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## **ABSTRACT**

The Universal Periodic Review (UPR) has been hailed as an innovative mechanism of the United Nations Human Rights Council. The peer review mechanism evaluates the human rights record of all 193 Member States and provides recommendations to further the global promotion and protection of human rights. This paper assesses the mechanism, currently in its third cycle, in the context of Muslim states. It considers the extent of these states' commitment to the process and argues for a need to move away from mere lip-service to the mechanism and engage in meaningful discourse to achieve the objectives of the UPR.

**KEYWORDS:** Universal Periodic Review, Human Rights Council, Islamic law, human rights.

# THE UNIVERSAL PERIODIC REVIEW AND MUSLIM STATES' ENGAGEMENT

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## 1. INTRODUCTION

The Universal Periodic Review (UPR), established in 2006, is an innovative mechanism of the United Nations Human Rights Council (HRC). The HRC was introduced to replace its predecessor, the Commission on Human Rights, which was in operation for sixty years before its dissolution. Many of the issues surrounding the Commission have influenced the way in which the HRC operates, including the UPR. It is therefore important to consider the historical context in which the UPR was established in order to fully appreciate its purpose. This paper serves two main objectives. First, to provide a comprehensive overview of the Universal Periodic Review (UPR) and, second, to provide an analysis of the role, or lack thereof, of Muslim states<sup>1</sup> in the mechanism.

## 2. UPR ORIGINS: FROM COMMISSION TO COUNCIL

Article 68 of the United Nations Charter mandated the Economic and Social Council (ECOSOC) with creating commissions for the protection and promotion of human rights.<sup>2</sup> Under its mandate, ECOSOC established the Commission on Human Rights in 1946, a charter-based subsidiary body, which was 'entrusted with promoting respect for human rights globally, fostering international cooperation in human rights, responding to violations in specific countries and assisting countries in building their human rights capacity'.<sup>3</sup>

The Commission's work was primarily based around standard setting during its first two decades and from 1967 onwards, ECOSOC extended the Commission's work to promoting, monitoring and implementing human rights.<sup>4</sup> It began to investigate state-specific human rights

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<sup>1</sup> For the purpose of this article, all state members of the Organisation of Islamic Cooperation (formerly the Organisation of Islamic Conference) are considered as being 'Muslim' states.

<sup>2</sup> See generally Eibe Riedel, 'Article 68' in Bruno Simma et al (eds), *The Charter of the United Nations: A Commentary* (2nd edn, OUP 2002) 1011, 1027.

<sup>3</sup> High-Level Panel on Threats, Challenges and Change, *A More Secure World - Our Shared Responsibility* (2 December 2004) UN Doc A/59/565, para 282. See also ECOSOC Res 5(I) (16 February 1946) UN Doc E/Res/5(I).

<sup>4</sup> Rosa Freedman, *The United Nations Human Rights Council: A Critique and Early Assessment* (Routledge 2013) 15; Ladan Rahmani-Ocora, 'Giving the Emperor Real Clothes: The UN Human Rights Council' (2006) 12(1) *Global Governance* 15.

violations and a complaints procedure was initiated which was accessible to all states, individuals and NGOs. Twenty-nine countries were considered under this procedure, between 1978 to 1985, however coverage was not balanced as certain states such as Iran and South Korea were scrutinised whilst other Arab countries and North Korea were not.<sup>5</sup> This selective nature of the Commission was criticised.<sup>6</sup>

In order to address cross-border human rights violations, the Commission created thematic mandates which allowed it to deal with widespread human rights abuses across a range of states.<sup>7</sup> The Commission was criticised for its one-sided form of action as ‘it was the mightiest - militarily, economically and politically - who ran the human rights show’.<sup>8</sup> In other words, it was mainly Western countries placing developing countries under international scrutiny and according to the representative of Iraq, ‘it was forbidden to mention violations occurring in the United States and Europe’.<sup>9</sup>

Miko Lempinen argues that selective scrutiny could be partly attributed to ‘a different understanding of how to address and handle human rights concerns, as well as by a different understanding of what constitutes promotion and protection of human rights, or for that matter, what constitutes a violation of human rights’.<sup>10</sup> For example, during Brazil’s draft resolution on human rights and sexual orientation, Muslim states prepared no less than 55 amendments to the draft aiming to remove any reference to sexual orientation. According to the representative of Pakistan, ‘the issue was not a proper subject for consideration by the commission’.<sup>11</sup>

The Commission’s increasing deficiencies paved the way for its ultimate downfall. A number of factors have been identified which contributed to the Commission’s demise such as the

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<sup>5</sup> Jack Donnelly, ‘Human Rights at the United Nations 1955-85: The Question of Bias’ (1988) 32 *International Studies Quarterly* 275, 294. This procedure was largely confidential however, the Commission would publicise the list of countries concerning which action had been taken. Inclusion on this list was generally interpreted as evidence of serious violations (ibid).

<sup>6</sup> ibid 295.

<sup>7</sup> ECOSOC Res 1235 (XLII) (6 June 1967) UN Doc E/4393; ECOSOC Res 1503 (XLVIII) (27 May 1970) UN Doc E/4832. See Tom J Farer and Felice D Gaer, ‘The UN and Human Rights: At the End of the Beginning’ in Adam Roberts and Benedict Kingsbury (eds), *United Nations: Divided World* (2nd edn, Clarendon Press 1993) 279; Phillip Alston, *The United Nations and Human Rights: A Critical Appraisal* (OUP 1995) 126; James H Lebovic and Erik Voeten, ‘The Politics of Shame: The Condemnation of Country Human Rights Practices in UNCHR’ (2006) 50(4) *International Studies Quarterly* 864.

<sup>8</sup> UN Doc E/CN.4/Sub.2/1998/SR.4, para 27 (Mr Khalifa, member of the Sub-Commission on Human Rights).

<sup>9</sup> UN Doc E/CN.4/1992/SR.40, para 38.

<sup>10</sup> Miko Lempinen, *The United Nations Commission on Human Rights and the Different Treatment of Governments* (Abo Akademi University Press 2005) 168.

<sup>11</sup> UN Doc E/CN.4/2003/SR.61, para 60. See also UN Docs E/CN.4/2003/L.106-110; Commission on Human Rights Decision 2003/118.

increasing politicization of its activities,<sup>12</sup> naming and shaming policy in country-specific resolutions,<sup>13</sup> scrutiny of certain states<sup>14</sup> and the absence of membership criteria.<sup>15</sup> Rosa Freedman has noted that, ‘the expansion of international human rights to cover ever more issues, coupled with the body’s increasing loss of credibility in the eyes of the states and observers resulted in the Commission widely being deemed to be unable to fulfil its mandate’.<sup>16</sup>

A prime example was the case of Iran which was placed under country-specific scrutiny for nearly twenty years by the Commission.<sup>17</sup> The mandate failed to be renewed after the rejection of draft resolution E/CN.4/2002/L.33 in 2002 with Member States criticising the Commission’s politicised nature. For example, Algeria observed that ‘despite widespread human rights violations during the Shah’s political regime, the Commission had seen fit to condemn Iran only since the emergence of the new republic in 1979’.<sup>18</sup> It considered the draft resolution unbalanced and politically motivated.<sup>19</sup>

Pakistan, speaking on behalf of the Organisation of Islamic Cooperation (OIC), said the organisation opposed selective criticism of some developing and Muslim states and the Commission was being used to promote political objectives rather than to advance the cause of human rights in the targeted countries. It maintained that, ‘the promotion of human rights would not be guaranteed by the adoption of a politically motivated resolution, but through dialogue and cooperation’.<sup>20</sup> Sudan echoed similar sentiments commenting on the selectivity that was practised against some states and how the resolution ‘did not accurately reflect the

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<sup>12</sup> In the words of Libya, the Commission had become a ‘battlefield for political debate’, UN Doc E/CN.4/2002/SR.49, para 22.

<sup>13</sup> Donnelly (n 5) 295; Jerome J Shestack, ‘The Commission on Human Rights: Pitfalls, Progress and a New Maturity’ in Seymore M Finger and Joseph R Harbert (eds), *U.S. Policy in International Institutions: Defining Reasonable Options in an Unreasonable World* (Westview Press 1982).

<sup>14</sup> *ibid.*

<sup>15</sup> Elvira D Redondo, ‘The Universal Periodic Review of the UN Human Rights Council: An Assessment of the First Session’ (2008) 7(3) *Chinese Journal of International Law* 721-34; Eric Heinze, ‘Even-handedness and the Politics of Human Rights’ (2008) 21(7) *Harvard Human Rights Journal* 41. See also Philip Alston, ‘Richard Lillich Memorial Lecture: Promoting the Accountability of Members of the New Human Rights Council,’ (2005-2006) 15 *Journal of Transnational Law and Policy* 49; Tait Carney, ‘The United Nations Human Rights Council’ (2007) 8 *Human Rights and UK Practice* 34; Nazila Ghanea, ‘From UN Commission on Human Rights to UN Human Rights Council: One Step Forward or Two Steps Sideways?’ (2006) 55 *International and Comparative Quarterly* 695.

<sup>16</sup> Freedman (n 4) 17. See also Nico Schrijver, ‘The UN Human Rights Council: A New “Society of the Committed” or Just Old Wine in New Bottles’ (2007) 20(4) *Leiden Journal of International Law* 812.

<sup>17</sup> For a detailed case study of Iran in the Commission, see Lempinen (n 10) 333-45.

<sup>18</sup> UN Doc E/CN.4/2002/SR.49, para 20.

<sup>19</sup> *ibid.*

<sup>20</sup> *ibid* para 16.

recent improvements in the human rights situation in Iran and it made negative references to Islam'.<sup>21</sup>

The sentiment was shared amongst non-Muslim states too. Cuba voted against the draft resolution in an endeavour to put an end to 'the use of double standards and politically motivated draft resolutions that were threatening the credibility of the Commission and emphasizing the division between the Powers of the north and the developing countries of the south'.<sup>22</sup>

The most damning statement came from Iran itself in that:

The United Nations system had been taken hostage by a powerful minority that unsparingly exploited its mechanisms to exert pressure on certain countries. The system had lost all credibility and integrity.

The promotion and protection of human rights and fundamental freedoms was the primary objective of the United Nations and no country should be immune from international scrutiny. However, the existing system of monitoring human rights violations was selective, arbitrary, partial and unproductive. To rectify the discrepancies of the system in respect of its human rights machinery, and to prevent its abuse and manipulation, a spirit of understanding and cooperation among the entire membership was essential.<sup>23</sup>

Despite its shortfalls, the Commission's achievements cannot be understated. The conception and foundation of the Universal Declaration of Human Rights,<sup>24</sup> the International Covenant on Civil and Political Rights<sup>25</sup> and the International Covenant on Economic, Social and Cultural Rights<sup>26</sup> (which comprise the International Bill of Human Rights<sup>27</sup>) can all be attributed to the workings of the Commission which played a principal role in these achievements.<sup>28</sup>

### 3. INTRODUCTION OF THE HUMAN RIGHTS COUNCIL

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<sup>21</sup> *ibid* para 24.

<sup>22</sup> *ibid* para 23.

<sup>23</sup> *ibid* paras 26-31.

<sup>24</sup> UNGA Res 217A (III), 'Universal Declaration of Human Rights' (1948) UN Doc A/810 at 71.

<sup>25</sup> UNGA Res 2200A (XXI), 'International Covenant on Civil and Political Rights' (16 December 1966) UN Doc A/6316.

<sup>26</sup> UNGA Res 2200A (XXI), 'International Covenant on Economic, Social and Cultural Rights' (16 December 1966) UN Doc A/6316.

<sup>27</sup> See, for example, Peter Meyer, 'The International Bill: A Brief History' in Paul Williams (ed), *The International Bill of Rights* (Entwhistle Books 1981).

<sup>28</sup> Freedman (n 4) 16.

In 2005 the United Nations then General-Secretary, Kofi Annan, published a damning report entitled 'In Larger Freedom: Towards Development, Security and Human Rights for All'.<sup>29</sup> The report questioned the Commission's credibility and professionalism with states seeking membership for the promotion of self-interests as opposed to the protection and promotion of human rights.<sup>30</sup> This credibility deficit had 'cast a shadow on the reputation of the United Nations system as a whole',<sup>31</sup> so Annan called for the disbanding of the Commission, arguing that:

If the United Nations is to meet the expectations of men and women everywhere - and indeed, if the Organization is to take the cause of human rights as seriously as those of security and development - then Member States should agree to replace the Commission on Human Rights with a smaller standing Human Rights Council.<sup>32</sup>

Anan's report advocated for a new body on human rights and was met with general support by states and organisations.<sup>33</sup> Although there was a broad consensus that the Commission failed in its duty and there was a need for a new body to strengthen UN human rights, it was masked by grave disagreements about what had actually gone wrong. After a series of negotiations on the composition, functions and procedures of the new Human Rights Council, the General Assembly adopted Resolution 60/251 on 15 March 2006.<sup>34</sup> The final text of the Resolution, however, only determined basic structural issues, such as election of members and composition and issued broad guidelines in respect to the institutional and procedural arrangements of the new Human Rights Council.<sup>35</sup>

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<sup>29</sup> UNGA, 'Report of the Secretary-General: In Larger Freedom: Towards Development, Security and Human Rights for All' (21 March 2005) UN Doc A/59/2005.

<sup>30</sup> *ibid* para 182.

<sup>31</sup> *ibid*.

<sup>32</sup> *ibid* para 183.

<sup>33</sup> See ECOSOC, 'Summary of the open-ended informal consultations held by the Commission on Human Rights pursuant to Economic and Social Council decision 2005/217, prepared by the Chairperson of the sixty-first session of the Commission' (21 June 2005) UN Doc A/59/847; UN Doc E/2005/73 at para 12.

<sup>34</sup> UNGA Res 60/251, 'Human Rights Council' (3 April 2006) UN Doc A/RES/60/251. The Human Rights Council was created with 170 states voting in favour, 4 against (Israel, Marshall Islands, Palau, United States) and 3 abstaining (Belarus, Iran, Venezuela). See UNGA Press Release, 'General Assembly Establishes New Human Rights Council by Vote of 170 in Favour to 4 Against, with 3 Abstentions' <[www.un.org/press/en/2006/ga10449.doc.htm](http://www.un.org/press/en/2006/ga10449.doc.htm)> accessed 20 December 2018.

<sup>35</sup> Philip Alston, 'Reconceiving the UN Human Rights Regime: Challenges Confronting the New UN Human Rights Council' (2006) 7 *Melbourne Journal of International Law* 186.

In accordance with Article 22 of the UN Charter,<sup>36</sup> the General Assembly established the HRC as one of its subsidiary organs,<sup>37</sup> thereby elevating its institutional standing in comparison to its predecessor. The HRC would therefore assist the General Assembly with the performance of fulfilling its mandate on human rights. This suggested a greater international commitment towards the protection and promotion of universal human rights as the HRC's enhanced status would make its discussions more visible, influential and authoritative both inside and outside the United Nations.<sup>38</sup>

The 'strong and unifying'<sup>39</sup> language employed in the Resolution helped convey the need for international dialogue, understanding and cooperation between countries, cultures and religions. It responded to criticisms of the Commission's politicisation and selectivity by ensuring that the guiding principles of the HRC's work should be universality, impartiality, non-selectivity and objectivity; it introduced 'a number of innovative elements that would make the Council a significant improvement on the Commission on Human Rights'.<sup>40</sup>

The main differences between the new Human Rights Council and its predecessor revolved around the frequency of meetings held annually, election of members and the creation of the Universal Periodic Review; a peer review mechanism designed to strengthen the accountability of Member States in relation to their human rights record.<sup>41</sup> The concept of a peer review mechanism was first raised by Annan during the final session of the Commission<sup>42</sup> wherein he proposed to abolish the Commission and use a process of peer-review to evaluate and implement universal human rights.<sup>43</sup> Such a proposal was expected to combat the politicisation

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<sup>36</sup> 'The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.'

<sup>37</sup> Freedman notes that '[s]ubordination is a legal characteristic of subsidiary organs with the GA retaining organisational power and control over the bodies' structure and activities. For example, the GA votes to elect the Council's members; has the power to suspend a Council member; may dictate which situations the body must address; and receives an annual report from the Council'. Freedman (n 4) 56.

<sup>38</sup> Kevin Boyle, 'The United Nations Human Rights Council: Origins, Antecedents, and Prospects,' in Kevin Boyle (ed), *New Institutions for Human Rights Protection* (OUP 2009) 12.

<sup>39</sup> UNGA President Jan Eliasson, statement on the draft resolution on the Human Rights Council, GA 60<sup>th</sup> Session (15 March 2006) 4.

<sup>40</sup> *ibid* 5.

<sup>41</sup> Gareth Sweeney and Yuri Saito, 'An NGO Assessment of the New Mechanisms of the UN Human Rights Council' 2009 9(2) Human Rights Law Review 203; Gerd Oberleitner, *Global Human Rights Institutions* (Polity Press 2008) 65.

<sup>42</sup> Speech of Secretary-General Kofi Annan to the Commission on Human Rights, 'Reforming UN Human Rights Machinery' (7 April 2005) UN Press Release SG/SM/9808 HR/CN/1108.

<sup>43</sup> UNGA, 'Secretary-General Report, Addendum, Human Rights Council, Explanatory Note by the Secretary-General' (23 May 2005) UN Doc A/59/2005/Add.1, para 6.

and selectivity of the Commission and would be the key factor in depoliticising the human rights body.<sup>44</sup>

Annan's proposal suggested a periodical review of each state thereby preventing the 'selectivity bias that had kept some states perennially on or off the Commission's agenda'.<sup>45</sup> He defined peer review as a process 'whereby states voluntarily enter into discussion regarding human rights issues in their respective countries'<sup>46</sup> and findings are implemented 'as a cooperative venture with assistance given to states in developing their capacities'.<sup>47</sup>

The mechanism of universal scrutiny would be the driving factor for the success of such a peer review process. It would allow states to be subject to assessment by other Member States and therefore prevent any single state from evading inquiry into its human rights practices.<sup>48</sup>

#### **4. INTRODUCTION OF THE UPR**

Under subsection (d) of Resolution 60/251, the Human Rights Council was mandated with the responsibility of monitoring Member States' compliance with human rights obligations and commitments. This was to be implemented through the Universal Periodic Review, a mechanism based on:

objective and reliable information...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.<sup>49</sup>

Themes of cooperation, capacity-building and consent were reiterated throughout the resolution. The interaction with the wider UN human rights machinery was also addressed by ensuring that the Universal Periodic Review 'shall complement and not duplicate the work of [the] treaty bodies'<sup>50</sup> which was a main criticism of the Commission.

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<sup>44</sup> Mathew Davies, 'Rhetorical Inaction? Compliance and the Human Rights Council of the United Nations' (2010) 35 *Alternatives: Global, Local, Political* 449, 457.

<sup>45</sup> *ibid* 456.

<sup>46</sup> UNGA, 'Secretary-General Report, Addendum, Human Rights Council, Explanatory Note by the Secretary-General' (23 May 2005) UN Doc A/59/2005/Add.1, para 7.

<sup>47</sup> *ibid*.

<sup>48</sup> *ibid* para 8.

<sup>49</sup> UNGA Res 60/251, 'Human Rights Council' (3 April 2006) UN Doc A/RES/60/251, para 5e.

<sup>50</sup> *ibid*.



Drafting took place over three sessions and a conference was also held in Geneva to discuss the different models<sup>51</sup> and approaches suggested for the review.<sup>52</sup> It was decided that Member States would be reviewed every four years<sup>53</sup> and the periodicity and modalities would be reviewed at the end of the first cycle.<sup>54</sup>

The following year, the HRC adopted Resolution 5/1, also known as the ‘Institution Building Package’, which provided an overview of the modalities and further expanded upon Resolution 60/251.<sup>55</sup> It listed the objectives of the review as:

- (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 Council, other human rights bodies and the Office of the United Nations High Commissioner for Human Rights.<sup>56</sup>

The Institution Building Package stressed that the Universal Periodic Review should be a cooperative mechanism; an intergovernmental process; operate in an objective, transparent,

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<sup>51</sup> Models considered included periodic or peer-review mechanisms in the African Union (AU), Council of Europe (CoE), the International Atomic Energy Agency (IAEA), International Labour Organisation (ILO), International Monetary Fund (IMF), the Organisation for Economic Co-operation and Development (OECD), the Organisation of American States (OAS), and the World Trade Organisation (WTO). See also Human Rights Peer Review, Draft Concept and Options Paper, prepared by Canada, 29 April 2005 at para 9.

<sup>52</sup> Patrizia Scannella and Peter Splinter, ‘The United Nations Human Rights Council: A Promise to be Fulfilled’ (2007) 7(1) Human Rights Law Review 41, 63-64; Allehone Mulugeta Abebe, ‘Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council’ (2009) 9 Human Rights Law Review 4; Felice D Gaer, ‘A Voice Not an Echo: Universal Periodic Review and the UN Treaty Body System’ (2007) 7(1) Human Rights Law Review 113-114.

<sup>53</sup> This has now changed to 4.5 years.

<sup>54</sup> Claire Callejon, ‘Developments at the Human Rights Council in 2007: A Reflection of its Ambivalence’ (2008) 8(2) Human Rights Law Review 335.

<sup>55</sup> UNHRC Res 5/1, ‘Institution Building of the United Nations Human Rights Council’ (18 June 2007) UN Doc A/HRC/RES/5/1.

<sup>56</sup> *ibid* para 4.

non-selective, constructive, non-confrontational and non-politicized manner; and most importantly, promote universal and indivisible human rights.<sup>57</sup>

It also identified which human rights commitments and obligations would be used to review a state and therefore form the basis of its review. It was agreed that the review would be based upon, ‘the United Nations Charter, the Universal Declaration of Human Rights, human rights instruments to which a State is party, and voluntary pledges and commitments made by States, including those undertaken when presenting their candidatures for election to the Human Rights Council’.<sup>58</sup> The review criteria also included applicable international humanitarian law due to the ‘complementary and mutually interrelated nature of international human rights law and international humanitarian law’.<sup>59</sup> The inclusion of legally binding and non-legally binding human rights instruments as the basis of the review highlights the comprehensiveness of the UPR and allows it to build upon the universality, indivisibility and interrelatedness of human rights.<sup>60</sup>

## 6. HOW THE UPR OPERATES

The first UPR cycle commenced from February 2008 and concluded with the twelfth session of the HRC’s Working Group in 2011. However, in order to accommodate slightly longer reviews by the Working Group, the second and subsequent cycles have been extended to four and a half years in length from 2012. Two-week sessions of the Working Group take place in February, May and October of each year with fourteen countries being reviewed in each session (a total of forty-two countries per year).<sup>61</sup> At the time of writing, the third cycle of the UPR is underway.

This change, amongst others, is a product of Resolution 16/21<sup>62</sup> which was adopted in March 2011. It contained the revised modalities for the functioning of the Human Rights Council and although a substantial part of the resolution consisted of the Universal Periodic Review, some

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<sup>57</sup> *ibid* para 3.

<sup>58</sup> UNHRC, ‘Intersessional open-ended intergovernmental working group to develop the modalities of the universal periodic review mechanism established pursuant to Human Rights Council decision 1/103’ (30 November 2006) UN Doc A/HRC/3/3, p4, para A.

<sup>59</sup> UNHRC Res 5/1 (18 June 2007) UN Doc A/HRC/RES/5/1, para 1.

<sup>60</sup> Redondo (n 15) 726; Nadia Bernaz, ‘Reforming the UN Human Rights Protection Procedures: A Legal Perspective on the Establishment of the Universal Periodic Review Mechanism,’ in Kevin Boyle (ed), *New Institutions for Human Rights Protection* (OUP 2009) 83.

<sup>61</sup> Alex Conte, ‘Reflections and Challenges: Entering into the Second Cycle of the Universal Periodic Review Mechanism’ (2011) 9 *New Zealand Yearbook of International Law* 189.

<sup>62</sup> UNHRC Res 16/21, ‘Review of the work and functioning of the Human Rights Council’ (12 April 2011) UN Doc A/HRC/RES/16/21.

issues remained pending. The HRC completed the review by adopting Decision 17/119 as a follow-up to the resolution.<sup>63</sup> The implication of this decision allowed the process to become fairer and more transparent as discussed below.

### 6.1 National Consultations

The first stage of the UPR involves national consultations where the state under review is encouraged to prepare information that it will submit ‘through a broad consultation process at a national level with all relevant stakeholders’.<sup>64</sup> The consultations, which generally begin ten to twelve months before the actual review,<sup>65</sup> allow the stakeholders to make significant contribution in spreading awareness and knowledge of the UPR mechanism. This, in turn, allows key human rights issues, such as protecting the right to life, to be brought to the forefront.

Stakeholders are identified as NGOs, human rights defenders, national human rights institutions, academic and research institutions, regional organisations and civil society representation.<sup>66</sup> Prominent stakeholders raising questions in the UPR of Muslim states include Amnesty International, Human Rights Watch and the International Commission of Jurists. Other NGOs which have also contributed in the UPR of these states are Alkarama Foundation, Americans for Democracy and Human Rights in Bahrain, Islamic Human Rights Commission and Muslims for Progressive Values.

Civil society engagement in the Universal Periodic Review brings independent and impartial perspectives which are needed throughout the whole process in order to provide a balance to the state’s performance. It also gives a voice to the marginalized and vulnerable groups which highlights the universality and indivisibility of human rights. Civil society is considered a ‘legitimate representative for the right holders’<sup>67</sup> due to their non-governmental nature. It therefore has a cogent role to play when a state’s human rights record is being reviewed.

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<sup>63</sup> UNHRC Decision 17/119, ‘Follow-up to the Human Rights Council resolution 16/21 with regard to the universal periodic review’ (19 July 2011) UN Doc A/HRC/DEC/17/119.

<sup>64</sup> UNHRC Res 5/1 (18 June 2007) UN Doc A/HRC/RES/5/1, para 15(a).

<sup>65</sup> Lisbeth Arne Nordager Thonbo, ‘The Role of the State’ in Lis Dhundale and Lisbeth Arne Nordager Thonbo (eds), *Universal Periodic Review First Cycle: Reporting Methodologies from the Positions of the State, Civil Society and National Human Rights Institutions* (The Danish Institute for Human Rights 2011) 17.

<sup>66</sup> OHCHR, ‘Information and Guidelines for Relevant Stakeholders on the UPR Mechanism [as of July 2008]’ available at <[www.ohchr.org/EN/HRBodies/UPR/Documents/TechnicalGuideEN.pdf](http://www.ohchr.org/EN/HRBodies/UPR/Documents/TechnicalGuideEN.pdf)>.

<sup>67</sup> Lis Dhundale, ‘The Role of Civil Society’ in Lis Dhundale and Lisbeth Arne Nordager Thonbo (eds), *Universal Periodic Review First Cycle: Reporting Methodologies from the Positions of the State, Civil Society and National Human Rights Institutions* (The Danish Institute for Human Rights 2011) 28.

The idea of national consultations is in line with the principle that the UPR must ‘ensure the participation of all relevant stakeholders, including nongovernmental organizations and national human rights institutions’.<sup>68</sup> No detailed instructions, however, are provided on the manner in which the consultative national process should be carried out. As a result, only a small number of state reports and submissions have identified the specific nature of consultations such as the time, location, and number of participants.<sup>69</sup> One such example is Pakistan which listed the date and location of its consultations with government departments and civil society organisations but failed to disclose their identities or the number of organisations actually involved.<sup>70</sup> Similarly, the UAE held several meetings and workshops ‘with a wide range of civil society organisations and government bodies’<sup>71</sup> but no further detail was provided. Consequently, the true level of cooperation and engagement with stakeholders cannot be determined and this can include stifling effective discourse on the protection of human rights in Muslim states.

Some states, such as Bahrain, have also been criticised for failing to hold nationally accessible consultations. In Bahrain’s review, the state failed to consult with ten highly active human rights groups, including the Bahrain Centre for Human Rights despite an appeal to the Prime Minister to include them in the consultation process. In fact, the stakeholders that did participate revealed that the consultations held ‘were for information not consultation, and that their comments had no reflection in the final national report’.<sup>72</sup>

Failure to engage in meaningful consultations will only impede the UPR process. One of the key reasons for a national consultation process is to allow the stakeholders to provide valuable input into the national report. A stakeholder involved in the UPR of a Muslim state can therefore contribute towards an accurate and comprehensive portrayal of the human rights situation on the ground (domestically) and reflect progressive efforts made by the state to ameliorate any human rights violations. Additionally, the influence of stakeholders can help identify that the proposed recommendations are substantial, relevant and important.<sup>73</sup>

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<sup>68</sup> *ibid* para 3(m).

<sup>69</sup> Abebe (n 52) 10.

<sup>70</sup> UNHRC, ‘National Report Submitted in Accordance with Paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1: Pakistan’ (6 August 2012) UN Doc A/HRC/WG.6/14/PAK/1, Annex 1.

<sup>71</sup> UNHRC, ‘National Report Submitted in Accordance with Paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1: United Arab Emirates’ (13 November 2017) UN Doc A/HRC/WG.6/29/ARE/1, para 5.

<sup>72</sup> UNHRC, ‘Written Statement Submitted by Cairo Institute for Human Rights Studies (CIHRS), a Non-Governmental Organization in Special Consultative Status’ (28 May 2008) UN Doc A/HRC/8/NGO/42, p. 2, para. 3.

<sup>73</sup> Thonbo (n 65) 19.

## 6.2 Submission of Reports

The review of a state is based upon three documents: 1) national report prepared by the state concerned, 2) summary of relevant stakeholder reports, and 3) a compilation submitted by the Office of the High Commissioner for Human Rights (OHCHR) on relevant official United Nations documents.<sup>74</sup>

The state under review must submit a national report which is restricted to twenty pages in length. States are therefore not required to present ‘colossal and factually dense’ reports which would be unrealistic given the page limit.<sup>75</sup> It must be submitted to the OHCHR approximately twelve to thirteen weeks in advance of the review.<sup>76</sup>

Stakeholders’ reports need to be submitted six months before the state’s review and they can either be an independent individual report, not exceeding 2815 words, or a joint stakeholder submission limited to 5630 words.<sup>77</sup> Joint stakeholder submissions are given a higher standing as it indicates that participating stakeholders were successfully able to reach a consensus regarding the human rights situation and were able to propose recommendations to ameliorate the situation in the country concerned.<sup>78</sup> In the instance of Pakistan, a total of 14 joint submissions were provided during its second review, an example being the International Association for Religious Freedom and the South Asia Centre for Peace submitting a joint statement on freedom of religion and belief.<sup>79</sup>

For the third cycle of the UPR, the OHCHR introduced new guidelines for stakeholders in order to improve the effectiveness of written submissions and introduced ‘matrices of recommendations of countries to be reviewed during the third cycle of the UPR’.<sup>80</sup> The aim of the matrix is to record precise and specific information regarding the implementation, in the

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<sup>74</sup> UNHRC Res 5/1 (18 June 2007) UN Doc A/HRC/RES/5/1, para 15.

<sup>75</sup> Abebe (n 52) 10.

<sup>76</sup> OHCHR, ‘Guidance Note on 3rd Cycle National Reports’ available at <[www.upr-info.org/sites/default/files/general-document/pdf/ohchr\\_guidance\\_national\\_report\\_3rdcycle\\_en.pdf](http://www.upr-info.org/sites/default/files/general-document/pdf/ohchr_guidance_national_report_3rdcycle_en.pdf)>. Tentative deadlines are included in the calendar of the cycle as posted on the OHCHR website. For States considered at the early session of the year, the deadline is usually set for October of the previous year. For States considered at the April-May session, the deadline is usually set for January-February of the same year. For States considered at the October-November session, deadline is usually set for July-August of the same year.

<sup>77</sup> OHCHR, ‘Universal Periodic Review (Third Cycle): Information and guidelines for relevant stakeholders’ written submissions’, para 11 available at <[www.upr-info.org/sites/default/files/general-document/pdf/upr\\_technicalguidelines3rdcycle\\_submissions.pdf](http://www.upr-info.org/sites/default/files/general-document/pdf/upr_technicalguidelines3rdcycle_submissions.pdf)>.

<sup>78</sup> UPR-Info, ‘The Civil Society Compendium: A Comprehensive Guide for Civil Society Organisations Engaging in the Universal Periodic Review’ (2017) 23.

<sup>79</sup> Joint submission 14. For a full list of stakeholder submissions in Pakistan’s review see <[www.upr-info.org/en/review/Pakistan/Session-14---October-2012/Civil-society-and-other-submissions#top](http://www.upr-info.org/en/review/Pakistan/Session-14---October-2012/Civil-society-and-other-submissions#top)>.

<sup>80</sup> The table of matrices is available from the OHCHR website at <[www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx](http://www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx)>.

state under review, for both supported and noted previous recommendations. The matrix provides a list of thematically clustered recommendations, such as the death penalty, and allows space for ‘assessment/comments on level of implementation’.<sup>81</sup>

Stakeholders are encouraged to download their country matrix, complete the relevant section, and submit it as an annex to the main contribution (its inclusion does not affect the word count).<sup>82</sup> In Bahrain’s review, only three out of forty-four NGOs used the country matrix with their submission<sup>83</sup> and only one used the matrix in UAE’s review.<sup>84</sup> Pakistan’s review had a total of 44 submissions but no stakeholder made use of the matrix. There seems to be little engagement with the matrix which needs to be utilised by civil society in order to identify ‘challenges or needs of technical cooperation’<sup>85</sup> where recommendations have not been implemented and to ensure submissions remain relevant and specific.

Section 5 of the updated guidelines not only details the benefits of the matrices<sup>86</sup> but also includes practical suggestions such as the use of S.M.A.R.T recommendations for states to take forward in the UPR.<sup>87</sup> It also mentions other formatting and technical advice such as deadlines, word limits, preferred languages of submission, and the use of endnotes and annexes. The OHCHR then compiles all the received stakeholder submissions into a single stakeholder report comprising a total of ten pages in length.<sup>88</sup>

The structure of both the national report and stakeholder reports can follow the General Guidelines adopted by the Human Rights Council. The reports can include information on the national consultation process; the current normative and institutional human rights framework

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<sup>81</sup> *ibid.*

<sup>82</sup> OHCHR, ‘Universal Periodic Review (Third Cycle): Information and guidelines for relevant stakeholders’ written submissions’, para 5e.

<sup>83</sup> See written submissions from Americans for Democracy and Human Rights in Bahrain; Joint Submission 16 (ADHRB and Iraqi Development Organisation); Joint Submission 17 (CIVICUS; Bahrain Centre for Human Rights; Gulf Centre for Human Rights) available at <[www.upr-info.org/en/review/Bahrain/Session-27---May-2017/Civil-society-and-other-submissions](http://www.upr-info.org/en/review/Bahrain/Session-27---May-2017/Civil-society-and-other-submissions)>.

<sup>84</sup> Joint Submission 17 (CIVICUS; Bahrain Centre for Human Rights; Gulf Centre for Human Rights) 17-23 available at [www.upr-info.org/sites/default/files/document/bahrain/session\\_27\\_-\\_may\\_2017/js17\\_upr27\\_bhr\\_e\\_main.pdf](http://www.upr-info.org/sites/default/files/document/bahrain/session_27_-_may_2017/js17_upr27_bhr_e_main.pdf).

<sup>85</sup> OHCHR, ‘Universal Periodic Review (Third Cycle): Information and guidelines for relevant stakeholders’ written submissions’, para 5d.

<sup>86</sup> The purpose of the matrices is to collect precise and specific information on the level of implementation, in the State under review, of both the accepted and noted recommendations from their previous reviews; the matrices clearly identify each recommendation (HRC report, cycle, paragraph number, recommendation number and recommending country) which will contribute better to report on the status of implementation and follow-up to the preceding reviews; the matrices help stakeholders identify ‘challenges or needs of technical cooperation’ where recommendations have not been implemented. See *ibid* para 5.

<sup>87</sup> S.M.A.R.T recommendations should be specific, measurable, achievable, relevant, and time-bound. See UPR-Info, ‘A Guide for Recommending States at the UPR’ (2015) 27-29.

<sup>88</sup> Dhundale (n 67) 35.

of the state under review; implementation of the human rights framework; cooperation with stakeholders; identification of achievements, best practices, challenges and constraints; key national priorities; and capacity-building expectations.<sup>89</sup> The outcome should be an evaluative report that provides a detailed analysis of a country's human rights record, both the positive and the negative, paving the way for future compromises and assistance from other countries.<sup>90</sup>

Many states predominantly focus on best practices and achievements in their reports which raises the question of objectivity, a point which was raised by the Syrian Arab Republic during Qatar's review. It noted a lack of objectivity in Qatar's reporting, expressing concerns 'regarding the role of charitable institutions in Qatar in the absence of transparency and, also, regarding delays in the ratification of international treaties'.<sup>91</sup> This proved unfavourable with Qatar who wished to respond to the 'allegations and accusations'.<sup>92</sup> Syria raised a point of order, indicating that the Syrian statement had been objective:

In fact, it had displayed restraint and adhered to the principles of UPR since no mention had been made of the inhuman role played by Qatar in the Syrian Arab Republic. It requested the President to urge Qatar to refrain from using provocative language and to respond objectively to the Syrian statement.<sup>93</sup>

Whilst such instances illustrate that the UPR is not immune from being politicised, it balances state engagement with the presence of stakeholders to allow for a more transparent perspective.

The OHCHR Guidelines strongly encourage stakeholders to specifically tailor their submissions for the UPR and ensure that they contain reliable and credible information on the state under review. They should identify issues of concern, possible recommendations and/or best practices, cover a maximum period of four years and not contain abusive language.<sup>94</sup> All

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<sup>89</sup> UNHRC Decision 6/102, 'General Guidelines for the Preparation of Information under the Universal Periodic Review' (27 September 2007) UN Doc A/HRC/DEC/6/102, paras A-G.

<sup>90</sup> Juliana Vengoechea-Barrios, 'The Universal Periodic Review: A New Hope for International Human Rights Law or a Reformulation of Errors of the Past?' (2008) 12 *International Law: Revista Colombiana de Derecho Internacional* 109.

<sup>91</sup> UNHRC, 'Report of the Working Group on the Universal Periodic Review: Qatar' (27 June 2014) UN Doc A/HRC/27/15, para 26.

<sup>92</sup> *ibid* para 61.

<sup>93</sup> *ibid* para 62.

<sup>94</sup> OHCHR, 'Universal Periodic Review (Third Cycle): Information and guidelines for relevant stakeholders' written submissions', paras 5-6.

submissions are made available on the OHCHR's website which adds to the transparency of the whole process.<sup>95</sup>

The third and final report is compiled by the OHCHR on information contained in the reports of human rights treaty bodies, Special Procedures and other relevant UN documents. This report is also restricted to ten pages.<sup>96</sup> Non-state contributions such as those by national stakeholders are accommodated as official documents in the review process which prevents any hierarchy among the different inputs.<sup>97</sup>

### **6.3 Interactive Dialogue**

The UPR takes the form of an interactive dialogue which is held in Geneva where the Universal Periodic Review Working Group conducts a three and a half hour review.<sup>98</sup> The president of the Human Rights Council chairs the Working Group which comprises all HRC Member States and Observer States.<sup>99</sup> Undertaking the review with the members of the HRC sitting as a Working Group rather than at a plenary session enables full participation without occupying sessional meeting time.<sup>100</sup> The duration of the review, according to Matthew Davies, provides for 'more of a schematic overview' of the country's situation 'rather than a detailed appraisal'.<sup>101</sup> As a result, a schematic overview does not provide much opportunity to discuss wider issues concerning Muslim state practice such as use of the death penalty and, for example, addressing the deeper theological questions on the subject.

The dialogue is webcasted live and made accessible on the OHCHR website which is in line with the principles of transparency, non-selectivity and equal treatment. Stakeholders with ECOSOC status<sup>102</sup> are able to attend the session but are not allocated speaking time and are therefore excluded from directly interacting in the review dialogue.<sup>103</sup> Although this is a

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<sup>95</sup> NGO submissions can be located on each country's page on the OHCHR website dedicated to the UPR: [www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx](http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx). After selecting the relevant country, click on the footnote at the end of the title 'Summary of stakeholders' information'.

<sup>96</sup> UNHRC Res 5/1 (18 June 2007) UN Doc A/HRC/RES/5/1, para 15(b).

<sup>97</sup> Abebe (n 52) 11.

<sup>98</sup> The time allocated for reviews was originally three hours but was later extended for a further half hour. Compare UNHRC Res 5/1 (18 June 2007), at para 22 and HRC Presidential Statement 8/1, (2008) UN Doc HRC/8/PRST/1 at para 7 with UNHRC Dec 17/119, at paras 3-4 and Annex II, and UNHRC Res 16/21, at para 11.

<sup>99</sup> UNHRC Res 5/1 (18 June 2007) UN Doc A/HRC/RES/5/1, para 18.

<sup>100</sup> Callejon (n 54) 334.

<sup>101</sup> Davies (n 44) 462.

<sup>102</sup> Further information on how stakeholders can gain ECOSOC accreditation can be found on the relevant OHCHR web-site link: [www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx](http://www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx).

<sup>103</sup> UNHRC Res 5/1 (18 June 2007) UN Doc A/HRC/RES/5/1, at paras 18 and 21.



drawback to the Universal Periodic Review, it reflects the ideology that the review is a state-led process.<sup>104</sup>

Stakeholders can still make last minute lobbying sessions to governments and also prepare parallel events at the UN office in Geneva to raise awareness of the review taking place.<sup>105</sup> To facilitate NGO lobbying, UPR-Info<sup>106</sup> holds ‘pre-sessions’ in Geneva one month before the review. This provides civil society with an ‘international platform to directly advocate to state delegations ahead of the UPR sessions’.<sup>107</sup> There are instances, however, where the state has restricted this process. For example, during Sudan’s second review, a group of human rights defenders were prevented from attending the pre-sessions.<sup>108</sup> Stakeholder lobbying, of which this author facilitated, resulted in a cross regional alliance of 14 governments and an NGO affirmation (36 NGOs) of a submission to the HRC for the human rights violations under President Bashir’s government.<sup>109</sup> This influenced the recommendations made at the UPR with many states and stakeholders bringing this issue to the attention of the international community and holding the state under review to account.<sup>110</sup>

The review is guided by the troika which is a group of three Member State Rapporteurs chosen by the drawing of lots.<sup>111</sup> The state being reviewed can request that one of the three troika members is from its own region thereby allowing the state to have ‘a regional ally that understands its cultural sensitivities and/or issues relating to capacities for human rights protection and promotion’.<sup>112</sup> During the first session of the UPR, all the African states which were scheduled for review requested this.<sup>113</sup> Additionally, a state that is selected to be part of troika can recuse itself from the position. This occurred in 2008 where Pakistan declined to

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<sup>104</sup> Marianne Lilliebjerg, ‘The Universal Periodic Review of the UN Human Rights Council: An NGO Perspective on Opportunities and Shortcomings’ (2008) 26 NQHR 311, 313. See also Lawrence Moss, ‘Opportunities for Nongovernmental Organization Advocacy in the Universal Periodic Review Process at the UN Human Rights Council’ (2010) 2 Journal of Human Rights Practice 122; Human Rights Council, ‘Open-Ended Intergovernmental Working Group on the Review of the Work and Functioning of the Human Rights Council: Compilation of State proposals’ (2010) UN Doc A/HRC/WG.8/1/CRP.1/Rev.1 at 3-5.

<sup>105</sup> Dhundale (n 67) 41.

<sup>106</sup> UPR-Info is an NGO, based in Geneva, dedicated to utilising the UPR mechanism to ensure cooperation among all actors including states, governments, and civil society. See ‘Vision & Mission’ (*UPR Info*) <[www.upr-info.org/en/about/vision-and-mission](http://www.upr-info.org/en/about/vision-and-mission)> accessed 20 December 2018.

<sup>107</sup> ‘Pre-Sessions’ (*UPR Info*) <[www.upr-info.org/en/upr-process/pre-sessions](http://www.upr-info.org/en/upr-process/pre-sessions)> accessed 20 December 2018.

<sup>108</sup> ‘4 Sudanese defenders banned from participating in UPR Info Pre-session’ (*UPR Info*, 31 March 2016) <[www.upr-info.org/en/news/4-sudanese-defenders-banned-from-participating-in-upr-info-pre-session](http://www.upr-info.org/en/news/4-sudanese-defenders-banned-from-participating-in-upr-info-pre-session)> accessed 11 April 2018.

<sup>109</sup> On file with author.

<sup>110</sup> UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Sudan’ (11 July 2016) UN Doc A/HRC/33/8, paras 58, 81, 98, 113, 122, 126, 127 and 128.

<sup>111</sup> UNHRC Res 5/1 (18 June 2007) UN Doc A/HRC/RES/5/1, para 18(d).

<sup>112</sup> Freedman (n 4) 26.

<sup>113</sup> Abebe (n 52) 14.

serve as a troika member for India's review due to the history of political tension between the two countries.<sup>114</sup>

According to Roland Chauville, the interactive dialogue reduces 'sensitivities surrounding the discussion of human rights at the international level. It challenges the notion that human rights are a matter of domestic policy and that the involvement of the international community is akin to interfering with the sovereignty of the state being reviewed'.<sup>115</sup> Therefore, statements such as Egypt asserting that retentionist countries 'need to preserve the death penalty given their cultural, political and legal specificities'<sup>116</sup> can be respectfully challenged at the UPR; contesting the notion that capital punishment is underpinned by state sovereignty and criminal justice, and help solidify the argument that it is a matter of human rights.

The interactive dialogue comprises of two main elements: a presentation by the state to be reviewed and a question and answer session. The state under review presents its national report regarding the country's human rights situation and responds to written questions submitted to it through the troika. Member and Observer States are then provided the opportunity to take the floor and pose questions, present observations, or make recommendations. Member States are restricted to three minutes of speaking time whilst Observer States are given two minutes.<sup>117</sup>

During the first cycle, on many occasions, state representatives would stay overnight in order to enrol onto the list of speakers, which would open at 8.45am the day before the review. Moreover, states would adopt strategies that involved getting blocks of allied states to speak together thereby enhancing the impact of their praise and using up the majority of the allotted time. This tactic was seen in the first review of Bahrain which was dominated by its allied states delivering positive statements. Such allies included Palestine, India, Pakistan, Qatar, Tunisia, the UAE, Saudi Arabia, Turkey, Malaysia, Algeria, Libya and Cuba.<sup>118</sup> Similarly, Tunisia's review heard from numerous allies<sup>119</sup> giving the impression that it was 'an exercise

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<sup>114</sup> Emma Hickey, 'The UN's Universal Periodic Review: Is it Adding Value and Improving the Human Rights Situation on the Ground? A Critical Evaluation of the First Cycle and Recommendations for Reform' (2011) 7 ICL Journal 4; Redondo (n 15) 727.

<sup>115</sup> Roland Chauville, 'The Universal Periodic Review's First Cycle: Successes and Failures' in Hilary Charlesworth and Emma Larking (eds), *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (CUP 2014) 90.

<sup>116</sup> A/HRC/28/16, para 165.

<sup>117</sup> UNHRC, Presidential Statement 8/1 (2008) UN Doc HRC/8/PRST/1, para 7.

<sup>118</sup> See UNHRC, 'Report of the Working Group on the Universal Periodic Review: Bahrain' (9 April 2008) UN Doc A/HRC/WG.6/1/BHR/4, paras 19-31.

<sup>119</sup> The first 15 countries to speak in the interactive dialogue were Kuwait, Palestine, Pakistan, Philippines, Chad, Saudi Arabia, the Russian Federation, Slovenia, China, India, Madagascar, Ghana, Mauritania, Bangladesh and Angola. UNHRC, 'Report of the Working Group on the Universal Periodic Review: Tunisia' (22 May 2008) UN Doc A/HRC/8/21, paras 12-26.

in filibustering'.<sup>120</sup> As a result of political and regional allies dominating the review, many countries inscribed on the speakers' list did not get a chance to participate due to insufficient time.<sup>121</sup>

Regionalism through protecting allied states from scrutiny continued to impact the efficacy of most reviews of Muslim states.<sup>122</sup> Qatar's review heard from 49 states<sup>123</sup> but only six asked critical questions and these were non-OIC states.<sup>124</sup> The implications of this are not to be understated. Filibustering against Muslim states will dilute the review process and hinder the opportunity to question their safeguarding of human rights.

As a result of this drawback to the UPR mechanism, Decision 17/119 was adopted in 2011 to allow the process to become fairer and more transparent for future cycles. The speakers' list now opens a week before the review and the first speaker is drawn by lot with the list proceeding alphabetically from that point. States are permitted to swap places if they should so desire. Strict time limits have also been enforced in regards to state speaking time.<sup>125</sup> This change was seen in Bahrain's second review which heard from a range of states such as Slovenia, Spain, Sudan, Switzerland, Thailand, Turkey and the UAE allowing for a more balanced approach.<sup>126</sup> Hearing from states that are not from the state under review's regional group reduces the chances of bias and unnecessary praise. Hence a non-OIC state will be more likely, for example, to question state use of the death penalty and foster critical discussion for elevating the right to life.

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<sup>120</sup> Sweeney and Saito (n 41) 210.

<sup>121</sup> Hickey (n 114) 273-74.

<sup>122</sup> See for example the reviews of Azerbaijan, Bangladesh, Jordan, Malaysia, Saudi Arabia, Uzbekistan, United Arab Emirates, Yemen which were dominated by other OIC states delivering complimentary statements and few critical questions or recommendations.

<sup>123</sup> Algeria, Azerbaijan, Bahrain, Bangladesh, Belarus, Bosnia and Herzegovina, Brazil, Brunei Darussalam, Canada, Chile, Cuba, Djibouti, DPRK, Egypt, France, Hungary, Indonesia, Iran, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Libya, Malaysia, Mexico, Morocco, Nepal, Nicaragua, Norway, Oman, Pakistan, Philippines, Russia, Saudi Arabia, Singapore, Slovenia, Sri Lanka, Spain, Sweden, Syria. Sudan, Tunisia, Turkey, United Arab Emirates, United Kingdom, Uzbekistan, Venezuela, Yemen.

<sup>124</sup> Brazil, Canada, Norway, Spain, Sweden, United Kingdom.

<sup>125</sup> HRC Decision 17/119, 'Follow-up to the Human Rights Council Resolution 16/21 with regard to the Universal Periodic Review' (19 July 2011) UN Doc A/HRC/DEC/17/119, paras 5-8: 'The established procedures, which allow three minutes speaking time for Member States and two minutes for observer States, will continue to apply when all speakers can be accommodated within three hours and thirty minutes available to Member and observer States. Should it be impossible to accommodate all speakers within three hours and thirty minutes based on three minutes speaking time for Member States and two minutes for observer States, the speaking time will be reduced to two minutes for all. If all speakers still cannot be accommodated, the speaking time will be divided among all delegations inscribed so as to enable each and every speaker to take the floor'.

<sup>126</sup> See UNHRC, 'Report of the Working Group on the Universal Periodic Review: Bahrain' (23 May 2012) UN Doc A/HRC/WG.6/13/L.4, paras 26-33.

It is important to note that the Human Rights Council makes it clear that ‘the state under review is sovereign in addressing the questions and/or issues it chooses to answer of those transmitted to it by the troika members or raised during the proceedings of the working group’.<sup>127</sup> This was reflected in North Korea’s first review where it failed to accept a single recommendation.<sup>128</sup> Refusing to address issues put forth by other Member States, such as the application of the death penalty, demonstrates a lack of genuine engagement with the mechanism and suggests the state under review is merely paying lip service to the UPR and using sovereignty as a shield to avoid investigation into its human rights abuses.

The state under review needs to address all recommendations put forward to it, providing a clear explanation for any recommendations it is unable to accept in order for the international community to understand what is preventing acceptance and enable ways to potentially overcome this. For example, in Saudi Arabia’s review, it failed to accept recommendations to impose a moratorium on the death penalty citing conflict with Islamic law principles.<sup>129</sup>

At the same time, it must also be noted that the potential impact of recommendations, on the human rights situation of a country, varies depending on the *quality* of recommendations that are issued during the review session (emphasis added). Edward McMahon has categorised recommendations on a scale of 1 to 5 depending on the verb that is used in each recommendation.<sup>130</sup> He describes them as follows:

- 1) Category 1: these recommendations require minimal action in comparison with other categories. They call upon the state under review to seek international assistance or share best practices (verbs in this category would include ‘call on’, ‘seek’, and ‘share’).

For example, Brunei Darussalam to Qatar: ‘Share its experiences in strengthening its judiciary system.’<sup>131</sup>

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<sup>127</sup> *ibid* para 5.

<sup>128</sup> Walter Kalin, ‘Ritual and Ritualism at the Universal Periodic Review: A Preliminary Appraisal’ in Hilary Charlesworth and Emma Larking (eds), *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (CUP 2014) 31. See UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Democratic People’s Republic of Korea’ (4 January 2010) UN Doc A/HRC/13/13, para 91 and Hisham Badr, ‘Report of the Human Rights Council on its Thirteenth Session’ (8 February 2011) UN Doc A/HRC/13/56, paras 644-45.

<sup>129</sup> UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Saudi Arabia’ (4 March 2009) UN Doc A/HRC/11/23, para 82.

<sup>130</sup> Edward McMahon, ‘The Universal Periodic Review: A Work in Progress an Evaluation of the First Cycle of the New UPR Mechanism of the United Nations Human Rights Council’ (Friedrich Ebert Stiftung, September 2012) 14-15.

<sup>131</sup> UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Qatar’ (10 February 2010) UN Doc A/HRC/WG.6/7/L.1, recommendation 83.38.

2) Category 2: these recommendations encourage continuity of actions and/or policies ('continue', 'maintain', 'persevere', 'pursue'). These recommendations are fairly easy to implement as they do not demand any change however they can be challenging when the state under review is faced with political insecurity, economic cuts or conflict.

For example, Kuwait to Afghanistan: 'Continue implementing national policies and programmes to improve the living conditions of the people'.<sup>132</sup>

3) Category 3: recommendations to consider change ('analyse', 'consider', 'envisage', 'explore', 'reflect upon', 'review'). Such recommendations are generally issued when the subject matter is controversial and does not enjoy state support.

For example, Maldives to Pakistan: 'Consider removing the reservations made to the ICCPR to ensure gender equality and women's empowerment'.<sup>133</sup>

4) Category 4: recommendations that contain a general element. As a result of being so broad, they can cause frustration to both the state under review and relevant stakeholders as they lack clarity in regards to the method of implementation or measurable outcomes.

For example, Egypt to Saudi Arabia: 'Take all necessary measures to protect the rights of migrant workers, especially those regarding means of remedies'.<sup>134</sup>

5) Category 5: these recommendations require specific actions and 'demand certain tangible or measurable outcomes'. Recommendations on the death penalty predominantly fall within this category.

For example, Sierra Leone to Lebanon: 'Establish a moratorium with a view to abolishing the death penalty'.<sup>135</sup>

During the first cycle, more than 21000 recommendations were issued by member states of which 4691 were attributed to Muslim states. The second cycle saw a total of 36331 recommendations of which 8933 recommendations were made by Muslim states, almost

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<sup>132</sup> UNHRC, 'Report of the Working Group on the Universal Periodic Review: Afghanistan' (29 January 2014) UN Doc A/HRC/WG.6/18/L.2, recommendation 138.38.

<sup>133</sup> UNHRC, 'Report of the Working Group on the Universal Periodic Review: Pakistan' (2 November 2012) UN Doc A/HRC/WG.6/14/L.10, recommendation 122.13.

<sup>134</sup> UNHRC, 'Report of the Working Group on the Universal Periodic Review: Saudi Arabia' (October 2013) UN Doc A/HRC/WG.6/17/L.1, recommendation 137.210.

<sup>135</sup> UNHRC, 'Report of the Working Group on the Universal Periodic Review: Lebanon' (4 November 2015) UN Doc A/HRC/WG.6/23/L.2, recommendation 5.105.

double the previous cycle.<sup>136</sup> This indicates, in general, the active participation of Muslim states in the review process however most recommendations were category four and therefore generic in nature. This raises the question as to whether the UPR is indeed being used as a tool to engage in meaningful discourse on the furtherance of human rights or whether states are viewing it as simply a tick-box exercise.

Nonetheless, Muslim states' willingness to participate with the mechanism was reflected in their level of political engagement by sending high-level delegations comprising of key and prominent individuals such as state ministers, senior officials, or diplomats.<sup>137</sup> Countries such as Morocco, Tunisia, and Sudan sent Ministers of Justice 'thus affording the process the national legal clout that it deserved'.<sup>138</sup> However, throughout the first cycle, many countries sent delegates from foreign ministries instead of ministers with legal or human rights expertise.<sup>139</sup> Others such as Bahrain, Pakistan, Indonesia and Algeria sent Ministers or Deputies of Foreign Affairs suggesting that they viewed the UPR as a foreign affairs exercise rather than a process for the protection and promotion of human rights.<sup>140</sup>

## **6.4 Adoption of Universal Periodic Review Outcomes**

### *6.4.1 Adoption by the Working Group*

Following the interactive dialogue, the troika prepares a report of the Working Group which includes a summary of the proceedings, the issues raised in the interactive dialogue, the recommendations submitted by participating Member States and voluntary commitments made by the state under review.<sup>141</sup> The time between the interactive dialogue and the adoption of the outcome report is forty-eight hours.<sup>142</sup>

Both accepted and noted recommendations by the state under review are identified in the outcome report. Attribution of recommendations was another challenge faced by the HRC.

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<sup>136</sup> UPR Info <[www.upr-info.org/database/statistics/index.php?cycle=1](http://www.upr-info.org/database/statistics/index.php?cycle=1)> accessed 1 January 2019.

<sup>137</sup> See UN General Assembly, *A More Secure World: Our Shared Responsibility*. Report by the High-Level Panel on Threats, Challenges and Change, 2 December 2004, A/59/565 at para 286, available at: <[www.un.org/secureworld/report2.pdf](http://www.un.org/secureworld/report2.pdf)> accessed 1 January 2019. The reports of the Working Group provide lists of the composition of delegations as annexures, available at: <[www.upr-info.org/-Working-Group-Reports-adopted-.html](http://www.upr-info.org/-Working-Group-Reports-adopted-.html)> accessed 1 January 2019.

<sup>138</sup> Freedman (n 4) 268.

<sup>139</sup> Davies (n 44) 463; Redondo (n 15) 729.

<sup>140</sup> Sweeney and Saito (n 41) 209.

<sup>141</sup> UNHRC Res 5/1 (18 June 2007) UN Doc A/HRC/5/1, at para 26; UNHRC, Presidential Statement 8/1 (2008) UN Doc HRC/8/PRST/1 at paras 8-11; and UNHRC Presidential Statement 9/2 (2008) UN Doc HRC/9/PRST/2.

<sup>142</sup> Redondo (n 15) 732.

Egypt argued that ‘it is a violation of the sovereign rights of states’<sup>143</sup> to imply that all working group members have agreed upon a recommendation which in fact has only been proposed by one state. The idea that a recommendation is only ascribed to the state which proposes it garnered widespread acceptance amongst states. As a result, states can avoid having their names attributed to specific recommendations which would technically mean that the Working Group does not adopt the recommendations per se.<sup>144</sup> This is particularly useful for states who may not agree with recommendations that conflict with their own cultural or religious norms. Hence Norway’s recommendation to Algeria to ‘take all necessary measures to abolish the death penalty and ratify the Second Optional Protocol to the ICCPR’<sup>145</sup> would not be endorsed by states such as Saudi Arabia, Pakistan, Iran or Sudan who cite Islamic law as a barrier to such a step.

Recommendations are therefore considered to be, in essence, ‘bilateral recommendations made through the multilateral forum of the Universal Periodic Review’<sup>146</sup> and this is reflected in the language employed at the end of all outcome reports which states that, ‘[a]ll conclusions and recommendations contained in the present report reflect the position of the submitting states and the state under review. They should not be construed as endorsed by the Working Group as a whole’.<sup>147</sup>

The selective and politicized nature of recommendations has drawn criticism of the workings of the UPR.<sup>148</sup> An example of this is where near identical recommendations have received different outcomes depending on the country that submitted them. Recommendations by ‘likeminded’ states have enjoyed state support whilst those from ‘unfriendly’ states have often been rejected.<sup>149</sup> During Egypt’s first review, it accepted a recommendation from Bangladesh to ‘continue its ongoing review of national laws to ensure that they are in line with its

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<sup>143</sup> Abebe (n 52) 16.

<sup>144</sup> *ibid.*

<sup>145</sup> UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Algeria’ (5 July 2012) UN Doc A/HRC/21/13, recommendation 129.90.

<sup>146</sup> Conte (n 61) 195.

<sup>147</sup> See for example, UNHRC, ‘Report of the Working Group on the Universal Periodic Review: United Kingdom of Great Britain and Northern Ireland’ (6 July 2012) UN Doc A/HRC/21/9 at para 111.

<sup>148</sup> See, for example, Edward McMahon, ‘Herding Cats and Sheep: Assessing State and Regional Behaviour in the Universal Periodic Review Mechanism of the United Nations Human Rights Council’ (2010) <[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)>.

<sup>149</sup> Conte (n 61) 196. For a discussion on like-minded groups see generally, Rhona Smith, ‘Form over Substance? China’s Contribution to Human Rights through Universal Periodic Review’ (2011) *Asian Yearbook of International Law* 17.

international human rights law obligations'.<sup>150</sup> However, it failed to support a similar recommendation from Israel to 'conduct a wide-ranging review of Egyptian human rights laws in order to bring them into line with Egypt's international commitments, as so pledged in its Human Rights Council candidature and within its National Report'.<sup>151</sup>

Another criticism which arose during the course of the first cycle was states' failure to provide a clear response to all the recommendations received. Approximately 6.5 percent of recommendations received a vague and ambiguous response that failed to specify whether the state under review had accepted or noted the recommendation.<sup>152</sup> One such case was Israel, which accepted a total of three recommendations and did not communicate clear answers to a number of others.<sup>153</sup> As a result, the revised modalities for future cycles require the state under review to clearly convey its position on all received recommendations, preferably before the plenary session at the HRC.<sup>154</sup>

#### *6.4.2 Adoption by the Human Rights Council*

Approximately three to five months after the Working Group session, the Human Rights Council will conduct a plenary session to adopt the Working Group's outcome report. It allows the state under review to respond to any issues that were not adequately addressed during the interactive dialogue. This is generally preceded by an addendum to the outcome document which specifies whether any additional recommendations have enjoyed state support between the time of the review and the adoption of the outcome report.<sup>155</sup>

The HRC allocates one hour for the discussion of the Working Group documents. The time is distributed evenly between the state under review (20 minutes), Member and Observer States (20 minutes), and stakeholders (20 minutes) to express their views. It provides the opportunity for relevant stakeholders to comment on the outcome report and those states whose recommendations were noted can restate their proposals, after which the plenary adopts the

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<sup>150</sup> UNHRC, 'Report of the Working Group on the Universal Periodic Review: Egypt' (26 March 2010) UN Doc A/HRC/14/17, para 95.3.

<sup>151</sup> *ibid.*, para 97.2.

<sup>152</sup> Chauville (n 115) 103.

<sup>153</sup> UNHRC, 'Report of the Human Rights Council on its Tenth Session' (9 November 2007) UN Doc A/HRC/10/29, para 460.

<sup>154</sup> UNHRC Res 16/21, 'Review of the work and functioning of the Human Rights Council' (12 April 2011) UN Doc A/HRC/RES/16/21, para 16.

<sup>155</sup> UNHRC Res 5/1 (18 June 2007) UN Doc A/HRC/5/1, at paras 29-32 and UNHRC Res 16/21, at para 12, HRC Presidential Statement 9/2, at para 13. The provision of a written communication is called for in UNHRC Res 16/21, at para 16.



outcome report.<sup>156</sup> For example, during the adoption of Iraq's report, the United Kingdom of Great Britain and Northern Ireland (United Kingdom) and Belgium reiterated their recommendations to the state to abolish the death penalty as did the stakeholders, Amnesty International and Verein Sudwind.<sup>157</sup> However, none of these actors made reference to the more limited role of Islamic law in this matter which could have strengthened their arguments by addressing the status of the death penalty from a religious lens as well as an international one.

Although Alex Conte describes this stage as 'little more than a formality and ... somewhat of a rubber-stamping exercise'<sup>158</sup>, it is much more than that. This is the only stage where stakeholders are given a platform to speak and, having discussed the importance of stakeholders in the UPR, it is imperative that their voices are heard in order to make human rights violations ever more transparent.

Furthermore, adoption of the report by the Human Rights Council highlights the state under review's public commitment to implement accepted recommendations and emphasises its position on human rights. For example, in Bahrain's addendum to its outcome report, the state acknowledged that death penalty recommendations were not accepted because, '[s]uch abolition is inconsistent with Bahrain's constitution and not required by international law'.<sup>159</sup> It therefore allows such views to be challenged by other actors involved in the process.

## **6.5 Implementation and Follow-up**

The UPR extends beyond mere reaffirmation of human rights standards by requiring states to explicitly accept or note recommendations. As a result, the state under review is faced with expectations that it will take progressive steps to implementation.<sup>160</sup> The subsequent review focuses on the extent to which the previous cycle's recommendations have been implemented.

Implementation is one of the fundamental challenges facing the Universal Periodic Review.<sup>161</sup> The UPR needs to ameliorate violations and advance human rights on the ground level by

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<sup>156</sup> Abebe (n 52) 17.

<sup>157</sup> UNHRC, 'Report of the Human Rights Council on its Twenty-Eighth Session' (8 July 2015) UN Doc A/HRC/28/2, paras 755 (United Kingdom), 761 (Belgium); 772 (Verein Sudwind); 776 (Amnesty International).

<sup>158</sup> Conte (n 61) 198.

<sup>159</sup> UNHRC, 'Report of the Working Group on the Universal Periodic Review: Bahrain' (12 October 2012) UN Doc A/HRC/21/6/Add.1/Rev.1, para 4.

<sup>160</sup> Kalin (n 128) 37-38.

<sup>161</sup> The state under review is primarily responsible for the implementation of accepted recommendations, commitments and pledges. Resolution 5/1 dictates that the international community will facilitate, with the consultation and consent of the country concerned, in implementing recommendations regarding capacity-building and technical assistance. This is strengthened by the 'Voluntary Fund for Financial and Technical Assistance for the Implementation of the Universal Periodic Review' and the 'Voluntary Trust Fund for

‘translating the recommendations and commitments made...into measurable improvements’.<sup>162</sup> Recommendations, therefore, need to be S.M.A.R.T<sup>163</sup> in order to facilitate implementation. For example, a recommendation to simply, ‘consider restricting the death penalty’ lacks any specificity for its application. Instead a recommendation to, ‘adopt the punishment only for the “most serious crimes” under Article 6(2) and present to Parliament a motion for a moratorium within two years’ is measurable and achievable.

In order to gauge the level of implementation, states are encouraged to submit a midterm update, on a voluntary basis, to the HRC in relation to the accepted recommendations.<sup>164</sup> However, due to the preparation and time taken between the state’s review and the adoption of its outcome report, the time left for implementation is significantly shortened, resulting in approximately three years available for domestic adoption.<sup>165</sup>

The third cycle of the UPR, underway since May 2017, has laid an important focus on the implementation of accepted recommendations from previous cycles. The OHCHR now sends letters, which are publicly available in a spirit of transparency, to each Minister of Foreign Affairs after the HRC adopts the UPR outcomes. These letters are sent as part of a constructive engagement with Member States and identify 10-15 areas for attention and action in advance of the next UPR cycle.<sup>166</sup> In his letter to Pakistan, the High Commissioner encouraged the state to submit a midterm report by 2020 and highlighted areas in need of particular attention such as safeguarding the right to life by encouraging the state to, ‘[r]e-impose the moratorium on the death penalty and consider abolishing it. Should it be maintained, it may be applied only to the ‘most serious crimes’’.<sup>167</sup>

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Participation’. See generally, UNHRC Res 5/1 (18 June 2007) UN Doc A/HRC/5/1, para 36; UNHRC Res 6/17, ‘Establishment of Funds for the Universal Periodic Review, Mechanism of the Human Rights Council’ (28 September 2007) UN Doc A/HRC/RES/6/17; OHCHR, ‘Terms of Reference for the Voluntary Fund for Financial and Technical Assistance for the Implementation of the Universal Periodic Review’ (2009) available at: <[www.ohchr.org/Documents/HRBodies/UPR/TOR\\_TF\\_for\\_TC\\_assistance\\_UPR.pdf](http://www.ohchr.org/Documents/HRBodies/UPR/TOR_TF_for_TC_assistance_UPR.pdf)>; ‘Requests for financial assistance under the Voluntary Fund for Participation in the UPR Mechanism as of 24 February 2012’ <[www.ohchr.org/EN/HRBodies/UPR/Documents/VPUFinancialRequest.pdf](http://www.ohchr.org/EN/HRBodies/UPR/Documents/VPUFinancialRequest.pdf)> accessed 5 January 2019; UNHRC, ‘Operations of the Voluntary Fund for Financial and Technical Assistance in the Implementation of the Universal Periodic Review’ (13 April 2017) UN Doc A/HRC/35/18.

<sup>162</sup> Conte (n 61) 201.

<sup>163</sup> Specific, Measurable, Achievable, Relevant, Time-bound.

<sup>164</sup> UNHRC Res 16/21, ‘Review of the work and functioning of the Human Rights Council’ (12 April 2011) UN Doc A/HRC/RES/16/21, para 18.

<sup>165</sup> Dhundale (n 67) 44.

<sup>166</sup> UPR: Overview of the Voluntary Fund for Implementation, 5.

<sup>167</sup> OHCHR, ‘Letter from OHCHR on Implementation in 3rd Cycle: Pakistan’ (13 April 2018) 4 available at <[www.upr-info.org/sites/default/files/document/pakistan/session\\_28\\_-\\_november\\_2017/letter\\_for\\_implementation\\_3rd\\_upr\\_pak\\_e.pdf](http://www.upr-info.org/sites/default/files/document/pakistan/session_28_-_november_2017/letter_for_implementation_3rd_upr_pak_e.pdf)>.

All 193 UN Member States are expected to cooperate and engage with this peer-review mechanism. Resolution 5/1 makes it clear that, ‘cases of persistent non-cooperation’<sup>168</sup> will be dealt by the Human Rights Council. However, there is no detail or explanation as to what exactly would be considered ‘non-cooperation’ of a ‘persistent’ nature. The Geneva based NGO, UPR-Info, has produced an outline of what this may be which includes non-participation and non-implementation of recommendations. Failure to engage with three or more of the following steps, according to UPR-Info, should be deemed as a persistent non-cooperation case: 1) submitting a national report; 2) selecting the troika; 3) participating in the interactive dialogue; 4) submitting an addendum; and 5) presenting midterm updates on implementation.<sup>169</sup> It must be noted here that selection of the troika is undertaken by the Human Rights Council, by the drawing of lots, so the aforementioned point two is incorrect. So far only one state, Israel,<sup>170</sup> has refused to engage with the Universal Periodic Review. However, the HRC’s response was to simply postpone the review. The steps developed in Decision OM/7/1 were considered unsatisfactory and could set a precedent for other countries. A robust mechanism is needed to ensure full engagement with the process.<sup>171</sup>

## 7. UPR AND CULTURAL RELATIVISM

The UPR also provides a forum to consider the question of cultural relativism which has the potential to pose a barrier to the realisation of universal human rights, especially in the context of Muslim states. The promotion of perceived Islamic norms is often used as an argument against the promotion of universal values and this can be seen, to varying degrees, in the UPR of states such as Iran, Maldives, Yemen and Pakistan.<sup>172</sup> An examination of their reports reveals a number of expressions of cultural relativism which can be used to justify non-adherence to international human rights obligations. A vocal proponent in this regard is Iran which argued that human rights need to be understood in light of its adherence to Islamic principles which it

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<sup>168</sup> UNHRC Res 5/1 (18 June 2007) UN Doc A/HRC/5/1, para 38.

<sup>169</sup> UPR Info, ‘Non-cooperation with the UPR: Paving the way’ (18 March 2013) <[www.upr-info.org/en/news/non-cooperation-upr-paving-way](http://www.upr-info.org/en/news/non-cooperation-upr-paving-way)> accessed 2 January 2019.

<sup>170</sup> UNHRC Decision OM/7/1, ‘The non-cooperation of a State under Review with the Universal Periodic Review Mechanism’ (29 January 2013) UN Doc A/HRC/OM/7/1; UNHRC, ‘Report of the President of the Human Rights Council submitted in accordance with Council decision OM/7/1 of 29 January 2013’ (5 June 2013) UN Doc A/HRC/23/CRP.1.

<sup>171</sup> UPR Info, ‘Non-cooperation with the UPR: Paving the way’ (18 March 2013) <[www.upr-info.org/en/news/non-cooperation-upr-paving-way](http://www.upr-info.org/en/news/non-cooperation-upr-paving-way)> accessed 2 January 2019.

<sup>172</sup> See Roger Lloret Blackburn, ‘Cultural Relativism in the Universal Periodic Review of the Human Rights Council’ (ICIP Working Paper, September 2011).

uses to establish the foundation of its legal system.<sup>173</sup> Relying upon, ‘the principle of cultural diversity, while respecting and avoiding political and cultural pressures’, it concluded in its national report that:

Any change or adjustments in these laws must come about as a result of dynamic national dialogue among our own authorities and civil society in the context of Islamic principles. Pressure or demands by other countries to accept and adopt certain Western standards of human rights will practically have negative impact on promotion of human rights.<sup>174</sup>

Another Muslim state, Maldives, stressed that it had embraced and maintained Islamic values for the last 800 years. Islamic values were part of the national identity and heritage and formed the basis of the Constitution and all Maldives’ laws hence, ‘any efforts to introduce values and practices that were contrary to the values of Islam...would not be entertained by the people of Maldives’.<sup>175</sup>

During Yemen’s review, the state acknowledged the UPR mechanism ‘as a means of improving the human rights situation by applying principles of impartiality, objectivity and full transparency’<sup>176</sup> but failed to mention the principle of universality thereby lending support to the cultural relativism argument. Furthermore, during the interactive dialogue stage, Iran applauded Yemen’s efforts to promote human rights and address challenges, ‘with due regard to national and regional particularities and historical, cultural and religious backgrounds’.<sup>177</sup> In a similar vein, Egypt encouraged Afghanistan to ‘[c]ontinue to resist attempts to enforce any values or standards beyond the universally agreed human rights norms’.<sup>178</sup>

Consequently, states may unilaterally reject certain recommendations on the basis that they do not concern ‘universally recognised human rights,’ as was claimed by Pakistan during its review.<sup>179</sup> This has become ‘a rather powerful rhetorical device to contend that the West is

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<sup>173</sup> UNHRC, ‘National Report Submitted in Accordance with Paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1: Islamic Republic of Iran’ (18 November 2009) UN Doc A/HRC/WG.6/7/IRN/1, para 130.

<sup>174</sup> *ibid.*

<sup>175</sup> UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Maldives’ (13 July 2015) UN Doc A/HRC/30/8, para 11.

<sup>176</sup> UNHRC, ‘National Report Submitted in Accordance with Paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1: Yemen’ (20 February 2009) UN Doc A/HRC/WG.6/5/YEM/1, pt 13.

<sup>177</sup> UN Doc A/HRC/12/13, para 21.

<sup>178</sup> UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Afghanistan’ (20 July 2009) UN Doc A/HRC/12/9, recommendation 95.20.

<sup>179</sup> UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Pakistan’ (4 June 2008) UN Doc A/HRC/8/42, paras 47, 108.

perpetuating false universalisms'<sup>180</sup> and allows states to immunise themselves from further scrutiny. Strong cultural relativism<sup>181</sup> has troubling implications for international law as a whole and hinders the ability of different cultures to participate in constructive dialogue. Colleen Good argues that in order to ensure greater agreement and reduce instances of cross-cultural misunderstandings, aspects of weak relativism should be considered in that, 'different cultures have different cultural and ethical histories, and that these histories should not be brushed aside and ignored, but should instead be examined closely to allow us to further intercultural dialogue on subjects such as human rights'.<sup>182</sup> The discussion on the death penalty in Islam is an example of this. Exploring the historical, cultural and religious background of capital punishment in Islamic law will help provide a new perspective and enable further dialogue in the UPR with a view to elevate the right to life by subjugating the right to put to death.

## 7. CONCLUSION

All Muslim states have engaged with the UPR mechanism albeit to varying degrees. What emerges is a common theme of regionalism used to undermine the review process, and this is often seen through the use of vague language. Furthermore, a number of Muslim states perpetuate a false relativism narrative and use religion to account for a lack of adherence to international human rights law such as Iran, Maldives, Pakistan, Saudi Arabia and Sudan. Nonetheless, the UPR sheds light on Muslim state practice and international law by providing a constructive, transparent and cooperative platform to engage in human rights issues, a much-needed improvement on its predecessor. Going forward, member states need to move away from mere lip-service to the mechanism and engage in meaningful discourse to give credence to the objective of the UPR: the global protection and promotion of human rights.

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<sup>180</sup> Khaled Abou El Fadl, *Reasoning with God: Reclaiming Shari'ah in the Modern Age* (Rowman & Littlefield 2014) 185.

<sup>181</sup> Colleen Good provides a useful overview of the two stances within relativism: 'first, the more extreme strong relativist view is that there is no such thing as universal human rights, as all beliefs and values are culturally relative and therefore apply only within certain cultures. Second, the less extreme weak relativist view states that, while ethical systems do come out of particular cultural settings, this does not mean that these ethical systems do not share some overlap—therefore a comprehensive human rights doctrine may be possible'. Colleen Good, 'Human Rights and Relativism' (2010) 19(1) *Macalester Journal of Philosophy* 27, 27. See also Jack Donnelly, 'Cultural Relativism and Universal Human Rights' (1984) 6(4) *Human Rights Quarterly* 400.

<sup>182</sup> Good (n 71) 49.