July 2011 and subsequently added to the calendar by decision of the Human Rights Council Bureau

## Reference List

- Achard, D. (2004). *Children: Rights and childhood* (2nd ed.). Abingdon, Oxon: Routledge.
- Badse, C. (2011). The role of National Human Rights Institutions, In L. Dhundale, & L. A. N. Thonbo (Eds.), *Universal Periodic Review First Cycle: Reporting methodologies from the positions on the state, civil society and national human rights institutions* (pp. 48-70). Copenhagen, Denmark, The Danish Institute for Human Rights.
- Blackburn, R. (2011). Cultural Relativism in the Universal Periodic Review of the Human Rights Council. Barcelona, Institut Català Internacional per la Pau. Retrieved August 21, 2012, from [http://www.upr-info.org/IMG/pdf/blackburn\\_upr\\_cultural\\_relativism.09.2011.pdf](http://www.upr-info.org/IMG/pdf/blackburn_upr_cultural_relativism.09.2011.pdf)
- Burnbacher, D. (2009). What Does it Mean to Have a Right?, *Intergenerational Justice Review: Fondation for the Rights of Future Generations*, 9(4), 128-132.
- Convention on the Rights of the Child, Retrieved September 1, 2012, from [http://en.wikipedia.org/wiki/Convention\\_on\\_the\\_Rights\\_of\\_the\\_Child#cite\\_note-untreaty-0](http://en.wikipedia.org/wiki/Convention_on_the_Rights_of_the_Child#cite_note-untreaty-0)
- CRC Committee, General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child (UN Doc. CRC/GC/2002/2, 2002), para. 2
- Frazier, D. (2011). Evaluating the Implementation of UPR Recommendations: A Quantitative Analysis of the Implementation Efforts of Nine UN Member States. Retrieved September 1, 2012, from [http://www.upr-info.org/IMG/pdf/david\\_frazier\\_paper\\_upr\\_implementation\\_2011-2.pdf](http://www.upr-info.org/IMG/pdf/david_frazier_paper_upr_implementation_2011-2.pdf)
- Hart, J. (2008). Business as Usual? The Global Political Economy of Childhood Poverty. Young Lives Technical Note No. 13.
- Holzscheiter, A. (2010). Discourses of childhood – the ‘Communicative Ecology’ of the child. In A. Holzscheiter, *Children’s Rights in International Politics. The Transformative Power of Discourse* (pp. 99-137). Basingstoke: Palgrave Macmillan.
- Human Rights Council Press Release. *Eighth session of the Human Rights Council's Universal Periodic Review to be held from 3 to 14 May 2010*. Retrieved August 29, 2012, from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9993&LangID=E>
- Human Rights Council Press Release. *Human Rights Council adopts outcomes of Universal Periodic Review of Guinea-Bissau and Kiribati* <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10406&LangID=E>
- Ineichen, M., Starrenburg, O. (Eds.) (2012). Universal Periodic Review – Examining the opportunities following the first cycle. *Human Rights Monitor Quarterly - ISHR*, 2012 (1), 8-10.

- Ineichen, M., Starrenburg, O. (Eds.) (2012). Universal Periodic Review – Examining the opportunities following the first cycle. *Human Rights Monitor Quarterly - ISHR*, 2012 (2), 22-25.
- Ineichen, M., Starrenburg, O. (Eds.) (2012). Universal Periodic Review – Testing the new procedural rules of the second cycle. *Human Rights Monitor Quarterly - ISHR*, 2012 (3), 6-8.
- James, A. (2009). Agency. In J. Qvortrup, W.A. Corsaro and M.-S. Hong (Eds.), *The Palgrave Handbook of Childhood Studies* (pp. 34-45). Basingstoke: Palgrave Macmillan.
- Kamal, S. (2011). UPR Follow-up and Implementation of Recommendations: A view from an NGO. In P. Sen (Ed.), *Universal Periodic Review – Lessons, Hopes And Expectations* pp. 36-37. London, UK. Commonwealth Secretariat.
- Koo, A. (2011). Preparing for the Review in Geneva: A view from an NGO. In P. Sen (Ed.), *Universal Periodic Review – Lessons, Hopes And Expectations* pp. 26-28. London, UK. Commonwealth Secretariat.
- Malawi – CIA – The World Factbook. Retrieved September 20, 2012, from <https://www.cia.gov/library/publications/the-world-factbook/geos/mi.html>
- Mauras, M. (2011). Public Policies and Child Rights: Entering the Third Decade of the Convention on the Rights of the Child. *The ANNALS of the American Academy of Political and Social Science*, 633, 52-65.
- McMahon, E. (2010). Herding Cats and Sheep: Assessing State and Regional Behaviour in the Universal Periodic Review Mechanism of the United Nations Human Rights Council. Retrieved August 29, 2012, from [http://www.upr-info.org/IMG/pdf/McMahon\\_Herding\\_Cats\\_and\\_Sheeps\\_July\\_2010.pdf](http://www.upr-info.org/IMG/pdf/McMahon_Herding_Cats_and_Sheeps_July_2010.pdf)
- Mushwana, L. (2011). UPR Follow-up and Implementation of Recommendations: A view from an NHRI. In P. Sen (Ed.), *Universal Periodic Review – Lessons, Hopes And Expectations* pp. 32-35. London, UK. Commonwealth Secretariat.
- Nieuwenhuys, O. (1998). Global childhood and the politics of contempt. *Alternatives: Social Transformation & Humane Governance*, 23(3), pp. 267-289.
- NINEISMINE (2012): Final India UPR Submission for the Thirteenth Session of the Working Group for the Universal Periodic Review of India, May 2012. Retrieved September 3, 2012, from <http://www.nineismine.in/final-india-upr-submission>
- Prohibiting corporal punishment of children in the Caribbean – Progress Report 2012. London, UK. Global Initiative to End All Corporal Punishment of Children. Retrieved September 20, 2012, from <http://www.endcorporalpunishment.org/pages/pdfs/reports/Caribbean%20Report%202012.pdf>

- Rathgeber, T. (2012). *New prospects for human rights? The Human Rights Council between the review process and the Arab spring*. Berlin: Friedrich-Ebert-Stiftung. Retrieved August 18, 2012, from [http://www.institut-fuer-menschenrechte.de/uploads/tx\\_commerce/new\\_prospects\\_for\\_human\\_rights.pdf](http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/new_prospects_for_human_rights.pdf)
- Renshaw, E. (2010). *Universal Periodic Review: The Status of Children's Rights. An analysis of trends - Review of NGO Participation*. Retrieved July 9, 2012, from [http://www.crin.org/docs/UPR\\_Summary\\_OCT11FINAL.pdf](http://www.crin.org/docs/UPR_Summary_OCT11FINAL.pdf)
- Salama, I. (2009). Introduction to the Universal Periodic Review Process. In P. Sen (Ed.), *Universal Periodic Review of Human Rights: Towards Best Practice* (pp. 5-7). London: Commonwealth Secretariat.
- Sears, J. (2011). A View from a state. In P. Sen (Ed.), *Universal Periodic Review – Lessons, Hopes And Expectations* pp. 50-52. London, UK. Commonwealth Secretariat.
- Sen, P. (2009). The Commonwealth Secretariat: The first year of the UPR. In P. Sen (Ed.) *Universal Periodic Review of Human Rights: Towards Best Practice* (p. 22). London: Commonwealth Secretariat.
- Sen, P. (2011). The First Two Years on the UPR: An Analysis and Summary. In P. Sen (Ed.) *Universal Periodic Review: Lessons, Hopes and Expectations*.(pp. 39-47) London: Commonwealth Secretariat.
- The Office of the High Commissioner for Human Rights, Committee on the Rights of the Child, UN Treaty Collection. Retrieved August 27, 2012, from [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en#EndDec](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en#EndDec)
- The Office of the High Commissioner for Human Rights, *Requests for financial assistance under the Voluntary Fund for Participation in the UPR Mechanism*. Retrieved August 17, 2012, from <http://www.ohchr.org/EN/HRBodies/UPR/Documents/VPUFinancialRequest.pdf>
- The Office of the High Commissioner for Human Rights. (2007). UN Human Rights Council, *Establishment of funds for the universal periodic review mechanism of the Human Rights Council* (UN Doc. A/HRC/RES/6/17), paras. 1 & 2.
- The Office of the High Commissioner for Human Rights. (2011). UN Human Rights Council, *Follow-up to the Human Rights Council resolution 16/21 with regard to the universal periodic review* (UN Doc. A/HRC/DEC/17/119), paras. 1, 3, 5-8.
- The Office of the High Commissioner for Human Rights. (2007). UN Human Rights Council, *Institution-building of the United Nations Human Rights Council* (UN Doc. A/HRC/RES/5/1), paras. 1, Annex 1-38.
- The Office of the High Commissioner for Human Rights, UN Human Rights Council, *Membership of the Human Rights Council*. Retrieved August 17, 2012, from <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Membership.aspx>



The Office of the High Commissioner for Human Rights. (2011). UN Human Rights Council, *Review of the work and functioning of the Human Rights Council* (UN Doc. A/HRC/RES/16/21), paras. 3, 4, 6, 15, 18.

The Office of the High Commissioner for Human Rights. (2009). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Afghanistan* (UN Doc. A/HRC/12/9), paras. 95.39, 95.42, 97.1 - 97.9.

The Office of the High Commissioner for Human Rights. (2010). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Albania*, (UN Doc. A/HRC/13/6), para. 70.2.

The Office of the High Commissioner for Human Rights. (2010). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Angola*, (UN Doc. A/HRC/14/11), para. 87.71.

The Office of the High Commissioner for Human Rights. (2011). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Antigua and Barbuda* (UN Doc. A/HRC/19/5), paras. 68.23-68.26, 69.9 – 69.15.

The Office of the High Commissioner for Human Rights. (2011). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Australia*, (UN Doc. A/HRC/17/10), para. 86.28.

The Office of the High Commissioner for Human Rights. (2009). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Bangladesh* (UN Doc. A/HRC/11/18), paras. 94.7, 94.25.

The Office of the High Commissioner for Human Rights. (2010). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Belarus*, (UN Doc. A/HRC/15/16), para. 97.24

The Office of the High Commissioner for Human Rights. (2012). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review Brazil* (UN Doc. A/HRC/21/11), paras. 119.64, 119.65, 119.71, 119.80.

The Office of the High Commissioner for Human Rights. (2010). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Cambodia*, (UN Doc. A/HRC/13/4), para. 82.27.

The Office of the High Commissioner for Human Rights. (2009). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Chile*, (UN Doc. A/HRC/12/10), para. 96.25.

The Office of the High Commissioner for Human Rights. (2011). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Costa Rica*, (UN Doc. A/HRC/13/15), para. 89.12.

The Office of the High Commissioner for Human Rights. (2011). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Croatia* (UN Doc. A/HRC/16/13), para. 98.12.

- The Office of the High Commissioner for Human Rights. (2011). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Dominica*, (UN Doc. A/HRC/13/12), para. 70.48.
- The Office of the High Commissioner for Human Rights. (2010). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Guinea* (UN Doc. A/HRC/15/4), para. 71.12.
- The Office of the High Commissioner for Human Rights. (2011). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Hungary* (UN Doc. A/HRC/18/17), para. 94.97.
- The Office of the High Commissioner for Human Rights. (2010). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Islamic Republic of Iran* (UN Doc. A/HRC/14/12), paras. 92.20 – 92.26.
- The Office of the High Commissioner for Human Rights. (2011). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Jamaica* (UN Doc. A/HRC/16/14), paras. 98.14, 108.17.
- The Office of the High Commissioner for Human Rights. (2010), UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Kiribati* (UN Doc. A/HRC/15/3), paras. 66.66, 66.67.
- The Office of the High Commissioner for Human Rights. (2011). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Latvia* (UN Doc. A/HRC/18/9), para. 91.45.
- The Office of the High Commissioner for Human Rights. (2011). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Malawi* (UN Doc. A/HRC/16/4), paras. 102.60, 105.33.
- The Office of the High Commissioner for Human Rights. (2008), UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of The Netherlands* (UN Doc. A/HRC/8/31), paras. 78.1, 78.7, 78.10, 78.12, 78.26.
- The Office of the High Commissioner for Human Rights. (2008), UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of The Netherlands, Addendum* (UN Doc. A/HRC/8/31/Add.1), paras. 3, 4, 10, 14, 17, 36.
- The Office of the High Commissioner for Human Rights. (2012). UN Human Rights Council, *National Report of the Kingdom of The Netherlands for the UPR* (UN Doc. A/HRC/WG.6/13/NDL/1), paras. 10-12, 15, 35, 37-38, 67, 82-83, 86-89, 101-103, 112, 118.

- The Office of the High Commissioner for Human Rights. (2012). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of The Netherlands* (UN Doc. A/HRC/21/15), paras. 13, 20, 98.12-117.
- The Office of the High Commissioner for Human Rights. (2010). Universal Periodic Review, *The Netherlands, National Interim Report, April 2010*. Retrieved August 10, 2012, from [http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/NL/Netherlands\\_Interim\\_report.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/NL/Netherlands_Interim_report.pdf), paras. 1, 7, 10, 12, 26.
- The Office of the High Commissioner for Human Rights. (2010). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Norway* (UN Doc. A/HRC/13/5), para. 105.28.
- The Office of the High Commissioner for Human Rights. (2008). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of the Philippines*, (UN Doc. A/HRC/8/28), paras. 58.1, 58.7, 58.9, 58.17, 60.
- The Office of the High Commissioner for Human Rights. (2012). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of the Philippines* (UN Doc. A/HRC/21/12), 7, 12, 20, 129.10-131.29.
- The Office of the High Commissioner for Human Rights. (2008). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of the Philippines, Addendum* (UN Doc. A/HRC/8/28/Add. 1), paras. 2,3.
- The Office of the High Commissioner for Human Rights. (2012). UN Human Rights Council, *National Report of Philippines for the UPR* (UN Doc. A/HRC/WG.6/13/PHL/1), paras. 81-82.
- The Office of the High Commissioner for Human Rights. *Universal Periodic Review Second Cycle – Philippines*, Questions in Advance 1, 2 and 3, Retrieved August 9, 2012, from <http://www.ohchr.org/EN/HRBodies/UPR/Pages/PHSession13.aspx>
- The Office of the High Commissioner for Human Rights. (2011). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Sierra Leone* (UN Doc. A/HRC/18/10), para. 81.24.
- The Office of the High Commissioner for Human Rights. (2009). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Slovakia* (UN Doc. A/HRC/12/17), para. 89.87.
- The Office of the High Commissioner for Human Rights. (2008). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of South Africa* (UN Doc. A/HRC/8/32), paras. 67.1, 67.5-6, 67.14-16.

- The Office of the High Commissioner for Human Rights. (2012). UN Human Rights Council, *National Report of South Africa for the UPR* (UN Doc. A/HRC/WG.6//13/ZAF/1), paras. 1, 4-5, 12, 20, 30, 33, 36-38, 46, 48.
- The Office of the High Commissioner for Human Rights. (2012). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of South Africa* (UN Doc. A/HRC/21/16), paras. 15, 19-22, 29, 37, 121-122, 125.61, 125.17-151.
- The Office of the High Commissioner for Human Rights. (2012). UN Human Rights Council, *Universal Periodic Review Second Cycle – South Africa*, Questions in Advance, Retrieved August 9, 2012, from <http://www.ohchr.org/EN/HRBodies/UPR/Pages/ZASession13.aspx>
- The Office of the High Commissioner for Human Rights. (2012). *Universal Periodic Review of South Africa, Questions in Advance, QA1, QA3*. Retrieved 5 September 5, 2012, from <http://www.ohchr.org/EN/HRBodies/UPR/Pages/ZASession13.aspx>
- The Office of the High Commissioner for Human Rights. (2011). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Thailand*, (UN Doc. A/HRC/19/8), para. 89.37.
- The Office of the High Commissioner for Human Rights. (2010). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Turkey* (Un Doc. A/HRC/15/13), para. 100.66.
- The Office of the High Commissioner for Human Rights. (2008). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of United Kingdom of Great Britain and Northern Ireland* (UN Doc. A/HRC/8/25), paras. 56.2-4, 56.16, 56.21, 56.25-26.
- The Office of the High Commissioner for Human Rights. (2012). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of the United Kingdom of Great Britain and Northern Ireland* (UN Doc. A/HRC/21/9), paras. 14, 15, 20, 44, 110.8, 110.34-35, 110.41, 110.42, 110.78-80.
- The Office of the High Commissioner for Human Rights. (2008). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of United Kingdom of Great Britain and Northern Ireland, Addendum* (UN Doc. A/HRC/8/25/Add.1), paras. 28-30, 52-56, 62-65, 71-74.
- The Office of the High Commissioner for Human Rights. (2012). UN Human Rights Council, *National Report of the United Kingdom of Great Britain and Northern Ireland for the UPR* (UN Doc. A/HRC/WG.6/13/GBR/1), paras. 6, 8, 96-121.

- The Office of the High Commissioner for Human Rights. (2010). *Universal Periodic Review, Mid-Term Update by the UK on its implementation of recommendations agreed in June 2008*. Retrieved August 9, 2012, from [http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/GB/UKmid\\_term\\_report2010.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/GB/UKmid_term_report2010.pdf), paras. 2, 7, 8, 14.
- The Office of the High Commissioner for Human Rights. (2011). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of the United Republic of Tanzania* (UN Doc. A/HRC/19/4), paras. 85. 48, 85.50, 86.38, 86.39.
- The Office of the High Commissioner for Human Rights. (2011). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review United States of America* (UN Doc. A/HRC/16/11), para. 92.96.
- The Office of the High Commissioner for Human Rights, *UPR Voluntary Fund for Financial and Technical Assistance*, Retrieved July 29, 2012, from <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRVoluntaryFundFinancialAndTechnicalAssistance.aspx>
- Thomas, N. (2007). Towards a Theory of Children's Participation, *International Journal of Children's Rights*, 15, 199-218.
- United Nations. The Geneva Declaration on the Rights of the Child. Retrieved August 26, 2012, from <http://www.un-documents.net/gdrc1924.htm>
- United Nations Human Rights Council. Retrieved August 17, 2012, from [http://en.wikipedia.org/wiki/United\\_Nations](http://en.wikipedia.org/wiki/United_Nations)
- United Nations General Assembly, *Resolution 251, Human Rights Council*, (UN Doc. A/RES/60/251, 2006), paras. 1-3, 5.
- United Nations General Assembly. *Resolution 281, Review of the Human Rights Council* (UN Doc. A/RES/65/281, 2011), para. Annex 18.
- United Nations General Assembly, *Review of the Human Rights Council* (UN Doc. A/RES/65/281, 2011), para. 18.
- UPR-Info. *Action Category*. Retrieved August 8, 2012, from [http://www.upr-info.org/IMG/pdf/Action\\_Category.pdf](http://www.upr-info.org/IMG/pdf/Action_Category.pdf)
- UPR Info – Follow up Program. Retrieved August 17, 2012, from <http://www.upr-info.org/followup/index/country/bangladesh>
- UPR Info – Follow up Program. Retrieved August 17, 2012, from <http://www.upr-info.org/followup/index/country/norway>
- UPR Info, *Universal Periodic Review*. Retrieved August 30, 2012, from <http://www.upr-info.org/database/>

UPR Info, *Universal Periodic Review*. Retrieved August 30, 2012, from  
<http://www.upr-info.org/database/statistics/>

Verhellen, E. (2006). *Convention on the Rights of the Child: Background, motivation, strategies, main themes* (4<sup>th</sup> ed.). Antwerp – Apeldoorn: Garant