

What is the Universal Periodic Review?

By Rebecca Oas, Ph.D.

INTRODUCTION

Is the Universal Periodic Review good or bad for human rights?

The Universal Periodic Review (UPR) is a relatively new UN human rights mechanism. In its ten-year tenure it has provided a forum for nations to review each other's human rights records, with input from civil society. It differs from other committees in the UN human rights system. Rather than relying on outside experts to critique government's performance, the UPR brings to bear a sort of peer pressure on governments. It encourages them to work harder to protect human rights, offers best practices, and exposes shortcomings.

For contested social issues, including abortion and issues pertaining to sexuality, the UPR's impact has been mixed. Because the country reviews are done by other countries, the UPR offers a constantly-evolving picture of the human rights priorities of the global community. It offers insights as to which issues framed as human rights enjoy universal or near-universal acceptance, and which are more niche concerns. The UPR both enables and forces a degree of frankness in the global human rights discourse: countries under review must answer recommendations from their peer countries "on the record."

Therefore, the UPR is what UN member States make of it.



It is a universal discussion of human rights in which every country has a say and where observers can make note of shifting trends in the discourse. Where other human rights mechanisms, such as treaty monitoring bodies, can sound like echo chambers for one side of a debate, the UPR by its nature exposes the lack of consensus that persists despite decades of debate.

Recommendations made in the UPR are being credited with causing real changes on the ground, particularly in advancing the “sexual rights” agenda in some countries. This paper explores how the UPR is being used to promote universally agreed rights on one hand, and distort human rights and promote divisive issues on the other. It concludes with observations about what pro-life and pro-family countries and organizations can do to make better use of the mechanism.

Making human rights a reality for all

A relatively recent UN mechanism seeks to apply the force of peer pressure to improve countries’ human rights records: the UPR.

On paper, the international human rights system can be characterized by a series of carefully negotiated declarations and treaties detailing the obligations of UN member States to ensure that the rights of individuals are protected. In practice, the system requires the willing participation of States to ensure that these rights exist in reality, in the absence of any stringent international force to police their compliance.

While international human rights treaties are considered binding, it is nevertheless true that countries widely considered to have poor records on human rights are often quick to ratify treaties, but slow to fulfill the commitments they contain.

A relatively recent UN mechanism seeks to apply the force of peer pressure to improve countries’ human rights records: the UPR. The UPR was established when the Human Rights Council was created in 2006 by a resolution of the UN General Assembly.¹ Several human rights mechanisms already existed; when UN member states ratified multilateral human rights treaties, they became subject to a periodic evaluation by expert committees assigned to each treaty. Additionally, special rapporteurs on specific human rights issues issued reports on their area of interest. However, these mechanisms involved unelected experts issuing nonbinding opinions to sovereign nations. Where the UPR differs from these is that it involves nations speaking directly to other nations. While treaty monitoring bodies only issue their observations to countries that have ratified their respective treaties, and special rapporteurs only visit member states that have issued them

an invitation, the UPR includes all 193 UN member states, speaking to each other.

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Moreover, the resolution establishing the UPR reviews the human rights performance of states based not just on the binding obligation undertaken by states themselves in human rights treaties, it uses a broader and vaguer standard, “human rights obligations and Commitments.” The word “commitment” here can refer to UN resolutions that are not binding and contain even vaguer standards than UN human rights treaties’. The result is that nations can be considered to be in violation of international obligations that they never consented to.

Another unique characteristic of the UPR is the fact that countries give each other specific and discrete recommendations, numbered individually, to which the country under review gives a response: “noted” or “supported.” This forces governments to address specific issues, on the record, with the option of providing additional explanation as to their answer.

Mechanics of the UPR

The first cycle of the UPR, during which all member States are reviewed, ran from 2008 to 2012; in subsequent cycles, the number of countries reviewed per session was decreased slightly, and the length of a cycle lengthened to five years. As of this writing, the third cycle is close to halfway completed.

When a country is reviewed, three documents are considered: a national report prepared by the government of the member State, a compilation of relevant documents from UN entities, and a collection of inputs from civil society groups, which is compiled by the Office of the High Commissioner for Human Rights—an entity well-known for advancing a pro-abortion agenda and campaigning for broader acceptance of homosexuality. The organization UPR-Info, which works to promote the UPR mechanism, maintains a searchable database of recommendations made in the UPR as well as official documents, arranged by country.² It has also provided training sessions around the world to encourage participation by civil society, without taking a stand on specific political issues.

Other organizations, such as the Sexual Rights Initiative, coordinate civil society involvement in the UPR process, with the explicit goal of furthering abortion and the acceptance of “sexual rights” within international human rights law.³ In

the formal review, the member States of the Human Rights Council make up the Working Group, which conducts the meeting in which the State under review delivers its statement, followed by an interactive dialogue during which it receives recommendations from other States.

How the UPR affects social issues

In a book about the UPR, Swiss human rights attorney Walter Kälin noted that it “provides states with an opportunity to promote rights that have not yet found universal recognition in the hope that they will be increasingly accepted by the international community.” Specifically, he pointed out that “Western states are using the UPR to promote sexual orientation and gender identity rights (SOGI) by regularly making corresponding recommendations. Such recommendations are, however, accepted much less often than recommendations addressing other categories of human rights.”⁴

Issues such as abortion and homosexuality remain highly divisive in the UN system, from resolutions negotiated in the General Assembly to the work of UN agencies to the human rights system. For decades, experts operating under the oversight of the Office of the High Commissioner for Human Rights, such as treaty monitoring bodies and special rapporteurs, have been systematically promoting abortion and the inclusion of sexual orientation and gender identity as human rights categories.⁵

Following its creation in the General Assembly, the UPR’s functions were further explained in Human Rights Council Resolution 5/1 from June, 2007.⁶ Among the objectives of the UPR as laid out in the resolution are the improvement of the human rights situation within countries and the fulfillment of their human rights obligations. Additionally, the UPR is intended to promote cooperation by member States with the UN’s human rights bodies, including the Office of the High Commissioner for Human Rights.

As of this writing, the credibility of the UPR has been strengthened by the near-universal participation of UN member States, despite the absence of a method to compel compliance. It also allows individual countries to highlight their specific priorities in giving recommendations to each other, and the fact that UPR recommendations are concise and specific enables quantitative analysis of which topics are most often raised, and which are most likely to be supported by the State

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Organizations whose work focuses on controversial social issues, such as human life and the family within the UN system, are watching the UPR closely, as are UN agencies such as the United Nations Population Fund (UNFPA). At the conclusion of the first and second cycles of the UPR, UNFPA published reports assessing the ways in which issues pertaining to sexual and reproductive health and rights (SRHR) came up in recommendations. In both reports, UNFPA concluded that abortion was mentioned relatively infrequently and, as with SOGI, recommendations that countries liberalize their laws on abortion were rarely supported.^{7,8} In the second report UNFPA urged “all stakeholders” to increase their advocacy “SRHR issues that have received less attention within the UPR thus far, such as contraception and family planning, safe abortion, adolescent SRHR, sex work and sexuality education.”

While some countries have made abortion and sexual orientation a priority at the UPR, the vast majority of recommendations given to and received by UN member states do not mention these topics at all. In the two completed UPR cycles, fewer than 3% of recommendations made referred to SOGI, and significantly fewer than that mentioned abortion. Of those SOGI recommendations that were made, in both completed cycles over 80 percent of them came from fewer than twenty countries: the vast majority of countries are consistently silent on these issues in the UPR.

In addition to being a priority of relatively few countries worldwide, abortion and SOGI recommendations are heavily clustered in the geopolitical group Western Europe and Other Countries, which includes the United States, Canada, Australia, New Zealand, and Israel.

Within other global regions, SOGI recommendations in the UPR often come from only a few member States. Taken together, these observations suggest a lack of consensus that human rights obligations exist in these areas, which is further demonstrated by the reluctance of States under review to support such recommendations.

Support for life and the family in the UPR

The UPR provides an opportunity for all countries to raise their concerns and champion their priorities in the arena of human rights. While some countries are using this platform to gain credibility for “rights” that are not universally agreed, there is

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also space for recommendations in support of human life at all stages and the family as understood in existing international law. While far more can be done in this regard, Egypt in particular has urged fellow member States to enact policies in support of the family as defined in the Universal Declaration of Human Rights as the “natural and fundamental group unit of society.”⁹ In addition, some States, including the Holy See and Kenya, have issued recommendations that countries enact protections for all human life, including that of the unborn.

Impact of the UPR

While the UPR is relatively new, it is being credited with concrete results on the ground pertaining to social issues. According to the UPR tracking organization UPR-Info, “In Viet Nam and Sri Lanka, the UPR was decisive in legitimizing the role of LGBTI (Lesbian, Gay, Bisexual, Trans and Intersex) activists.”¹⁰ While recommendations issues pertaining to abortion and “sexual rights” remain contentious—they are accepted at approximately half the rate of UPR recommendations in general—the pressure will continue. In contrast to other human rights bodies at the UN, the UPR reveals how these issues are being aggressively promoted by a small subset of regionally-concentrated countries, and are not universally agreed or accepted.

However, in a global discussion, mere silence is easily overlooked: in order to effectively contest this pressure, member States must go beyond just “noting” recommendations and maintaining silence on these topics when making their own recommendations. Instead, they must advance a true understanding of human rights so that those who seek to distort them are not the only voices heard in the room.

Unless countries actively reject recommendations related to abortion and LGBT issues, silence can be interpreted by international and domestic courts as consent to the emergence of a new customary international norm. Because States interact directly with each other, and a reply is expected from countries, it is likely that the UPR process will be cited as evidence of new customary international norms.

Conclusion

The UPR consists of nations speaking to nations. Unlike a resolution negotiated in the General Assembly or Human Rights

Council that is ultimately molded into a single document that all parties can agree on, the UPR retains all the messiness of a negotiation process, with different viewpoints standing alongside each other. Because of this, the UPR reflects both the attempt to distort human rights and to preserve them as they have been historically understood. It is a vehicle by which very divergent recommendations can exist alongside each other.

In the first two-and-a-half cycles of the UPR, civil society inputs have been more coordinated on the pro-abortion and pro-“sexual rights” side of the debate. There is a need for a fuller picture and a more diverse set of voices at the table. Pro-life and pro-family groups around the world should coordinate their efforts and submit reports as inputs for the UPR process. They should lobby their national governments to take a stronger stand in making relevant recommendations on these issues to their peer countries under review.

ABOUT THE AUTHOR

Dr. Oas is Associate Director of Research at C-Fam. She earned her doctorate in genetics and molecular biology from Emory University.

Susan Yoshihara Ph.D.
Editor

Rebecca Oas Ph.D.
Managing Editor

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805 3rd Avenue, Suite 1440
New York, New York 10022

info@c-fam.org
www.c-fam.org

Endnotes

- 1 General Assembly resolution 60/251, April 3, 2006. Available at <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/RES/60/251&Lang=E>
- 2 See <https://www.upr-info.org/en>
- 3 See <https://www.sexualrightsinitiative.com/about-us>
- 4 Kälén, W. (2015). Ritual and ritualism at the Universal Periodic Review: A preliminary appraisal. In H. Charlesworth & E. Larking (Eds.), *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (pp. 25-41). Cambridge: Cambridge University Press. doi:10.1017/CBO9781316091289.004
- 5 ylva, Douglas and Yoshihara, Susan Dorothy Fink, *Rights by Stealth: The Role of UN Human Rights Treaty Bodies in the Campaign for an International Right to Abortion* (July 1, 2007). International Organizations Research Group, White Paper, Number Eight, First Edition, 2007. Available at SSRN: <https://ssrn.com/abstract=2993303>
- 6 HRC Resolution 5/1, June 18, 2007. Available at http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc
- 7 UNFPA, *Lessons from the first cycle of the Universal Periodic Review: From commitment to action on sexual and reproductive health and rights* (New York: UNFPA, 2014). Available at <https://www.unfpa.org/publications/commitment-action-sexual-and-reproductive-health-and-rights-2014>
- 8 UNFPA, *From commitment to action on sexual and reproductive health and rights: lessons from the second cycle of the Universal Periodic Review*: (New York: UNFPA, 2019). Available at <https://www.unfpa.org/publications/commitment-action-sexual-and-reproductive-health-and-rights-0>
- 9 UN General Assembly, “Universal Declaration of Human Rights,” 217 (III) A (Paris, 1948). Available at <http://www.un.org/en/universal-declaration-human-rights/>
- 10 UPR-Info. 2016. *The Butterfly Effect: Spreading Good Practices of UPR Implementation*. Geneva: UPR Info. Available at https://www.upr-info.org/sites/default/files/general-document/pdf/2016_the_butterfly_effect.pdf