

Starting all over again?

An analysis of the links between
1st and 2nd cycle UPR recommendations



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Executive Summary

One of the prime objectives of the 2nd cycle of the Universal Periodic Review (UPR) is to look into the level of implementation of 1st cycle recommendations, as clearly laid out in Human Rights Council Resolution A/HRC/RES/16/21. In that sense, Recommending States play a great role at the 2nd UPR in questioning the country under review in relation to the steps taken and efforts made to advance human rights between the two reviews. Such inquiry would pressure States under Review to implement recommendations and would therefore increase the impact of the UPR on the ground. However, an analysis of the 70 first reviews of the second UPR cycle shows that Recommending States are not performing well in making recommendations related to the first cycle recommendations. This study finds that only 18.8% of 1st cycle recommendations were linked to recommendations made at the 2nd cycle (930 out of 4935). While recognising the existence of several factors explaining the low percentage, this study aims to share best practices on how to ensure that Recommending States become better at creating links between first and subsequent reviews.

Main Outcomes

- ✓ Recommending States bear **great responsibility** in ensuring that States under Review provide information about the progress made to implement recommendations;
- ✓ Recommending States **underperform** in ensuring that 2nd UPR cycle recommendations have a link with their 1st cycle recommendations;
- ✓ According to our data, only **1 first cycle recommendation out of 5** is linked to the 2nd cycle;
- ✓ Some factors can **explain this low percentage**: lack of comprehension of the cyclic nature of the UPR and the importance to refer back to previous recommendations; lack of knowledge of the previous recommendations made; lack of political will to confront the state under review for a second time on the same issue; commitment to only make two recommendations to each State under Review; the emergence of new priorities in the country under review or in the foreign policy of the Recommending State;
- ✓ **Recommending States need to do more**: maintain a list of all recommendations made previously and verify if they have been implemented according to the UPR basic documents (the national report, the compilation of UN information, and the summary of stakeholders' information); consult the *UPR Info* database; attend *UPR Info's* Pre-sessions; and meet individually with civil society organisations.

Introduction

The first cycle of the UPR was intended to establish an initial overview of a State's human rights record. Each UN member State underwent a first review in which its human rights situation in all areas was assessed. A report was drafted and published, covering all reservations, concerns, praises, and recommendations made by States.

The year 2012 marked the conclusion of all initial UPR assessments and the beginning of the second UPR cycle. Before that, in March 2011, Resolution A/HRC/RES/16/21 was adopted by the Human Rights Council with the purpose of providing a clear guideline for the next phase of the UPR. It notably states that the “second and subsequent cycles should focus on, inter alia, the implementation of the accepted recommendations and the developments of the human rights situation in the State under Review”¹.

In consideration of this mandated 2nd cycle focus, *UPR Info* undertook a study to determine the rate of linkage from 1st cycle UPR recommendations to 2nd cycle UPR recommendations. Based on its analysis, *UPR Info* determined that only 18.8% of all 1st cycle UPR recommendations have some sort of connection to 2nd cycle recommendations. While a 100% linkage rate would mean that most of the recommendations from the 1st cycle had not been implemented and that they needed to be reiterated, one could hope for a higher link percentage.

Through this study, *UPR Info* provides concrete information and analysis for States and civil society organisations (CSOs) to use in better understanding the results of the UPR process. This understanding can help States hold each other

¹ Human Rights Council resolution A/HRC/RES/16/21

accountable for implementation of recommendations that will lead to positive human rights developments on the ground.

The following analysis is broken down into five sections. The first section explains the importance of referring to previous cycle recommendations while the second section demonstrates the methodology used to categorise recommendation links. The third section presents the findings of the analysis and the fourth section discusses possible factors contributing to the low rate of percentage links. Lastly, the fifth section lists best practices for linking previous recommendations to subsequent recommendations.

1. Why is referring to previous cycle recommendations important?

Links reflect the focus or ability of a Recommending State (RS) to follow up on the implementation of the 1st cycle recommendations it made. Failing to follow up on previous UPR cycle recommendations can affect the implementation rate of said recommendations and diminish the impact of the UPR for the following reasons:

- ➔ The failure to link 2nd cycle recommendations to their 1st cycle counterparts diminishes States' accountability. If the RSs do not follow up on recommendations made in the 1st cycle, countries reviewed develop a feeling of impunity because they are not reminded of their 1st cycle obligations.
- ➔ If not linked, recommendations from the 2nd cycle cannot build upon the progress and failures experienced by the State under Review (SuR). The 2nd review would therefore fail to address the pressing issues faced by the SuR and each new cycle would start from scratch, without taking into account the previous cycle.
- ➔ In relation to the previous points, if RSs do not link their UPR recommendations, CSOs will not be able to work on the follow-up phase - at all. Many recommendations require years to be implemented and if the same issues are not brought up back in the second cycle, a critical risk arises of preventing stakeholders to legitimately continue to work on their issue.

Links reflect States' steps to re-examine past recommendations and ascertain if those recommendations have been implemented. Positive actions for human rights improvements occur through the acceptance and implementation of UPR recommendations, but change on the ground will be strongly facilitated if a SuR is held accountable for its actions during the 4½-year span between UPR reviews. Recommendations are the key force to implementing human rights change through the UPR mechanism and increasing accountability will more than likely lead to positive changes in the implementation rate. A recommendation without any follow up

action is an empty recommendation. RSs need to increase their link rates. Referring back to previous recommendations increases accountability and political pressure on the SuR to either implement the past recommendation or answer for why the recommendation was not implemented. *UPR Info* hopes that the results of this study will spur RSs to take steps towards following up on their previous recommendations, thus increasing link rate percentages.

2. Methodology

This report analyses “links” between recommendations made during the 1st and 2nd cycle of the UPR to the 70 first States reviewed: only recommendations made to 70 States during each cycle are analysed². Four categories defining the level of linkage are used:

1. General;
2. Similar;
3. Same;
4. Build-up.

An occurrence of any of these four categories will be referred to as a “link” between the two cycles. Further explanations of these categories are as follows:

1. The term **General** qualifies recommendations that talk about the same issue, but does not contain the same action. For example, the following recommendations made to Russia fall into this category:
 - In 2008: *Ratify the Protocol No. 14 to the European Convention on Human Rights and the Charter for Regional and Minority Languages;*
 - In 2013: *Ensure that its national legislation is in conformity with the obligation set in the article 27 of ICCPR with the objective of providing national minorities with the possibility to use their mother tongue without obstacles, as well as education in their mother tongue.*
2. The term **Similar** is used for recommendations that have the same issue and same action or objective. In using the term “Similar” the whole recommendation does not have to be similar but at least parts have to be similar. A shift from the General category to the Similar category occurs when there is similar action

² Countries included in sessions 13 to 17.

called for. For example the following recommendations made to Uzbekistan fall into this category:

- In 2008: *Ensure that conscientious objection to military service is available to individuals irrespective of their religion or belief and that the process for consideration applications is under civilian control and to provide a non-punitive civilian alternative service;*
- In 2013: *Fully recognize the right of conscientious objection to military service without discrimination as to the religion or belief on which the objection is based, and provide civilian alternative service compatible with international standards.*

3. The term **Same** is used if the recommendation is word for word exactly the same or if the recommendations were the same with a few minor word changes. For example the following recommendations made to Turkmenistan fall into this category:

- In 2008: *Accede to ratify the Rome Statue of the International Criminal Court;*
- In 2013: *Ratify the Rome Statute of the International Criminal Court.*

4. The term **Build-up** is used if there seems to have been some actions taken between the first and second cycle and, thus, the subsequent recommendations build upon the previous ones. For example, the following recommendations made to Jordan fall into this category:

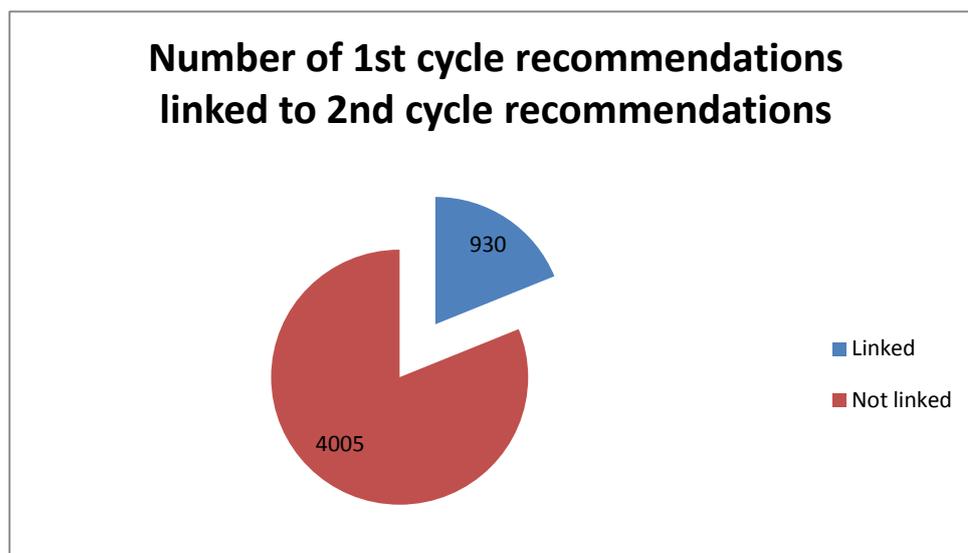
- In 2008: *Support the efforts made to establish the procedures for transitional justice under the 2000 Arusha agreements, in particular setting up methods for national consultations, as called for by the Security Council in its resolution 1606 (2005);*
- In 2014: *Finalize, as soon as possible, the establishment of a Truth Reconciliation Commission faithful to the spirit of the Arusha Agreements and representative of the recommendations made during the public consultations in 2010.*

3. Findings

A total of 4,935 recommendations were made to the 70 first States reviewed during the 1st cycle by a total of 133 Recommending States³. In the second UPR cycle, those same 133 Recommending States made a total of 10,628 recommendations to the same first 70 SuRs.

Out of 4,935 recommendations made during the 1st cycle, 930 recommendations (18.8%) were linked to the 2nd cycle recommendations:

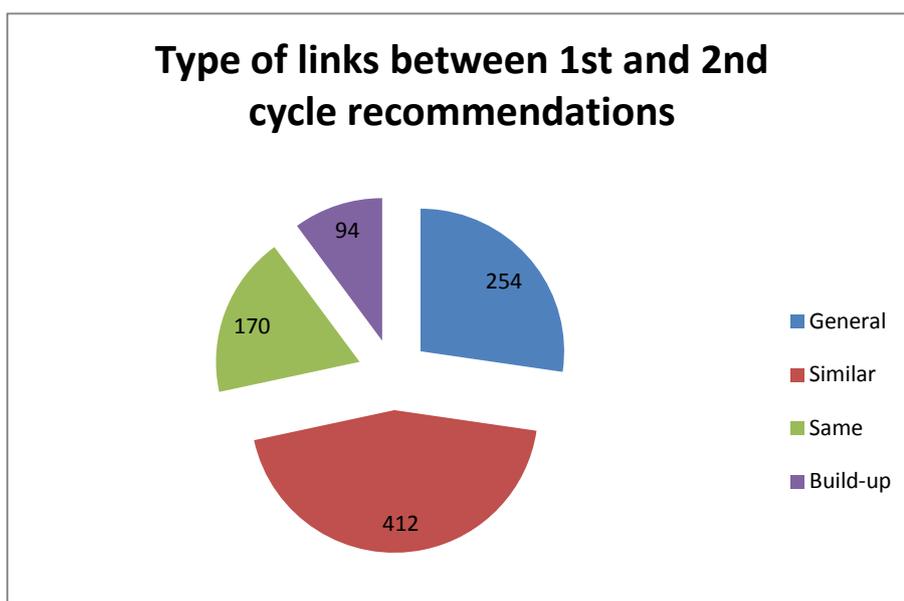
Chart 1



³ Available at <http://s.upr-info.org/1oUNZth>. A total of 4,944 recommendations were made, but 9 recommendations made to Indonesia were not attributed to any recommending States. These 9 recommendations are therefore not included in this study.

This result breaks down as follows: 27.31% were of category "General links"; 44.3% were of category "Similar"; 18.28% were of category "Same"; and 10.11% as "Build-up":

Chart 2



The Top 10 States with the best percentage of 1st cycle recommendations which were linked in the 2nd cycle (with a minimum of 10 recommendations made in the 1st cycle to those 70 SuRs and 10 recommendations linked from the 1st to the 2nd cycle) are the following:

1. Latvia: 55.2% (of 29 1st cycle recommendations, 16 are linked to 2nd cycle recommendations)
2. Saudi Arabia: 40% (of 25 1st cycle recommendations, 10 are linked to 2nd cycle recommendations)
3. Spain: 35.7% (of 28 1st cycle recommendations, 10 are linked to 2nd cycle recommendations)
4. Slovenia: 34.9% (of 175 1st cycle recommendations, 61 are linked to 2nd cycle recommendations)

5. Switzerland: 33.33% (of 120 1st cycle recommendations, 40 are linked to 2nd cycle recommendations)
6. Republic of Korea: 32.4% (of 37 1st cycle recommendations, 12 are linked to 2nd cycle recommendations)
7. France: 31.1% (of 180 1st cycle recommendations, 56 are linked to 2nd cycle recommendations)
8. Russian Federation: 31.1% (of 45 1st cycle recommendations, 14 are linked to 2nd cycle recommendations)
9. United States: 30.3% (of 33 1st cycle recommendations, 10 are linked to 2nd cycle recommendations)
10. Germany: 28.3% (of 99 1st cycle recommendations, 28 are linked to 2nd cycle recommendations)

The Top 10 States with the most 1st cycle recommendations in absolute numbers which were linked to the 2nd cycle are the following:

1. Slovenia (61 recommendations linked)
2. United Kingdom (58 recommendations linked)
3. France (56 recommendations linked)
4. Canada (46 recommendations linked)
5. Switzerland (40 recommendations linked)
6. Czech Republic (39 recommendations linked)
7. Italy (38 recommendations linked)
8. Germany (28 recommendations linked)
9. Netherlands (28 recommendations linked)
10. Mexico (26 recommendations linked)

4. Potential Reasons for Low Percentage Rate of Links

UPR Info recognises that there are potentially several contributing factors that affect linkage rates of recommendations:

1. As noted above, one factor that might contribute to a low link percentage is the methodology used in this report. If a State made comments, objections, or concerns about the implementation of previous recommendations but did not turn these comments, objections or concerns into new recommendations, this effort by the RS is not reflected in our study. It may indeed happen that States take the floor and provide only comments on previous recommendations, without making new recommendations linked to previous issues.
2. A second factor is structural to the UPR process: if the recommendation was fully implemented by the SuR, then a RS does not need to raise the issue again in the form of a new recommendation.
3. A third factor could be the lack of knowledge by the RS about the importance of linking to previous recommendations. Some States do not necessarily see the UPR as a cycle and therefore do not understand the necessity to inquire about the implementation of previous recommendations. In addition, diplomats change post frequently and there is a high chance that, in the time span of a country's two reviews, the diplomats have moved to another post. The new diplomat posted in Geneva does not always know where to find the recommendations made previously.
4. The recommendations were not implemented and the RS does not want to confront the SuR for a second time on the same issues. The RS will rather choose to address other issues in the new recommendations. This factor will be even more decisive if the given 1st cycle recommendations were not accepted by the SuR.

5. No information was available to the RS about the status of implementation of the recommendations. The RS therefore will prefer raising another issue in the new recommendations.
6. The issue became obsolete/less important in the country under review. The human rights situation in the country has evolved since the previous UPR and the RS therefore considers that there are new priorities to consider.
7. Another factor might arise from the growing trend of States to only make two recommendations per SuR. This trend to limit recommendations to two per SuR is a recent development in the UPR process and bears two negative consequences. Firstly, the RS will concentrate on its priority issues and therefore less visible human rights violations might not receive as much attention as before. Secondly, the RS will have less opportunity to follow up on its previous recommendations, reducing its link percentage. Example: The United Kingdom made 210 recommendations in the 1st cycle but only 136 in the 2nd one, thus reducing its capacity to link recommendations from one cycle to another.
8. Lastly, there may have been a shift in a RS's overall political focus/agenda. UPR recommendations are sometimes influenced by foreign policy. Areas of national priorities might shift from one government to another.

While identifying several factors that may have contributed to the overall low linkage rate by RSs, *UPR Info* believes that RSs could achieve a higher link average. The next section will present good practices for following up on previous recommendations.

5. Suggestions to improve a Recommending State's linkage rate

In order to increase this linkage rate between 1st and 2nd cycle recommendations, there are several easy steps that RSs can take.

5.1. Maintain a list of all recommendations made previously

First, a RS should maintain a list of all recommendations made during each UPR review. By keeping a list of said recommendations, a State will quickly be able to review previous recommendations and identify the issues/recommendations that potentially need to be reiterated or built upon in an upcoming review. For example, the United Kingdom has created an in-house database that contains all the recommendations that it has made at the UPR.

5.2. Consult UPR Info's database

If a previous list is not feasible by the Permanent Mission, a RS still has many options to access this information. A RS can read the first cycle Working Group Report that includes all recommendations or use *UPR Info's* database that includes many search filter options, such as "Recommending State", "State under Review", "Issue" and more.⁴ A RS can then use this list as a guide in reading the UPR reports. It can compare its previous recommendations to the national reports, UN compilations and NGO summaries and look for information in these documents regarding their own recommendations. In this manner, a RS will know which of their previous recommendations still need to be addressed.

⁴ Available at: <http://www.upr-info.org/database>.

5.3. Attend UPR Info's Pre-sessions

Another way to achieve a higher link percentage would be to attend *UPR Info's* pre-session meetings⁵. During these meetings, CSOs from States to be reviewed give presentations concerning the status of human rights issues in their home countries. A RS could come to these pre-session meetings with their list of previous recommendations for that country (the Permanent Mission will have received that list from *UPR Info*, together with the invitation to the Pre-sessions). Again, this list will act as a guide through a pre-session presentation as CSOs provide feedback on the recommendations that had been previously made. A RS could then engage in a discussion with the CSOs about the issues that were covered in the presentation and could ask for suggestions of new recommendations.

5.4. Meet individually with CSOs

A fourth way to focus on follow up to previous recommendations is to make time to meet with CSOs. Once again, the use of the previous recommendations' list as a background document would be useful in this situation. It would provide a means of interactive dialogue between the RS and the CSOs who have come for a meeting. These meetings would thus make it possible for a RS to: 1) follow up and discuss previous issues; 2) find out the status of implementation and decide whether this topic needs to be addressed again at the next review; and 3) provide an opportunity to learn about new and developing human rights issues in the SuR.

⁵ Read more here: <http://www.upr-info.org/en/upr-process/pre-sessions>.

5.5. Other best practices for 2nd cycle engagement

5.5.1. Advance written questions

Questions written in advance by the RS offer an opportunity to ask the SuR about the actions taken between the two reviews to implement the previous recommendations.

5.5.2. “As previously recommended”

When making “Similar” or “Same” recommendations (about 62.58% of the links), it is recommended to use the words “as previously recommended” at the end of the recommendations. This will help identify those similar/same recommendations and will strengthen accountability in the UPR process.

6. Conclusion

The analysis laid out in this document strives to provide States and stakeholders involved in the UPR process with basic tools and suggestions in order to increase the linkage rate between 1st and 2nd cycle recommendations. Increasing these links – for instance, by questioning the country under review about steps taken and efforts made to advance human rights between the two reviews – can help to achieve two important goals. Firstly, increasing the linkage rate will pressure the States under Review to implement recommendations, thus ensuring a larger impact of the UPR on the ground; and, secondly, it will strengthen the accountability of the UPR process itself.

Following up on the recommendations of the 1st cycle and building links with the recommendations during the 2nd cycle will make the States under Review accountable for what has or has not been achieved in the 4½ years between the two reviews. In turn, this accountability will strongly facilitate the acceptance and implementation of recommendations, resulting in positive actions for human rights improvements on the ground.

Recommendations are the key element of the UPR process: they can help to effect change in the countries and be used to hold States accountable, but only if implemented and followed up. In this regard, Recommending States bare great responsibility in ensuring a follow up on recommendations and in building a bridge between the two reviews.

The UPR needs to be seen not as a one-off exercise, but as a cyclic process that needs constant consideration in order to fulfil its aim of improving the human rights situation on the ground.

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