

How to Better Infuse Gender into the Human Rights Council's Universal Periodic Review Process?

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The shift at the United Nations (U.N.) from the much criticized Human Rights Commission to the Human Rights Council in 2006 has supposedly brought new opportunities to affect the promotion and protection of human rights around the world. One of the major developments has been the implementation of the Universal Periodic Review (UPR) process to review the human rights (HR) situations in all U.N. member countries on a regular basis. The extent to which it is having the desired effect still needs to be determined. One area that such a review mechanism could have a dramatic effect is on the lives of women to ensure that levels of discrimination and violence against women are reduced and that real and meaningful equality occurs for women and girls. This article reviews the way in which gender issues could be brought more directly into the work of the UPR process by reviewing the way UPR works and making recommendations on the way the process could be reformed to ensure greater infusion of gender issues into the process. This is crucial as gender discrimination around the world remains a major scourge. Finding where it is occurring and finding ways to deal with it must be a critical part of the human rights agenda at international, regional, sub-regional and domestic levels. The UPR process, it is argued, can play a critical part if the process works in a satisfactory manner. This article reviews the role of the UPR and makes recommendations to improve it with regard to dealing with gender more comprehensively and cohesively. Suggestions are made to ensure that the UPR process has the desired effect in the country concerned to ensure that the lives of billions of women and girls are improved by striving for equality by reducing discrimination and combating other types of human rights violations committed against women and girls in both the public and private sphere.

INTRODUCTION

The shift¹ at the U.N.² from the much criticized Human Rights Commission³ to the Human Rights Council in 2006 is praised by some⁴ and criticized by

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1. Suggested in the document by the then Secretary-General Kofi Annan *In Larger Freedom: towards development, security and human rights for all* A/59/2005, 45 (21 March 2005). On the process of moving from the Commission to the Council See Amnesty International, *Meeting the challenge: Transforming the Commission on Human Rights into a Human Rights Council*, (Amnesty International, 2005).

2. See on the U.N. generally, THOMAS WEISS, (ed.) *THE OXFORD HANDBOOK ON THE U.N.* (2007).

3. See U.N., *A More Secure World: Our Shared Responsibility*, A/59/565, (2 December 2004), p. 74. See also, M. LEMPINEN, *THE U.N. COMMISSION ON HUMAN RIGHTS AND THE DIFFERENT TREATMENT OF GOVERNMENTS*, (Institute for Human Rights, Åbo Akademi University, 2005); On the Commission in general See P. Alston, *The Commission on Human Rights, in THE U.N. AND HUMAN RIGHTS* (Alston, ed., 1995).

4. See for example C. Flinterman and P. R. Baehr, *Three Cheers for the New Human Rights Council* 23 NETHERLAND Q. HUM'N. RTS. 547 (2005).

others.⁵ That reform was needed is doubted by few.⁶ In this regard it has been noted that:

The legitimacy and effectiveness of the U.N. were questioned in the wake of the 11 September 2001 attacks and the US invasion of Iraq in 2003. The investigation of the U.N. Oil-for-Food Programme raised issues of integrity and management competence. Apparent shortcomings in the human rights machinery and peacekeeping came to the forefront.⁷

While there was near unanimous support by states for the reform⁸ (170 countries voted in favor, four voted against: the USA⁹, Palau, the Marshall Islands and Israel and three abstained: Belarus, Iran and Venezuela)¹⁰ at least some have argued that the reform process did not go far enough.¹¹ Some have argued that the fact that states¹² are still at the centre of the process¹³ rather than independent experts,¹⁴ as in treaty bodies like the Committee on the Rights of the Child or the Human Rights Committee, or in the UN Special Procedures process¹⁵, ensures the process is much more political than it ought to be.¹⁶ Marc Bosuyt has noted

5. See P. G. Lauren, *To Preserve and Build on its Achievements and to Redress its Shortcomings: The Journey from the Commission on Human Rights to the Human Rights Council*, 29 HUMAN RT. Q. 307 (2007). See also, L. Rahmani-Ocora, *Giving the Emperor Real Clothes: The UN Human Rights Council*, 12 GLOBAL GOVERNANCE, 15 (2006); P. Scannella & P. Splinter, *The U.N. Human Rights Council: A Promise to Be Fulfilled*, 7 HUMAN RIGHTS L. R. 41 (2007) and N. Ghanea, *From UN Commission on Human Rights to UN Human Rights Council: One Step Forwards or Two Steps Sideways*, 55 INT'L. & COMP. L. Q. 695 (2006).

6. MARCUS FRANDA, *THE U.N. IN THE TWENTY-FIRST CENTURY: MANAGEMENT AND REFORM PROCESSES IN A TROUBLED ORGANIZATION* (2006). See also, Walter Kälin, *Towards a UN Human Rights Council: Options and Perspectives*, Institute of Public Law, University of Bern, August 4, 2004.

7. JOACHIM MUELLER, *REFORMING THE U.N.: THE STRUGGLE FOR LEGITIMACY AND EFFECTIVENESS* v (2006).

8. See generally on the reform process, A. Almeida, *Background on the Reform of the UN Commission on Human Rights*, (Rights & Democracy, 2005), See also H. Upton, *The Human Rights Council: First Impressions and Future Challenges*, 7 HUMAN RT. L. R. 29 (2007).

9. See John R. Bolton, Explanation of Vote by Ambassador John R. Bolton, U.S. Permanent Representative to the U.N., on the Human Rights Council Draft Resolution, in the General Assembly, USUN Press Release 51 (06), 15 March 2006.

10. International Service for Human Rights (ISHR), *News Bulletin – UN Reform: The Human Rights Council*, (15 March 2006).

11. Hadar Harris, *The Politics of Depoliticization: International Perspectives on the Human Rights Council*, Human Rights Brief, Center for Human Rights and Humanitarian Law, American University Washington College of Law, 13, Issue 3 (Spring 2006), 8.

12. For the 47 states that are members see <http://www2.ohchr.org/english/bodies/hrcouncil/membership.htm>.

13. On the question of which states are members and the difficulties as a result see Lawrence C. Moss, *Will the Human Rights Council Have Better Membership than the Commission on Human Rights?* Human Rights Brief, Center for Human Rights and Humanitarian Law, American University Washington College of Law, 13, Issue 3 (Spring 2006).

14. International Commission of Jurists (ICJ), *Reforming the Human Rights System: A Chance for the U.N. to Fulfill its Promise*, (ICJ, 2005), p. 23. On the role of independent experts in the UN system See I. NIFOSI, *THE UN SPECIAL PROCEDURES IN THE FIELD OF HUMAN RIGHTS*, (2005) and Amnesty International, *U.N. Special Procedures: Building on a Cornerstone of Human Rights Protection*, (Amnesty International, 2005).

15. On Special Procedures See INGRID NIFOSI, *THE UN SPECIAL PROCEDURES IN THE FIELD OF HUMAN RIGHTS* (2005).

16. On the role of politics See also Elvira Dominguez Redondo, *The Universal Periodic Review of the UN*

that the criticism of the political nature of the system is:

based on a (widespread) misconception: the principal UN human rights organ is not a tribunal of impartial judges, not an academy of specialists in human rights, nor a club of human rights activists. It is a political organ composed of States represented by governments that as such reflect the political forces of the world as it is.¹⁷

Nevertheless, the success or otherwise of the Human Rights Council and its new process will be evaluated by the human rights impact it has. In this regard Alston noted with respect to the Human Rights Commission and its effectiveness: “responding to violations remains the benchmark which the great majority of governments and other observers continue to use.”¹⁸

This same criterion will no doubt be used with respect to the Human Rights Council by those keen to see actual improvements in human rights situation in countries around the world.¹⁹ Without doubt one of the most significant advances has been the development of the system of universal periodic review (UPR)²⁰ whereby all 192 UN member countries are reviewed every four years by the council to determine their compliance with human rights standards.²¹ Thus, 48 states are reviewed each year.²² The UPR process is however a work in progress as the General Assembly resolution establishing UPR could not reach agreement on the way UPR would work.²³ Resolution 69/251 did not spell out the manner in which UPR was to work but requested the Council to “develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session.”²⁴ In 2007 the Council agreed on how it would work when it agreed to its document “United Nations Human Rights Council: Institution Building.”²⁵

This article reviews the way in which gender issues could be brought more

Human Rights Council: An Assessment of the First Session, CHINESE J. INT'L. L. 721 (2008).

17. Marc Bossuyt, *The New Human Rights Council: A First Appraisal*, 24:4 NETHERLANDS Q. HUMAN RT. 551, 554 (2006).

18. See PHILIP ALSTON, *THE U.N. AND HUMAN RIGHTS: A CRITICAL APPRAISAL*, 138 (1992).

19. Carlos Villan Duran, *Lights and shadows of the new U.N. Human Rights Council*, 5 INT'L. J. HUMAN RTS., 9 (2006).

20. On the role of the Council generally see F. Hampson, *An Overview of the Reform of the UN Human Rights Machinery*, 7 HUMAN RTS. L. R. 7 (2007). See also, M. Abraham, *Building the New Human Rights Council – outcome and analyses of the institution-building year*, Geneva/Switzerland, Friedrich Eber t Stiftung, August (2007).

21. See Y. Terlingen, *The Human Rights Council: A New Era in the UN Human Rights Work*, 21 ETHICS & INT'L. AFF., 167 (2007). F. Gaer, *Voice Not an Echo: Universal Periodic Review and the UN Human Rights Treaty Bodies System*, 7 HUMAN RTS. L. R. 109 (2007).

22. On the debate whether to use the term peer or periodic See Claire Doole & Juan Gasparini, *Enhancing Council Credibility*, *Human Rights Tribune*, 4 December 2006,

23. R. Brett, *Neither Mountain nor Molehill: UN Human Rights Council: One Year On*, Quakers U.N. Office, August (2007).

24. ¶ 5 (e), General Assembly Resolution 60/251.

25. U.N. Doc. A/HRC/5/21, *Report to the General Assembly on the Fifth Session of the Council, Resolution 5/1, Institution-Building of the U.N. Human Rights Council* (Aug. 7, 2007).

directly into the work of the UPR process by reviewing the way UPR works and making recommendations on the way the process could be reformed to ensure greater infusion of gender issues into the process. This is crucial as gender discrimination²⁶ around the world remains a major scourge.²⁷ Finding where it is occurring and finding ways to deal with it must be a critical part of the human rights agenda at international, regional, sub-regional and domestic levels.²⁸ The UPR process which reviews all countries can play a critical part in this regard if the process works in a satisfactory manner. The article reviews the role of the UPR and makes recommendations to improve it with regard to dealing with gender more comprehensively and cohesively. In this article gender refers:

to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, as well as the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes. They are context/ time-specific and changeable. Gender determines what is expected, allowed and valued in a woman or a man in a given context. In most societies there are differences and inequalities between women and men in responsibilities assigned, activities undertaken, access to and control over resources, as well as decision-making opportunities. Gender is part of the broader socio-cultural context. Other important criteria for socio-cultural analysis include class, race, poverty level, ethnic group and age.²⁹

I. ERADICATING GENDER DISCRIMINATION AND ACHIEVING GENDER EQUALITY GLOBALLY

Discrimination and especially gender discrimination is about power relationships and the ability of those in power to limit the rights of others.³⁰ States have duties to eradicate discrimination against groups such as women who are specifically protected in international human rights instruments that most states are party to, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). States also have duties to promote

26. See, e.g., R. Anker, *Gender and Jobs: Sex Segregation of Occupations in the World*, Geneva: ILO (1998).

27. See also MARJORIE AGOSIN, *WOMEN, GENDER, AND HUMAN RIGHTS: A GLOBAL PERSPECTIVE* (ed., 2001).

28. The World Conference on Human Rights, 1993, Vienna Declaration and Programme of Action, A/CONF.157/23, ¶ 17 noted that "The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community."

29. U.N. Office of the Special Advisor on Gender Issues and Advancement of Women, *Gender mainstreaming: Strategy for promoting Gender Equality 1* (Rev. August 2001), available at www.un.org/womenwatch/osagi/pdf/factsheet1.pdf.

30. Charlotte Bunch, *Women's Rights as Human Rights: Toward a Re-Vision of Human Rights*, 12 *HUM. RTS. Q.*, 486 (1990), See also G. Beetham & J. Demetriades, *Feminist Research Methodologies and Development: Overview and Practical Application*, 15 *GENDER & DEVELOPMENT* (2007).

the rights of women through empowerment and other strategies.³¹ Quotas and other forms of positive steps, such as affirmative action, to achieve parity are necessary.³²

While the 1993 Declaration on the Elimination of Violence against Women states that “violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms”³³ according to a 2005 report by the World Health Organization (WHO) women’s lifetime rates of domestic violence range from 15% to 71% depending on the country.³⁴ WHO also found that one in four women around the world will be physically or sexually abused by an intimate partner during her life.³⁵ Domestic violence accounts for 40%-70% of female homicides worldwide.³⁶ Copelon thus considers that domestic violence can be a form of torture.³⁷ In this context gender equality must mean

the equal rights, responsibilities and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same but that women’s and men’s rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration—recognizing the diversity of different groups of women and men. Gender equality is not a ‘women’s issue’ but should concern and fully engage men as well as women. Equality between women and men is seen both as a human rights issue and as a precondition for, and indicator of, sustainable people-centered development.³⁸

In spite of numerous and significant problems and enormous difficulties for

31. A. Lopez-Claros & S. Zahidi, “Women’s Empowerment: Measuring the Global Gender Gap, World Economic Forum, Geneva (2005).

32. See also for example, D. Dahlerup, & L. Freidenvall, *Quotas as a ‘Fast Track’ to Equal Representation for Women*, 7 INT’L FEMINIST J. POL. 26–48 (2005).

33. *Declaration on the Elimination of Violence Against Women*, 1993).

34. See World Health Organization, *Multi-Country Study on Women’s Health and Domestic Violence Against Women* World Health Organization, http://www.who.int/gender/violence/who_multicountry_study/en/. See also, Sally Engle Merry, *Human Rights & Gender Violence: Translating International Law into Local Justice* (2005).

35. Garcia-Moreno, Claudia, Henrica AFM Jansen, Mary Ellsberg, Lori Heise, & Charlotte Watts on behalf of the WHO Multicountry Study on Women’s Health and Domestic Violence against Women Study Team. 2006. Prevalence of intimate partner violence: Findings from the WHO multi-country study on women’s health and domestic violence. *Lancet* 368: 1260-69.

36. *Intimate Partner Violence* World Health Organization, Regional Office for South-East Asia, <http://w3.whosea.org/dpr/pdf/violence-prevent/partner.pdf>. See also Garcia-Moreno, Claudia, Henrica AFM Jansen, Mary Ellsberg, Lori Heise, & Charlotte Watts. 2006. Prevalence of intimate partner violence: Findings from the WHO multi-country study on women’s health and domestic violence. *Lancet* 368: 1260-69.

37. RHONDA COPELON, *INTIMATE TERROR: UNDERSTANDING DOMESTIC VIOLENCE*, IN *HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES*, 172 (ed. Rebecca Cook, 1994).

38. U.N. Office of the Special Advisor on Gender Issues and Advancement of Women rev. August 2001 *Gender mainstreaming: Strategy for promoting Gender Equality* 1.

women around the world³⁹ there has been significant progress towards broader and more consistent attention to, and analysis of, women's human rights and methods to reduce and eradicate discrimination against women. This has occurred in the U.N. system⁴⁰ and in countries around the world over the last few decades.⁴¹ However, whether that attention is always turned into effective change to the reality of the lives of women on the ground remains questionable. Despite significant strides toward the achievement of human rights equality for women, the rights of women continues to be a challenging issue in many parts of the world.⁴² Many barriers to their equal participation in their societies remain.⁴³ Thus, while there has been progress the extent to which gender discrimination has been reduced, and the extent to which women and girls are able to achieve their full potential all across the globe needs greater study and more work. Certainly, the fact that an independent Commission on the Status of Women came into being is a result of the perceived failure of the UN Human Rights Commission to adequately address women's issues and achieve greater gender equality.⁴⁴

In the document authored by the Deputy Secretary-General of the UN entitled *Further Details on Institutional Options for Strengthening the Institutional Arrangements for Support to Gender Equality and the Empowerment of Women of 5 March 2009*⁴⁵ it was noted that "gender inequality exists in all societies around the world, albeit to differing extents. The devastating effects of poverty, discrimination, violence and lack of opportunity affect women⁴⁶ in multiple ways, from their economic standing to their social wellbeing, as well as their prospects for better political participation. No country in the world can claim to have eliminated discrimination against women and violations of their rights [as] a large gap remains between commitments to women and gender equality and their implementation."⁴⁷

39. PEGGY ANTROBUS, *THE GLOBAL WOMEN'S MOVEMENT: ORIGINS, ISSUES AND STRATEGIES* (2004), and Celestine Nyamu-Musembi, *Ruling Out Gender Equality? The Post-Cold War Rule of Law Agenda in Sub-Saharan Africa*, 27 *THIRD WORLD Q.* 1193 (2006).

40. DEVAKI JAIN, *WOMEN, DEVELOPMENT, AND THE UN: A SIXTY YEAR QUEST FOR EQUALITY AND JUSTICE* (2005) and Felice Gaer, *And Never the Twain Shall Meet? The Struggle to Establish Women's Human Rights as International Human Rights*, in *THE INTERNATIONAL HUMAN RIGHTS OF WOMEN: INSTRUMENTS OF CHANGE*, (C. Lockwood ed., 1998).

41. C. MORRISSON & J. P. JUTTING, *Women's Discrimination in Developing Countries: A New Data Set for Better Policies*, 33 (7) *WORLD DEVELOPMENT* 1065-81 (2005). See generally Arvonne S. Fraser, *Becoming Human: The Origins and Development of Women's Human Rights*, 21 *HUMAN RTS. Q.* 21, 857 (1999).

42. World Bank, *Global Monitoring Report 2007: Confronting the Challenges of Gender Equality and Fragile States*. Washington, DC: World Bank (2007).

43. See also S. Anand & A. Sen, *Gender Inequality in Human Development: Theories and Measurement*, 19 Occasional Paper, UNDP, New York (1995).

44. Arvonne S. Fraser, *Becoming Human: The Origins and Development of Women's Human Rights*, 21 *HUMAN RTS. Q.* 857 (1999).

45. See *FURTHER DETAILS ON INSTITUTIONAL OPTIONS FOR STRENGTHENING THE INSTITUTIONAL ARRANGEMENTS FOR SUPPORT TO GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN* (March 2, 2009), available at <http://www.un.org/ga/president/63/letters/swcgenderequality.pdf>.

46. M. BUVINIC ET. AL., *WOMEN AND POVERTY IN THE THIRD WORLD* (1983).

47. *Id.* at 3.

In this context it is not surprising that Human Rights Council Resolution 5/1 recognizes the importance of gender integration and specifically mandates as a principle that the Universal Periodic Review must “fully integrate a gender perspective” into all aspects of the review.⁴⁸ If effective the UPR process should have a dramatic effect on the quality of the lives of billions of women and girls around the world today and in the future. Developing the human rights of women is about affecting the everyday lives of women qualitatively.

However, for the UPR process to deal with gender issues sufficiently there ought to be a very clear understanding of what is meant by gender, gender discrimination, and how to integrate gender issues sufficiently into the UPR process so that results are achieved. Any examination must give recognition and understanding to the social construction of gender roles, relationships and status of women as a fundamental factor in shaping the reality of women and men around the world. When dealing with gender issues there has to be an understanding of the socially constructed roles of women and men in public and private life. Such a process must examine the differential treatment accorded to women.⁴⁹ Gender is thus distinct from sex which is biologically determined. But considering gender and integrating gender must mean that how the circumstances of women influence their enjoyment of human rights is a central enquiry.

As far as discrimination is concerned the definition contained in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) about what discrimination against women is, could be a standard to be applied and what ought to be considered in the process. Article 1 of CEDAW finds that discrimination is: “... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” Thus, discrimination has many effects, and these need to be taken into account when examining the extent to which there is gender discrimination in a society.

It must therefore be recognized that discrimination may be direct or indirect and occurs in both the public and private sectors.⁵⁰ It may be because of a law or a practice. Discrimination against women on the basis of gender is a factor that often intersects with other forms of discrimination, including race, ethnicity, religion, social origin etc. Women are often discriminated against on a number of bases, with very dire consequences for their enjoyment of human rights. Integration must mean ensuring that all forms of discrimination are recognized and strategies devised to ensure that equal rights are enjoyed by all women. Thus, for example

48. *Id.* ¶ #K.

49. On pay for example See Brainerd, Elizabeth, *Women in Transition: Changes in Gender Wage Differentials in Eastern Europe and the Former Soviet Union*, 54 *INDUST. & LAB’R RELATIONS REV.* 138–62 (2000).

50. See, e.g., Judith Sunderland, *Swept Under the Rug: Abuses against Domestic Workers Around the World*. 18 (7) *HUMAN RTS. WATCH.* (2006).

female illiteracy rates are a key to understanding access by women to a range of services and other aspects of a society.⁵¹ But it is not female illiteracy rates alone⁵², these rates must be examined in comparison to the rate of men's illiteracy in a given society to gain a true picture of the status of women. It is male versus female illiteracy rates that must be analyzed, as women are universally disadvantaged when it comes to literacy. To understand the extent of this the differential rates of access to education⁵³ as well as trends broadly, including data⁵⁴ on male/female differences in access to, and completion of, the full cycle of primary and secondary education must be understood.

To do this the U.N. system needs more information. While the Universal Periodic Review (UPR) process "shall complement and not duplicate the work of treaty bodies" increasing the information available on gender issues will complement and not duplicate the work of these bodies. While it could be argued that the CEDAW process, as well as others, examines such issues, it is not as complete as it could be, and it is not for all countries. Further, the same argument could be made on many issues which various treaty bodies and special procedures examine. The fact that there are gaps and omissions in the human rights system was a reason that UPR was introduced in the first place.

With respect to the mandate and functioning of the HRC regarding the UPR process its task is to:

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; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies.⁵⁵

Therefore, the UPR system demands "credible and reliable information provided by other relevant stakeholders."⁵⁶ By processing accurate and complete information and recommendations from as many skilled and knowledgeable sources as possible the chances of painting as accurate a picture as possible of the situation in the country that is being reviewed is increased. It is only if the

51. On the role of education See B. Bruns, A. Mingat, and R. Rakotomalala, *Achieving Universal Primary Education by 2015: A Chance for Every Child*, World Bank, Washington, D.C. (2003).

52. On gender and schooling See Lewis, M., and M. Lockheed, *Inexcusable Absence: Why 60 Million Girls Still Aren't in School and What to Do about It*. Washington, DC: Center for Global Development (2006).

53. See generally M. Buvini, J. Guzmán, & C. B. Lloyd, *Gender Shapes Adolescence*, DEVELOPMENT OUTREACH, World Bank Institute, Washington, D.C. (2007).

54. See also Abhijit Banerjee, & Esther Duflo, *Inequality and Growth: What Can the Data Say?*, 8 J. ECON. GROWTH, 267-99 (2003).

55. UN GA Res 60/251, ¶ 5(e). U.N. Doc. A/HRC/5/21.

56. U.N. Doc. A/HRC/5/21, at 15 (c).

full, accurate and complete picture is obtained can useful, adequate and workable recommendations be arrived at. It is therefore crucial that all the relevant information relating to the issues in general, and gender specifically is collected on an ongoing basis. This is critical partly to determine the situation that exists but also to track trends and changes over time.

Many UN reports, be they from the Office of the High Commissioner for Human Rights (OHCHR), Treaty Bodies, Special Procedures or elsewhere, that assess country situations usually include a section on women's human rights. These documents often point out some problems relating to the gender gap in that country.⁵⁷ However, the reports are often very general, are not comprehensive, and at times lack very specific factual information as well as trends and patterns. These reports do not often aggregate data on the extent of the problems that exist. Part of the problem is that there is a lack of data in some countries on many of the issues necessary to make an assessment of the extent of the problems identified. If there is data it is often an only set so that comparisons plotting changes over time cannot be done. Therefore, it would be useful if a set of questions that would be applicable to all countries were compiled that requested statistics⁵⁸ as well as an analysis of that data related to those questions. States should therefore be requested to regularly gather such data which could then be used to ascertain changes over time. States should therefore set in place a methodology to obtain such information with the assistance of those skilled enough and gender sensitive at drawing up a survey to obtain the necessary data that ensures that a complete gender analysis becomes possible. Thus, data collected would need to be specifically disaggregated by sex and thus information relevant to gender roles and discrimination against women could be ascertained.

The steps the state is taking, and will take, should be specifically identified by the state in its UPR report. Thus, the process of tackling the problems should be delineated as well as what and the way that a state is taxing⁵⁹ and spending⁶⁰ in general,⁶¹ and to achieve gender parity, and to overcome gender discrimination⁶². The costs involved in future spending on these issues should also be declared by the state in its report. This information should include exactly where, why, and on

57. On the gender gap see C. Deere and Cheryl R. Doss, *The Gender Asset Gap: What Do We Know and Why Does It Matter?*, 12 FEMINIST ECONOMICS 1-50 (2006)

58. On attaining relevant statistics see Sylvia Walby, Improving the statistics on violence against women, 22 STAT. J. OF U.N., 193-216 (2005)

59. Terence Smith, *Women and Tax in South Africa*, IDASA WOMEN'S BUDGET SERIES (2000).

60. D. BUDLENDER, D. ELSON, G. HEWITT, & T. MUKHOPADHYAY, (EDS.) GENDER BUDGETS MAKE CENTS: UNDERSTANDING GENDER RESPONSIVE BUDGETS (London: Commonwealth Secretariat, 2002); Kathleen Barnett, & Caren Grown, *Gender Impacts of Government Revenue Collection: The Case of Taxation*, 62 Economic Paper (London: Commonwealth Secretariat, 2004) and D. ELSON, BUDGETING FOR WOMEN'S RIGHTS: MONITORING GOVERNMENT BUDGETS FOR COMPLIANCE WITH CEDAW (2006).

61. On the discrimination in taxation see Janet Stotsky, *Gender Bias in Tax Systems*, TAX NOTES INT'L, 1913-23 (1997).

62. Rhonda Sharp & Ray Broomhill, *Women and Government Budgets*, 25 AUSTRALIAN J. SOCIAL ISSUES, 1-14 (1990).

what, resources have been, and will be, deployed. This will allow these amounts, and what effect they have, to be tracked. It will assist in determining how effective the state has been in achieving gender equality in practice when compared to, and correlated with, other data that tracks broader gender issues over time.

Collecting sex disaggregated data, as well as other types of data to gain a better picture on gender issues in a state over time, is just the beginning of such a process. For the analysis to be useful, specific numbers detailing the extent of the problems and then improvements or deterioration of the situation over time could be tracked. A blueprint may be useful to ensure that there is consistency on the questions that need to be asked and the responses that are obtained. Key to making a good assessment is the information that is relied on to make such an assessment. Causal factors negatively affecting gender equality should be identified so that they can be addressed most effectively. Obviously, a specific gender analysis of the information obtained is a necessity. Analysis is needed on both process and substantive issues in the particular state to determine the full picture of the difficulties faced.

Ensuring that all the information is collected, verified, understood, analyzed, reported and made part of the findings and recommendations, means that *who* is part of the process is critical. The question of *who* would undertake the UPR was seen as “the most important decision to be made ... whether the UPR should be undertaken entirely by the Council itself or with the assistance of individual or a group of human rights experts.”⁶³ This question still remains. It is an issue that has existed for decades. In the 1950’s Professor Hersch Lauterpacht noted that the Commission on Human Rights “will not attain the full stature of moral authority and practical effectiveness until it includes, in addition to persons appointed by governments, private individuals of distinction, full independence and experience, chosen irrespective of nationality by a selective process.”⁶⁴

A key question is whether the people that have the requisite expertise and knowledge are part of the UPR process of gathering information? How, and by whom, is that information collated? How and to who is it disseminated? How and by who is it considered? What role does it play in making findings? How does it shape the reports drafted as a consequence? How does implementation occur? What follow up is there and how does one know what has changed over time?

A range of actors could play a useful role in the UPR process, including Special Procedures,⁶⁵ and specifically the Coordinating Committee of Special Procedures, the Human Rights Council’s Advisory Committee, regional and sub-regional human rights institutions, national human rights institutions, as well as others. For example, a member of the Coordination Committee of Special Procedures,

63. International Service for Human Rights and Friedrich Ebert Stiftung, 74.

64. Cited in Alston, *supra* note 3, at 194.

65. See generally J. Gutter, *Special Procedures and the Human Rights Council: Achievements and Challenges Ahead*, 7 HUMAN RIGHTS L. REV. 93 (2007).

or someone designated by the Coordination Committee, could be invited to represent Special Procedures and present their views on the concerned country during UPR, with a specific gender brief. Further, the role of the OHCHR could be enhanced beyond that of simply collating the information already available in other UN reports, and summarizing civil society contributions to the process.

An important role could be given to the new unit envisaged in the process to achieve a consolidated U.N. gender equality and women's empowerment entity. On 15 September 2008, the General Assembly adopted a resolution on System Wide Coherence⁶⁶ in terms of which it was recommended that there ought to be a strengthening, coherence and impact of the U.N. institutional gender equality architecture by streamlining and combining existing gender institutions into a consolidated U.N. gender equality and women's empowerment entity.

The current architecture for gender equality and empowerment of women of the U.N. including the Office of the Special Adviser on Gender Issues and Advancement of Women (OSAGI), the Division for the Advancement of Women (DAW), the U.N. Development Fund for Women (UNIFEM)⁶⁷, the International Institute for Research and Training for the Advancement of Women (INSTRAW) would all become part of the new unit. The Deputy Secretary-General has submitted a number of papers outlining options and processes to achieve this. The main aim of the strengthened gender equality architecture is envisioned as "providing coherent, timely support to Member States, consistent with the principle of national ownership, in their efforts to enhance their capacity to achieve gender equality, in line with national priorities and internationally-agreed norms and policies."⁶⁸ This unit could therefore play a crucial role in a number of ways to enhance gender issue identification and remediation in the UPR process.

Having more skilled women as part of the UPR is also a necessity. For example, the OHCHR must also ensure that individuals with gender expertise are involved in the two document compilations that they are responsible for. Those that assist in the process for each country (known as the "troika" country rapporteur system) must have gender expertise so that gender is an important part of the process. Training and workshops to train and sensitize those involved in the UPR process may be useful each year before the process starts. State delegations should also have had such training, including gender sensitizing, but should also have the necessary gender expertise as a part of its delegation, as far as possible. Obviously, where the delegation is small it will be difficult to achieve this, but the sensitivity training would then become all the more important. Having women, skilled on these issues, as part of the delegation will not only enhance the capacity of the state to identify and work on gender issues during and after the UPR process,

66. (A/RES/62/277)

67. See MARGARET SNYDER, *TRANSFORMING DEVELOPMENT: WOMEN, POVERTY, AND POLITICS* (1995).

68. <http://www.un.org/ga/president/63/letters/swcgenderequality.pdf>

but will also indicate the states commitment to gender. The use of independent experts by states, and in states during the consultation and report writing stage, will only enhance the credibility and usefulness of the report. Where civil society, from a particular state can play a part during the UPR process, women's organizations and women in general ought to be given the necessary assistance and resources to meaningfully participate. However, a common misperception is that gender mainstreaming⁶⁹ is simply about the number of women participating in a process.⁷⁰ Certainly, achieving parity is important but it is only one aspect. In reality, mainstreaming has a much wider meaning. It is a:

strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.⁷¹

It is a commitment to identifying the differential impacts of structure, process, laws, practice and other issues on the lives of women and girls when compared to the impact on men and boys and finding practical solutions to the problems identified. It is also not only about empowering women, although this is a necessary step to bridge longstanding gaps caused by gender inequality, it is about the broader goal of building equal opportunities for women to participate at every level of a society.⁷²

To achieve this resources are a key issue. It has previously been argued that the "workload associated with the establishment of the new human rights body [The Human Rights Council] presents a formidable challenge to states."⁷³ While the system needs more time it is true that some states have difficulty with competing commitments and lack the resources to commit to the enterprise. Thus, states that need it ought to be given the technical and financial assistance for this purpose. In fact all states could benefit from a process to heighten the identification of gender issues and assist them to make meaningful changes to address these issues to achieve greater gender parity and reduce gender discrimination. The UPR Trust Fund could be used for this purpose but it ought to become a regular UN budget issue rather than rely on voluntary contributions.

69. On the role mainstreaming can play with respect to poverty See N KABEER, *GENDER MAINSTREAMING IN POVERTY ERADICATION AND THE MILLENNIUM DEVELOPMENT GOALS: A HANDBOOK FOR POLICY MAKERS AND OTHER STAKEHOLDERS* (2003).

70. See also Caroline Moser & Annalise Moser, *Gender Mainstreaming Since Beijing: A Review of Successes and Limitations in International Institutions*, 13 *GENDER & DEV.* 11–22 (2005).

71. Economic and Social Council (ECOSOC), *Chap. IV: Special Session on Gender Mainstreaming' A/52/3*, in *REPORT OF THE ECONOMIC AND SOCIAL COUNCIL FOR 1997*, A/52/3, (1997)

72. C. GROWN, G. GUPTA, & R. PANDE, *TAKING ACTION: ACHIEVING GENDER EQUALITY AND EMPOWERING WOMEN* (2005).

73. Allehone Abebe, *Of Shaming and Bargaining: African States and the Universal Periodic Review of the U.N. Human Rights Council*, 22 *HUMAN RTS. L. REV.* 1 (2009).

As far resources allocated to gender issues in the UN there is criticism of the amount presently devoted.⁷⁴ More resources need to be given to deal with gender issues. Certainly giving sufficient resources to the new envisaged gender unit would capacitate this institution but also assist it to help states with their work on reporting and addressing gender issues.

As far as the UPR process is concerned gender could be a standing item presented by the UPR rapporteurs to the UPR Working Group. Gender could also be a specific item in the outcome document which could have proposals for follow up. All the way through the process there needs to be specific questions asked and answered with respect to both the de jure and de facto situation in the country concerned. There also needs to be a focus on a range of sectors in each country in both the private⁷⁵ and public sectors, including, work,⁷⁶ health⁷⁷, education⁷⁸, property ownership,⁷⁹ public participation,⁸⁰ access to credit,⁸¹ access to various social services,⁸² etc to ensure that human rights of women are specifically examined and addressed. Achieving equality would have significant positive effects for growth in those countries that do better in this regard.⁸³ States ought to identify the issues, problems and challenges that they have in addressing gender discrimination and inequality. States also need to identify what they are doing, and what assistance they need to address these issues. Steps taken to

74. Bahadur, Grown, Handbury & Elson, *The Financial requirements of achieving gender equality and women's empowerment*, in EQUALITY FOR WOMEN: WHERE DO WE STAND ON MILLENNIUM DEVELOPMENT GOAL 3?, (M. Buvinic et al. eds., 2008).

75. See also R Kanbur & L. Haddad, *Are Better Off Households More Equal or Less Equal?*, 46 (3) OXFORD ECO. PAPERS, 445–58 (1994).

76. K Mammen & C. Paxson, *Women's Work and Economic Development*, 14 J. ECO. PERSPECTIVE, 141–64 (2000); See also D Weichselbaumer & R. Winter- Ebmer, *A Meta- Analysis of the International Gender Wage Gap*, 19 J. ECO. SURV. 479–511 (2005). See also, M. Buvinić, *Promoting Employment among the Urban Poor in Latin America and the Caribbean: A Gender Analysis*, Discussion Paper 12, Issues in Development, International Labour Organization, Geneva (1996).

77. AbouZahr, C., and J. P. Vaughan, *Assessing the Burden of Sexual and Reproductive Ill-Health: Questions Regarding the Use of Disability-Adjusted Life Years*, 78 BULL. WORLD HEALTH ORGAN., 655–66 (2000); Anker, R., H. Melkas, and A. Kortten, *Gender-Based Occupational Segregation in the 1990s*, Working Paper No. 16, ILO, Geneva (2003).

78. T. P.Schultz, *Why Government Should Invest More to Educate Girls*, 30 WORLD DEV., 207–25 (2002). On the effects of schooling on child health See Paul Glewwe, *Why does mother's schooling raise child health in developing countries? Evidence from Morocco*, 34 J. HUM'N RESOURCES, 124-159 (1999).

79. C.D DEERE, & M. LEON, *EMPOWERING WOMEN: LAND AND PROPERTY RIGHTS IN LATIN AMERICA* (2001); Rania Antonopoulos & Maria Floro, *Asset Ownership Along Gender Lines: Evidence from Thailand*, Gender, Working Paper 418, Levy Economics Institute (2005).

80. P.M. Paxton, & S. Kunovich, *Women's Political Representation: The Importance of Ideology*, 82 SOCIAL FORCES 87–113 (2003).

81. M. Baydas, R. L. Meyer, & N. Aguilera- Alfred, *Discrimination against Women in Formal Credit Markets: Reality or Rhetoric?*, 22 WORLD DEV., 1073–82 (1994); D. Storey, *Racial and Gender Discrimination in the Micro Firms Credit Market? Evidence from Trinidad and Tobago*, 23 SMALL BUSINESS ECONOMICS, 401–22 (1994).

82. E. Duff, *Grandmothers and Granddaughters: Old Age Pension and Intra-Household Allocation in South Africa*, 17 WORLD BANK ECO. REV. 1–25(1994). See also, J.P. Jütting, & C. Morrisson, *Changing Social Institutions to Improve the Status of Women in Developing Countries*, OECD Development Centre Policy Briefs No. 27, OECD, Paris, (2005).

83. S. Seguino, *Gender Inequality and Economic Growth: A Cross- Country Analysis*, 28 WORLD DEV., 1211–30 (2000).

deal with violence against women, as well as success rates, and the steps they are still going to take need to be mentioned specifically. Rates of women reporting domestic, and other types of violence, also ought to be included in the state report, including issues such as the prevalence of marital rape. Criminal justice measures⁸⁴ to deal with violence against women and other types of discrimination, as well as other remedial responses to gender discrimination ought to be included in the report as well as further steps the state intends implementing, and the time frame for doing so. The number of prosecutions, convictions, and the type of sentences handed down over a number of years in such matters ought to be reported to determine the deterrence value and effectiveness of such measures. Specific steps to sensitize the police,⁸⁵ judiciary, prosecutors and other staff⁸⁶ of the system including the type, and the numbers of people that have been through such training also ought to be reported. The amount of human and financial resources that have been devoted to achieving gender equality and eradicating gender discrimination, and the amounts to be allocated in the future, should also be included. The state should also report on its equality legislation, specifically as far as gender is concerned, as well as any other types of legislative and other processes it has, or intends taking, to achieve gender equality. The state also ought to report on the effectiveness of such processes and what it still needs to do to effect change, the time frame envisaged to do so, and the assistance it needs to do so. Specific issues such as trafficking in women ought also to be reported.⁸⁷

As far as the present UPR documentation process is concerned it is likely negatively affected by strict limitations in the space permitted in submissions: 20 pages for state reports, 10 pages for the summaries of recommendations by special procedures and treaty bodies and 10 pages for the summaries of information provided by all non-governmental organizations and institutions together.⁸⁸

The role of women in the process at state level in the compilation of the state report is critical. While state reports generally refer glowingly to the consultation process used to compile the state document, there ought to be an increase in the consultations held, and the state report should detail the specifics of the consultation process. The numbers and names of stakeholders that participated should be specifically included so that the type and range of consultations that occurred are transparent. The methodology employed in the consultation process should also be clearly delineated. The full state report, which ought to be more

84. See also Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777 (2000); L. Chirayath, C. Sage, & M. Woolcock, *Customary Law and Policy Reform: Engaging with the Plurality of Justice System*, Background Paper for World Development Report 2006: Equity and Development, World Bank, Washington, D.C. (2005).

85. K. Huisman, J. Martinez & C. Wilson, *Training Police Officers on Domestic Violence and Racism*, 11 VIOLENCE AGAINST WOMEN (2005).

86. See, e.g., S. Prasad, *Medicolegal Response to Violence Against Women in India*, 5 VIOLENCE AGAINST WOMEN, 478-506 (1999).

87. Don Ellison, *A framework for measuring human trafficking*. Calverton, MD: ORC Macro (2004).

88. *Id.* at, 15(b) and 15 (c).

than 20 pages long, could be posted online if it was too long for replication. It could also be printed in only one U.N. language which is already the case for some UN reports. Having sufficient and complete information is helpful for everyone on the process. The state must have the necessary information to compile the report. To limit the length of the report just ensures that information often that which is critical to the state concerned, is excluded from the reporting process. This is at the cost of these issues. As a result it is usually the marginalized, such as vulnerable groups including women, whose information suffers where there are restrictions on the amount of information included.

As far as civil society is concerned OHCHR requires that submissions from each civil society institution should not exceed five pages. It is problematic that these submissions that were posted in full on the OHCHR website are no longer posted there. While there is supposedly some merit in the argument on shortening submissions to save printing costs civil society written contributions ought to be promoted and assisted as the number of role players that contribute in some sessions, even when permitted to do so, is limited.

For a number of states that went through UPR already, such as Gabon and Mali only two stake holders provided input. In fact, for many countries the number of civil society organizations participating has been very low. There were seven organizations for Benin, eight organizations for Zambia, nine organizations for Ghana, ten organizations for Algeria, seventeen organizations for Morocco and eighteen organizations for South Africa.⁸⁹ Increasing participation is therefore a necessity for some countries in the UPR process. This is specifically true for civil society groups that focus directly on gender issues. For countries where there is low participation more space ought to be given to the few NGOs that participate in order for them to more completely ventilate the issues, especially with regard to gender issues.⁹⁰

The role of civil society in general in the UPR process ought to be enhanced. While the exclusion of civil society organizations to address the Council at times is argued as a means "to guarantee equal treatment to all States and not to overburden the mechanism"⁹¹ what it does is to at times, at least, exclude valuable information which can have very positive effects for the state concerned. While this may have time, resource and other effects it could ensure that a better review process occurs. Even where NGOs are permitted to participate, they often play a limited role. For example, during the consideration of reports for some countries of the world few NGOs participated. For Mali and Gabon for example, no NGOs participated at all. Generally speaking NGOs in the global south have not been

89. Abebe, *supra* note 73, at 22.

90. On the role of NGOs See P. Scannella and P. Splinter, *The U.N. Human Rights Council: A Promise to be Fulfilled*, 7 HUM'N RTS. L. REV. 41 (2007); See also, Gareth Sweeney and Yuri Saito, *An NGO Assessment of the New Mechanisms of the UN Human Rights Council*, 9 HUM'N RTS. L. REV., 203-223; (2009).

91. At 15 (a).

able to play a major role and are not often be able to participate at all.⁹² In fact, NGOs from the Global South in 2007 comprised only one third of the total number of 3050 NGOs that enjoy U.N. consultative status. This was however better than it was in 1996 when NGOs from the Global South only comprised one fifth of the total.⁹³

The UPR process to document and remediate the gender situation in countries would be aided by a specific and separate report on women by the state, by stakeholders and by the OHCHR. Thus, an additional document from each of them would be useful and give specific attention to gender issues. Failing a separate report, there ought to be at least a specifically separate section in each of the present reports. Specific questions should be addressed throughout the UPR process concerning gender issues, including in the reports. At the minimum, the general guidelines for submission of documents need to contain greater guidelines on gender issue identification. Gender issues ought to be a standing item on the list of issues for identification and discussion. The UPR outcome document ought to have a specific section on gender and the steps that the state ought to be taking to remediate the gender problems in their state. Specific steps to guide the recommendations process ought to be devised, possibly including a blueprint for methodology and sections to be included.

To promote gender equality and reduce gender discrimination greater use of the media ought to occur. The media should be sensitized so as to promote a human rights culture, and focus on gender and gender issues specifically. Such an advance would also be aided if steps were taken to assist the media in reporting on the UPR process. This should occur at both the state and at the UN. Ensuring the media reports on the findings of the UPR, which is not often the case at present, will only enhance the legitimacy, integrity and effectiveness of the process. In fact reporting on the UN human rights system really only occurs when crises occur or when something controversial is happening. Finding ways to get the media to report on the process at the national level, before the UPR process occurs at the UN, as well as afterwards, will make it more likely that the UPR process has an effect at the domestic level. Making civil society more aware of the process will probably enhance the outcome of the process and make it more likely that the recommendations become realizable. To promote UPR domestically the national legislature could hold hearings. Civil society could also have its own workshops and other events to publicize the UPR process. Such processes would be useful in seeking out useful information to influence the role and effectiveness of the process.

A mechanism to track and assist implementation of the findings of UPR is also needed. At present findings that are made are not always taken forward to ensure that the issues identified are focused on and remediated. Therefore, a specific

92. Lucia Nader, *The Role of NGOs in the UN Human Rights Council*, 7 INT'L. HUM'N. RTS. J.8 (2007).

93. <http://www.un.org/esa/coordination/ngo/pie2007.html>

and clear follow-up mechanism to the UPR process for all countries is needed. So is a clear and definitive method with indicators⁹⁴ to evaluate with criteria and benchmarks.⁹⁵ In this regard the Millennium Development Goals⁹⁶ could be used in part.⁹⁷ At the June 2007 organizational meeting of the Council it noted: "In considering the outcome of the universal periodic review, the Council will decide if and when any specific follow-up is necessary."⁹⁸ Certainly, there is a need for a follow-up mechanism. This ought to ensure that a state tackles the problems that have been identified, but that the state is given the necessary support to capacitate it to deal with the identified problems. There is also a need for measures to ensure that what was picked up in the first UPR process are specifically tracked and dealt with in a country's second review after the four year UPR cycle has been completed. A process should be put into place to guard against a situation that the same problems are identified in every cycle. A system to measure a state's improvement from cycle to cycle ought to be identified and implemented. This is important as the system ought to be more than an accountability mechanism but one that actually achieves improvement on human rights issues in the country under review, specifically on achieving gender parity and eradicating gender discrimination.

CONCLUSION

The UPR process has the potential to have a major impact on the human rights landscape in all countries around the world. However, the extent to which UPR will be successful is dependent on whether or not it changes and affects positively human rights domestically. This obviously is even truer in those countries where significant and serious human rights abuses have been and are occurring. At the present time this does not seem that likely. Further reforms to the U.N. system, the Human Rights Council and the UPR process particularly, seem to be necessary to ensure that the process has more of the desired effect. It must however be noted that the UPR process is not, and cannot, be the panacea, or the sole solution, for tackling gross and other human rights abuse that are occurring in many states. All the various mechanisms need to play their part. However, it is domestic states that have the greatest role to play in ensuring that the violations that are occurring are addressed and halted. It is largely states which effect change on

94. On the need for indicators to measure processes See Katherine Pistor, *Launching a Global Rule of Law Movement: Next Steps November 10, 2005*, 25 BERKELEY J. INT'L L. 100, 103 (2007).

95. See lessons on this in, Berit Aasen, *Lessons from Evaluations of Women and Gender Equality in Development Cooperation*, Norad Synthesis Report No. 2006/1, Norwegian Institute for Urban and Regional Research (NIBR), Oslo, (2006). See also, TONY BECK, USING GENDER-SENSITIVE INDICATORS: A REFERENCE MANUAL FOR GOVERNMENTS AND OTHER STAKEHOLDERS (1999).

96. Mary Ellsberg, *Violence against women and the Millennium Development Goals: Facilitating women's access to support*, 94 INT'L. J GYN. & OBSTET. 325-332 (2006).

97. Dina Abu-Ghaida & Stephan Klasen, *The Costs of Missing the Millennium Development Goal on Gender Equity*, 32 WORLD DEV., 1075- 1107(2004).

98. *Id.* 37.

their territory. Others can only assist, critique, provide guidance and suggestions. With sovereignty again on the ascendancy it must be remembered that it is states that control what occurs within their own borders. While the international norm of the “responsibility to protect”, which would allow intervention by the international community, or by others with international sanction, to occur in certain circumstances, was increasingly being accepted in the early years of the twenty-first century, it is now seemingly on the decline. Many of those, including a good number of states, that adhered to, or supported R2P, no longer do so. Some have watered down what they believe R2P means in practice, so as to make it a shell of what it was envisaged to be. Some have pared down R2P, including UN Secretary-General Ban-ki Moon, supposedly to gain greater acceptance of its principles. As a result R2P, where it is to be used, will be similar to what has existed before, and will probably not achieve much headway and have little of the effect that it was intended to have. Thus, those who opposed the growth of R2P have seemingly won the battle for control of what R2P means, and when it should, and will be used. While there was hope that states that were committing egregious human rights violations would be stopped from doing so, this no longer seems to be true. Again victims of human rights abuse by the states they live in have few places to go, and few to turn to, to halt those abuses. Seemingly, the world has turned its back on the millions of victims that after the Rwandan genocide it again told “Never Again”

The means to prevent, or to stop human rights abuses that are occurring in a state by the state, remains a serious problem. Where this is the case it is very rare for that state to be forced to halt its abuse. Getting a state to comply with the views of others concerning the way it conducts itself is a major challenge. Until mechanisms are found, therefore, to remedy this situation states will continue to be able to commit human rights violations with impunity. Those that do so at present often snub their noses at the UN, and others, who call for a halt to what is occurring. While pressure can, and often is, brought to bear on some of these countries, others seemingly are able to withstand such pressure even if it is forcefully applied. The states that apply such pressure often do in cases where they have a strategic interest in the country concerned, or the region. Where no such interest exists often the situation in that country remains off the radar with dire consequences for the victims who live there.

While it is useful that regional and sub-regional systems, with their powers to deal with states, are growing in number and stature, some of these systems are weak, have few resources, and are not hearing many cases. Those that are hearing cases, and are making findings do not often see their judgments being effectuated in the state concerned. Some systems hear very few cases and therefore play a limited role in their region with respect to changing the lives of the people in their areas. While the proposal for a World Court of Human Rights where individuals and others could take states on review where their human rights are violated is a useful one, it will only be a useful institution if its decisions can be enforced. This

would not be the case today.

The greatest weakness, with the international human rights system is its inability to enforce the decisions of human rights tribunals, courts and other institutions. This means that impunity is still a major issue, particularly by states. While the growth of international and hybrid criminal tribunals, to hold individual leaders accountable. Has been the major development area of international law issue of the last twenty years, victims still have few choices, and fora to approach, to obtain redress where their rights are violated. Access to civil courts, particularly for cases against states, remains limited. It is only in certain parts of the world that regional or sub regional bodies can be approached and then mostly in very limited circumstances. Even in the US where foreign victims can sue foreign perpetrators, holding states accountable is almost impossible. In any case, the obstacles and jurisdictional hurdles that victims need to overcome to bring these types of claims ensure that few victims are able to do and fewer are able to succeed. Those that are successful almost never receive the judgments and reparations the courts award. An effective means to ensure that states are compliant with these decisions as well as the results of the UPR process needs to be found. An independent and verifiable means of follow up to the UPR process needs to be found. This procedure should plot and report on the reality of what states have done to redress the issues identified in the UPR process. This is crucial because if the findings of UPR are not complied with by states then the process will have little meaning in practice, and for the promotion and protection of human rights for billions of people in all parts of the world.

As far as achieving gender equality is concerned much is still to be achieved. Discrimination against women is still rampant around the world. For most women gender parity is a distant dream. At international, regional, sub-regional and domestic level much more ought to be done to improve the lives of the majority of women and girls who live in desperate conditions. For most women and girls achieving even some modicum level of equality is a long way off. In fact, the right to equality and human rights in general, is meaningless for billions of women and girls. For this reason alone the Human Rights Council and its UPR process have a lot to achieve. The fundamental question is whether they are up to the task and are able they able to make states deliver on the promise of equality for all?