

ENGAGING WITH THE UN HUMAN RIGHTS COUNCIL'S UNIVERSAL PERIODIC REVIEW MECHANISM AS AN ACADEMIC

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Non-governmental organisations are vital to the progression and realisation of global human rights. In particular, they play a pivotal role as “Stakeholders” in the United Nations Human Rights Council’s (UNHRC) Universal Periodic Review (UPR). The UPR is an innovative mechanism with the aim of ensuring the protection and promotion of human rights across the world. Stakeholders can submit individual reports, based upon experience and research, detailing both problem areas and advances in human rights on the ground in UN Member States. This paper draws upon the experiences of submitting Stakeholder reports from an academic institution through the “UPR Project at BCU,” and the recognition it has achieved to date through citations in the USA’s final 2020 Stakeholder Report. This paper also seeks to encourage further academic input to the UPR process through the submission of individual Stakeholder reports, in order for scholarly research to support human rights discourse and seek to influence change on the ground.

The Universal Periodic Review

The UPR is an innovative international human rights mechanism, involving intergovernmental and civil society input in the review of all 193 UN Member States’ protection and promotion of human rights.² The UPR was created alongside the UNHRC in 2006, and began its first cycle of review in 2008.³ All 193 Member States have been reviewed at least twice, with the third cycle currently taking place. Each review is recorded in publicly available documentation, and begins with the preparation of the three documents that form the basis of each review: (1) the National Report, compiled by the State under Review; (2) the Compilation of UN Information, compiled by the Office of the High Commissioner for Human Rights (OHCHR) inclusive of comments and recommendations from other UN bodies; and, (3) the Summary of Stakeholders’ Information, which is a ten-page summary of the individual Stakeholder submissions from non-governmental organisations.⁴ These individual reports can also include submissions by academics. For example, scholars from the London School of Economics and London Metropolitan University teamed up to submit a joint submission to the

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² UN General Assembly, Resolution 60/251 (2006).

³ *Id.*

⁴ UN Human Rights Council, Resolution 5/1 (18 June 2007) para. 15.

United Kingdom's UPR and were cited in the final Stakeholder Report regarding domestic abuse.⁵

Once the documentation has been submitted, the review itself is then held in the UNHRC in Geneva, wherein an interactive dialogue takes place between the State under Review and other Member States. As part of this review, recommendations are provided by the Member States regarding how the State under Review can better protect and promote human rights. The proceedings are written up into the Outcome Report, and the State under Review then decides whether to accept or note each of the recommendations. The Outcome Report will thereafter be adopted at a UNHRC plenary session. Finally, the accepted recommendations must be implemented by the State under Review and implementation is measured during the following cycle.

The UPR is viewed as generally being a success, as it has attracted 100% cooperation from Member States to date.⁶ However, it is not without its faults, and scholars have argued for changes to be made to the mechanism.⁷ What seems to be agreed upon by all key UPR actors, is that this mechanism is a positive for global human rights and, whilst changes may need to be made, it should continue to operate as a “check” on Member States' human rights records.

The UPR Project at BCU

In order to make an appeal to academics to engage with the UPR as a Stakeholder, this paper details the experiences of academics submitting Stakeholder Reports to the UPR through

⁵ UNHRC, *Summary of Stakeholders Information – United Kingdom of Great Britain and Northern Ireland* (Mar. 11, 2008) UN Doc. A/HRC/WG.6/1/GBR/3, para.18.

⁶ See, Natalie Baird, *The Role of International Non-Governmental Organisations in the Universal Periodic Review of Pacific Island States: Can 'Doing Good' Be Done Better?*, Melb. J. Int'l L. Vol. 16 No. 2, FN3 (2015), citing, Alex Conte, *Reflections and Challenges: Entering into the Second Cycle of the Universal Periodic Review Mechanism* 9 N.Z. Y. Int'l L. 187 (2011); Elvira Dominguez-Redondo, *The Universal Periodic Review – Is There Life beyond Naming and Shaming in Human Rights Implementation?*, 4 N.Z. L. Rev. 673 (2012); Rosa Freedman, *New Mechanisms of the UN Human Rights Council*, 29 N.Q.H.R. 289 (2011); Edward McMahon and Marta Ascherio, *A Step Ahead in Promoting Human Rights? The Universal Periodic Review of the UN Human Rights Council*, 18 Global Governance 231 (2012); Constance de la Vega and Tamara N Lewis, 'Peer Review in the Mix: How the UPR Transforms Human Rights Discourse' in M Cherif Bassiouni and William A Schabas (eds) *New Challenges for the UN Human Rights Machinery: What Future for the UN Treaty Body System and the Human Rights Council Procedures?* (Intersentia 2011); Hilary Charlesworth & Emma Larking, 'Introduction: The Regulatory Power of the UPR' in Hilary Charlesworth and Emma Larking (eds), *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (CUP 2015). See, also, Gareth Sweeney & Yuri Saito, *An NGO Assessment of the New Mechanisms of the UN Human Rights Council*, Human Rights Law Review 9:2 203-223 (2009); James Gomez and Robin Ramcharan (eds) *The Universal Periodic Review of Southeast Asia* (Palgrave Macmillan 2017) 33-34.

⁷ See, Alice Storey, *Challenges and Opportunities for the United Nations' Universal Periodic Review: A Case Study on Capital Punishment in the USA*, (Forthcoming 2021, Volume 90.1 UKMC Law Review); Olivier de Frouville, 'Building a Universal System for the Protection of Human Rights: The Way Forward' in M Cherif Bassiouni and William Schabas (eds) *New Challenges for the UN Human Rights Machinery: What Future for the UN Treaty Body System and the Human Rights Council Procedures?* (Intersentia 2011).

the UPR Project at BCU, facilitated by the Centre for Human Rights at Birmingham City University. The UPR Project at BCU currently has a number of Stakeholder Reports in preparation,⁸ although this paper will specifically focus upon its inaugural submission to the United States of America's (USA) third cycle UPR in September 2019.⁹

The USA Stakeholder Submission

The UPR Project at BCU's first report was submitted in September 2019, in preparation for the third cycle of the USA's UPR. This was scheduled to take place in May 2020 but, due to the COVID-19 pandemic, has been pushed back until November 2020.¹⁰ The report was written in conjunction with the Elisabeth Haub School of Law at Pace University, New York and focused on three human rights issues in the USA: capital punishment, climate change, and compassionate release for prisoners. It harnessed the expertise of academics in the School of Law at BCU and Pace University, to allow academic research to inform human rights practice.

The UPR Project at BCU's submission was recognised by the OHCHR when it compiled the USA's 2020 Stakeholder Report, as it was cited four times in the final Report.¹¹ Regarding capital punishment, the UPR Project's work was referenced to affirm the American Civil Liberties Union's observations that the death penalty in the USA is "applied in an arbitrary and discriminatory manner, based on race, geography, socioeconomic status, and the quality of representation."¹² It was also cited to support Amnesty International's claims regarding miscarriages of justice in death penalty cases, that in many cases "prisoners [have] gone to their deaths despite serious doubts about the proceedings that led to their convictions."¹³ On the issue of climate change, the UPR Project at BCU was referenced to support the findings of the Women's International League for Peace and Freedom that the USA's "energy policy was still mainly focused on the use of fossil fuels and that oil and gas industries benefited from favourable taxation."¹⁴ It also affirmed the Women's International League for Peace and Freedom's recommendation for the USA to reinstate the Paris Agreement.¹⁵ It remains to be seen whether other Member States will utilise these points to formulate their recommendations to the USA during the November 2020 review.

⁸ Reports in preparation will be submitted to the UPRs of: Myanmar, eSwatini, Namibia, Pakistan, and the UK.

⁹ UPR Project at BCU, *Stakeholder Report – USA UPR* (2019) available at: <https://bcuassets.blob.core.windows.net/docs/The%20UPR%20Project%20at%20BCU%20-%20US%20Stakeholder%20Report.pdf> <accessed 3 June 2020>.

¹⁰ UNHRC, *Human Rights Council's Universal Periodic Review Working Group May 2020 Session Postponed* (Mar. 20, 2020) available at <<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25733&LangID=E>>.

¹¹ UNHRC, *Summary of Stakeholders Information – United States of America* (Mar. 6, 2020) UN Doc. A/HRC/WG.6/36/USA/3 [hereinafter referred to as 'USA Stakeholder Report 2020'].

¹² *Id.* at para. 21, FN 63.

¹³ *Id.* at para. 22, FN 66.

¹⁴ *Id.* at para. 12, FN 38.

¹⁵ *Id.* at para. 14, FN 43.

These citations are evidence that academic submissions are not only taken seriously within the UPR process, but that scholarly research can support human rights discourse and seek to influence change on the ground in key areas. Furthermore, the USA is one of, if not the most, popular Member State to receive Stakeholder submissions. For example, for the 2020 USA UPR, the OHCHR had to compile information from 139 individual Stakeholder submissions into one ten-page report.¹⁶ Therefore, academic submissions to countries that receive much fewer submissions have a greater potential to be recognised by the OHCHR and have an impact on human rights on the ground.

An Appeal for Academic Submissions to the UPR

Academics across the globe are conducting timely and pertinent human rights research that could be used by other non-governmental organizations and Member State governments. The UPR provides a practical way of disseminating this research to a wider audience than just other academics. There are 193 Member States that academics can bring their expertise to. This spans all countries under the UN's remit and all human rights issues. Whilst academics may not always be out and out "human rights" scholars, oftentimes their expertise can be related back to human rights. For example, the academics who wrote the climate change section of the UPR Project at BCU report are predominantly Constitutional Law scholars, but their work also had a strong link to human rights. The UN's encouragement of jointly written Stakeholder submissions allows non-human rights focused scholars to work with international human rights academics in order to relate their work back to international law and human rights. Therefore, joint submissions not only prevent an overload of information for Member States, but can also foster networks between academics and practitioners across the world.

In order to ensure that the information being submitted by academics is "credible and reliable"¹⁷ as the UN guidelines state that it must be, academics must submit on their area of expertise. This also removes a significant time burden, as the majority of the research, data, findings, and conclusions should already have been carried out, meaning that writing this up for a UPR submission should not be overly burdensome. Additionally, the reports must be relatively short, according to UPR guidelines they should only be 2815 words if a single submission, or 5630 words if a joint submission between two or more Stakeholders.¹⁸ This means that the reports must be short, snappy and to the point, but also written simply and for a lay audience. Moreover, should further research be required, this is the perfect opportunity to enlist student research assistants. Working with undergraduate and postgraduate research assistants is beneficial for both academics and students. For academics, this allows for time consuming data collection and analysis to be carried out for them, and for students, it provides

¹⁶ USA Stakeholder Report 2020, *supra* n. 11.

¹⁷ UN General Assembly, Resolution 5/1, *supra* n. 4 at para. 15(c).

¹⁸ OHCHR, *Universal Periodic Review: Information and Guidelines for Relevant Stakeholders' Written Submissions*, available at: <www.ohchr.org/Documents/HRBodies/UPR/TechnicalGuideEN.pdf> last accessed 3 June 2020.

them with invaluable research experience. Cumulatively, this means that writing a Stakeholder submission, disseminating important research to a wider audience, and potentially influencing change on the ground should not take an inordinate amount of time for academics.

The UN provides technical guidelines to be followed when writing and submitting a Stakeholder submission, including the type of information that should be included.¹⁹ Some of the guidelines are compulsory, whereas others are advisory, however all of them, along with reading previous submissions, should be used as a guide for potential academic reports.

Conclusion

This paper has sought to appeal to academics across the globe whose research spans any human rights issue, to consider using their research as the basis of a Stakeholder submission to any of the 193 UN Member States' UPRs. There are many benefits to this, including disseminating research to the wider world and generating global networks, but perhaps most importantly is that this is a platform for scholarly research to support human rights discourse and seek to influence change on the ground in key areas.

¹⁹ OHCHR, *supra* n. 18.