

El Salvador

Mid-term Implementation Assessment



Promoting and strengthening
the Universal Periodic Review
<http://www.upr-info.org>



Introduction

1. Purpose of the follow-up programme

The second and subsequent cycles of the review should focus on, inter alia, the implementation of the accepted recommendations and the development of the human rights situation in the State under review.

A/HRC/RES/16/21, 12 April 2011 (Annex I C § 6)

The Universal Periodic Review (UPR) process takes place every four and half years; however, some recommendations can be implemented immediately. In order to reduce this interval, we have created an update process to evaluate the human rights situation two years after the examination at the UPR.

Broadly speaking, *UPR Info* seeks to ensure the respect of commitments made in the UPR, but also, more specifically, to give stakeholders the opportunity to share their opinion on the commitments. To this end, about two years after the review, *UPR Info* invites States, NGOs, and National Institutions for Human Rights (NHRI) to share their comments on the implementation (or lack thereof) of recommendations adopted at the Human Rights Council (HRC) plenary session.

For this purpose, *UPR Info* publishes a Mid-term Implementation Assessment (MIA) including responses from each stakeholder. The MIA is meant to show how all stakeholders are disposed to follow through on, and implement their commitments. States should implement the recommendations that they have accepted, and civil society should monitor that implementation.

While the follow-up's importance has been highlighted by the HRC, no precise directives regarding the follow-up procedure have been set until now. Therefore, *UPR Info* is willing to share good practices as soon as possible, and to strengthen the collaboration pattern between States and stakeholders. Unless the UPR's follow-up is seriously considered, the UPR mechanism as a whole could be adversely affected.

The methodology used by UPR Info to collect data and to calculate index is described at the end of this document.

Geneva, 15 October 2012

Follow-up Outcomes

1. Sources and results

All data are available at the following address:

http://followup.upr-info.org/index/country/el_salvador

We invite the reader to consult that webpage since all recommendations, all stakeholders' reports, as well as the unedited comments can be found at the same internet address.

7 stakeholders' reports were submitted for the UPR. 4 NGOs were contacted. The Permanent Mission to the UN was contacted. The domestic NHRI was contacted as well.

4 NGOs responded to our enquiry. The State under Review did not respond to our enquiry. The domestic NHRI did not respond to our enquiry either.

IRI: 9 recommendations are not implemented, 2 recommendations are partially implemented, and 1 recommendation is fully implemented. No answer was received for 106 out of 120 recommendations.

2. Index

Hereby the issues which the MIA deals with:

rec. n°	Issue	page	IRI
1	Death penalty	page 5	not impl.
2	ESC rights - general	page 8	not impl.
3	Detention conditions	page 5	not impl.
4	Women's rights, Rights of the Child, Human rights education and training,	page 7	partially impl.
7	Justice, Corruption,	page 6	partially impl.
10	Women's rights	page 7	fully impl.
12	International instruments, Death penalty,	page 6	not impl.
16	International instruments, Death penalty,	page 6	not impl.
35	Rights of the Child, Enforced disappearances,	page 7	-



rec. n°	Issue	page	IRI
45	Freedom of the press, Freedom of opinion and expression, Freedom of association and peaceful assembly, Civil society,	page 5	not impl.
58	Human rights defenders	page 6	not impl.
74	Human rights defenders, Freedom of the press,	page 6	not impl.
82	Human rights defenders	page 6	-
113	Torture and other CID treatment, Rights of the Child,	page 7	not impl.

3. Feedbacks on recommendations

CP Rights

Recommendation n°45: *Ensure that civil society organizations and journalists can exercise their freedom of expression and participate in peaceful public gatherings and demonstrations* (Recommended by Norway)

IRI: *not implemented*

Article 19 (A19) response:

The current legislation, the 1997 Telecommunications Law, fails to recognise community broadcasters at all, only providing for commercial, public and amateur radio services (the latter can only be “of a personal nature and not for profit”). Article 84 of the Telecommunications Law allocates frequencies via a public auction. 10. El Salvador also lacks rules preventing monopolisation of the media. This has resulted in a situation where some 77% of the print media belongs to two families, while 75% of network television is owned by a single person. This is despite the existence of Article 110 of the Constitution against monopolies

Justice

Recommendation n°1: *Abolish the death penalty* (Recommended by Luxembourg)

IRI: *not implemented*

Instituto de Derechos Humanos de la UCA (IDHUCA) response:

No, it's still available on military issues.

World Coalition Against the Death Penalty (WCADP) response:

We sent letters and organised a lobbying mission in fall 2011 to ask the government to implement this recommendation and abolish the death penalty for all crimes in law and to ratify the Second Optional Protocol to the ICCPR. Our delegation was received by the Ministry of Foreign Affairs and the Ministry of Justice. The message was that because of legislative elections in May 2012, it was unlikely that the treaty would be ratified or the Penal Code modified before the elections.

Recommendation n°3: *Accelerate efforts to improve the existing situation in detention centres and prisons* (Recommended by Slovakia)

IRI: *not implemented*

IDHUCA response:

No, in fact has increased overcrowding and allegations of violations of detainees.



Recommendation n°7: *Adopt and implement reforms aimed at facilitating credible and responsible criminal investigations that respect human rights and at eliminating judicial corruption in order to ensure that persons suspected of breaking the law are apprehended, tried and sentenced in an efficient, accountable and transparent manner (Recommended by United States)*

IRI: *partially implemented*

IDHUCA response:

Reforms have been adopted but implementation is still poor, they prevent corruption, and impunity. There are no guarantees condemns people who actually committed crimes.

Recommendation n°12: *Amend the relevant legislation in order to abolish capital punishment entirely, in line with the Second Optional Protocol to the International Covenant on Civil and Political Rights (Recommended by Slovakia)*

IRI: *not implemented*

IDHUCA response:

Still not satisfied because there is the death penalty for military offenses

Recommendation n°16: *Consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights (Recommended by Italy)*

IRI: *not implemented*

WCADP response:

We sent letters and organised a lobbying mission in fall 2011 to ask the government to implement this recommendation and abolish the death penalty for all crimes in law and to ratify the Second Optional Protocol to the ICCPR. Our delegation was received by the Ministry of Foreign Affairs and the Ministry of Justice. The message was that because of legislative elections in May 2012, it was unlikely that the treaty would be ratified or the Penal Code modified before the elections.

Recommendation n°58: *Guarantee the full legitimacy of human rights defenders and ensure their protection in order to spare them from the harassment that they have often endured (Recommended by Slovakia)*

IRI: *not implemented*

A19 response:

The government response of cases against human rights defenders haven't fully protected them. Neither the harassment has stopped.

Recommendation n°74: *Investigate fully and effectively the violations committed against human rights defenders and journalists and to bring to justice those responsible (Recommended by Norway)*

IRI: *not implemented*

A19 response:

Most of the crimes against human rights defenders and journalist hasn't been before justice and sentenced the responsables.

Recommendation n°82: *Properly investigate and prosecute perpetrators of attacks against human rights defenders (Recommended by Netherlands)*

IRI: -

A19 response:

There are still pending several cases of harassment against human rights defenders.

Women & Children

Recommendation n^o4: *Accelerate the ongoing legislative reform to combat insecurity and violence against women and children and to consolidate those measures, including through improved statistics or educational programmes in schools regarding human rights and gender equality* (Recommended by Luxembourg)

IRI: *partially implemented*

IDHUCA response:

Legislative reform has advanced, has approved new laws on violence against women and children, but little progress in its implementation

Recommendation n^o10: *Adopt specific criminal legislation to protect the rights of women* (Recommended by Brazil)

IRI: *fully implemented*

IDHUCA response:

Recently adopted new regulations to combat violence against women and discrimination

Recommendation n^o35: *Continue to promote the establishment of a national commission to search for girls and boys who disappeared during the internal armed conflict* (Recommended by Colombia)

IRI: -

IDHUCA response:

[...]

Recommendation n^o113: *Take specific measures to prohibit corporal punishment of children in all settings, including at home* (Recommended by Slovenia)

IRI: *not implemented*

Global Initiative to End All Corporal Punishment of Children (GIEACPC) response:

Since the initial UPR of El Salvador in 2010, no new legislation has been enacted to prohibit corporal punishment of children: it remains lawful in the home and in alternative care settings. Article 38 of the Law for the Integral Protection of Children (2009) prohibits corporal punishment but states that this is without prejudice to the right of parents to "adequately and moderately correct" their children. This "right of correction" is also confirmed in article 215 of the Family Code and article 204 of the penal Code and provides a legal defence for the use of corporal punishment in childrearing.



Other

Recommendation n°2: *Accelerate efforts aimed at the promotion and protection of human rights, including through tackling problems of public safety, economic and judicial safety and human development (Recommended by Malaysia)*

IRI: not implemented

IDHUCA response:

No. There are drawbacks to this topic, not respected judicial independence are not met high court judgments, and violence have increased [level of criminal violence].



Methodology

A. First contact

Although the methodology has to consider the specificities of each country, we applied the same procedure for data collection about all States:

1. We contacted the Permanent Mission to the UN either in Geneva (when it does exist) or New York;
2. We contacted all NGOs which took part in the process. Whenever NGOs were part of coalitions, each NGO was individually contacted;
3. The National Institution for Human Rights was contacted whenever one existed.
4. UN Agencies which sent information for the UPR were contacted.

We posted our requests to the States and NHRI, and sent emails to NGOs and UN Agencies.

The purpose of the UPR is to discuss issues and share concrete suggestions to improve human rights on the ground. Therefore, stakeholders whose objective is not to improve the human rights situation were not contacted, and those stakeholders' submissions were not taken into account.

However, since the UPR is meant to be a process which aims at sharing best practices among States and stakeholders, we take into account positive feedbacks from the latter.

B. Processing the recommendations

The persons we contact are encouraged to use an Excel sheet we provide which includes all recommendations received by the State reviewed.

Each submission is processed, whether the stakeholder has or has not used the Excel sheet. In the latter case, the submission is split up among recommendations we think it belongs to. Since such a task is more prone to misinterpretation, we strongly encourage stakeholders to use the Excel sheet.

If the stakeholder does not clearly mention neither that the recommendation was “fully implemented” nor that it was “not implemented”, UPR Info usually considers the recommendation as “partially implemented”, unless the implementation level is obvious.



UPR Info retains the right to edit comments that are considered not to directly address the recommendation in question, when comments are too lengthy or when comments are defamatory or inappropriate. While we do not mention the recommendations which were not addressed, they can be accessed unedited on the follow-up webpage.

C. Implementation Recommendation Index (IRI)

UPR Info developed an index showing the implementation level achieved by the State for the recommendations received at the UPR.

The **Implementation Recommendation Index (IRI)** is an individual recommendation index. Its purpose is to show an average of stakeholders' responses.

The *IRI* is meant to take into account stakeholders disputing the implementation of a recommendation. Whenever a stakeholder claims nothing has been implemented at all, the index score is 0. At the opposite, whenever a stakeholder claims a recommendation has been fully implemented, the *IRI* score is 1.

An average is calculated to fully reflect the many sources of information. If the State under Review claims that the recommendation has been fully implemented, and a stakeholder says it has been partially implemented, the score is 0.75.

Then the score is transformed into an implementation level, according to the table below:

Percentage:	Implementation level:
0 – 0.32	Not implemented
0.33 – 0.65	Partially implemented
0.66 – 1	Fully implemented

Example: On one side, a stakeholder comments on a recommendation requesting the establishment of a National Human Rights Institute (NHRI). On the other side, the State under review claims having partially set up the NHRI. As a result of this, the recommendation will be given an *IRI* score of 0.25, and thus the recommendation is considered as “not implemented”.

Disclaimer

The comments made by the authors (stakeholders) are theirs alone, and do not necessarily reflect the views, and opinions at UPR Info. Every attempt has been made to ensure that information provided on this page is accurate and not abusive. UPR Info cannot be held responsible for information provided in this document.

Contact

UPR Info

Avenue du Mail 14
CH - 1205 Geneva
Switzerland

Website: <http://www.upr-info.org>



Phone: + 41 (0) 22 321 77 70

Fax: + 41 (0) 22 321 77 71

General enquiries info@upr-info.org

Follow-up programme followup@upr-info.org

Newsletter "UPR Trax" uprtrax@upr-info.org