

THE U.S. UNIVERSAL PERIODIC REVIEW AND AN ASSESSMENT OF THE UPR PROCESS

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ABSTRACT

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On November 5, 2010, the United States appeared before the UN Human Rights Council for a review of its human rights record through the Universal Periodic Review Process (UPR). While the appearance was historic in many ways, it is premature to offer a definitive assessment of its impact within the United States, and it is premature to assess whether the UPR process itself is an effective mechanism for reviewing and effectuating positive change in the area of human rights across the globe, and whether the Human Rights Council is the body best-suited for conducting such reviews. The answers to those questions will become clearer four years from now when we approach the end of the second cycle of the UPR process. Nonetheless, as the U.S. government and advocates across the United States prepare for the official adoption of the US UPR report in Geneva on March 18, 2011, we have an opportunity to take a step back and assess the process, identify lessons learned, and set an agenda for moving forward to ensure positive advances in human rights on the ground.

The Universal Periodic Review is a process created at the time the much critiqued UN Human Rights Commission was set aside and replaced with the UN Human Rights Council. Specifically, the UN General Assembly decided the Human Rights Council would “Undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States.”¹ It is a process all UN member-States are required to undergo, and it operates on a four-year cycle. While it is largely a State-driven process, in that it is the States that intervene during the review with statements, questions and recommendations – as compared to the Treaty Body Mechanisms in which Independent Experts conduct the review and draft a set of Concluding Observations and Recommendations – States under Review are urged to engage civil society at a national level as they prepare for and undergo their review.² The U.S. Government approached its review as an opportunity to demonstrate its commitment to the UN Human Rights Council, which the previous Administration had disdained, to reclaim its moral leadership before international community, and to demonstrate by its own example the importance of open, transparent, and active engagement with civil society. Throughout the process, the U.S. has reiterated its commitment to civil society, and set forth an unprecedented level of engagement both internationally and domestically on human rights in the United States.

¹ See A/RES/60/251 (3 April 2006) (establishing the Human Rights Council).

² See HRC Res. 5/1 (18 June 2007), Annex at paras. 3(m) and 15(a) (setting forth principles, objectives and modalities for the Universal Periodic Review process).

The United States' stated commitment to civil society and to advancing the rights of all at home was matched, if not superseded by, an equally unprecedented level of engagement by civil society across the country. Hundreds of non-governmental organizations, advocates, activists, and academics have participated and continue to participate in the process. Representatives from mainstream international human rights organizations, to grassroots activists engaged in a range of human rights advocacy from housing rights, criminal justice, environmental justice, health care, immigration, to national security and human rights. Advocates have sought to work across areas and reach out beyond our advocacy silos, to ensure the UPR's goal of the promotion of the "the universality, interdependence, indivisibility and interrelatedness of all human rights."³ Due at least in part to those efforts, the Draft Report of the Working Group for the US UPR contained 228 recommendations directed towards the advancement of human rights in the United States (the greatest number of recommendations ever issued in a UPR process). While certainly a handful of those recommendations can be dismissed as political and "polemical," an overwhelming majority of recommendations reflect those set forth by civil society.

In working to bridge the international advocacy in Geneva with the domestic advocacy at not only the national level, but at the local level, and in seeking to achieve a core objective of the UPR process, "the improvement of the human rights situation on the ground,"⁴ advocates are currently engaged in working with and pushing the Administration to adopt key recommendations coming out of the UPR and to develop a plan of action for implementation of those recommendations. The success of the UPR as a human rights mechanism is not reflected in the report issued, but in the actualization of positive advancements in the realization of rights at home. As such, the success of the UPR ultimately is dependent on the continued engagement of civil society. The ability of the broad coalition of advocates that came together in submitting coalition stakeholder reports to the UN in anticipation of the review, that then coordinated in lobbying and side-events to ensure the range of questions and recommendations were ultimately reflected in UPR report, to maintain its energy, collaboration and coordination in its advocacy here in the United States mindful of the competing political pressures at play, will be critical to the UPR's ultimate success as a mechanism for advancing human rights. While there is hope in the changing discourse around human rights at home, brought about at least in part through the UPR advocacy at the local, national and international level, that hope must be sustained through positive change not only in the discourse, but in action.

³ HRC Res. 5/1, Annex B.1.3(a) (June 18, 2007).

⁴ HRC Res. 5/1, Annex B.2.4(a).