

16 SHARING BEST PRACTICE?

The EU, the Right to Water and Sanitation and the UPR

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16.1 INTRODUCTION

Protection of human rights is one of the most important core values of the European Union (EU). Recently, the human right to water directly or indirectly gained some form of recognition from the member states (MSs) and importance within the EU, as a whole.¹ Some of the MSs explicitly recognize the human right to water in their constitution or other legislation, usually as a part or prerequisite of another human right. For example the Fundamental Law of Hungary declares the right to healthy environment and obliges the government to “promote the effective application of the right [...] by ensuring access to healthy food and drinking water....”² France can stand as another example guaranteeing water as a human right to everybody from 2016.³ Important steps related to the access to water were taken by the EU as a whole as well: after the basic legislation on water was adopted, the European Commission became active in policy-making.⁴ Also, European citizens made their voice heard via a European Citizens’ Initiative submitted in 2013, claiming some action from the Commission.⁵ Important to note as well, that all MSs of the EU are also contracting parties to the European Convention on Human Rights⁶ and stand under the jurisdiction of the European Court of Human Rights, known as an effective protector even of those human rights, which are not explicitly written into the text of the Convention, for example the right to water.⁷ From all these facts the logical assump-

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1 European Commission, Reporting Requirements and Synthesis Reports on Drinking Water Quality, http://ec.europa.eu/environment/water/water-drink/reporting_en.html.

2 The Fundamental Law of Hungary (25 April 2011), Art. XX (2).

3 National Assembly of France, Bill No. 758. (14 June 2016), Art. 1.

4 European Commission, Official website, Environment, http://ec.europa.eu/environment/water/water-drink/index_en.html (accessed: 29 May 2018).

5 European Citizens’ Initiative, Commission registration number: ECI(2012)000003, <http://ec.europa.eu/citizens-initiative/public/initiatives/successful/details/follow-up/2012/000003/en>.

6 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), Rome, CETS No. 005. (1950).

7 WaterLex, The Human Rights to Water and Sanitation in Courts Worldwide, a selection of national, regional and international case law, 2014, <https://www.waterlex.org/publications/the-human-rights-to-water-and-sanitation-in-courts-worldwide/>.

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tion follows: the EU and its MSs have a best practice on the protection of the human right to water to share.

Since 2006, there is a forum designed for, among others, sharing existing best practices of protection and promotion of human rights: the Universal Periodic Review Mechanism (UPR) of the Human Rights Council (HRC). The UPR monitors the protection of human rights in all member states of the Organization of the United Nations (UN) in four and a half years cycles.⁸ One of the objectives of the UPR is “sharing of best practice among States and other stakeholders”,⁹ thus the whole mechanism can be considered as a “learning culture in which UN member states ‘share best practice’ and engage in constructive criticism...”¹⁰ Based on the full analysis of the recommendations given by EU MSs during the two already finished cycles of the UPR, this paper intends to discover if there is a common position and an identifiable best practice on the protection and promotion of the human right to water and sanitation within the EU.

16.2 METHODOLOGY

According to the rules of UPR, states can share their best practices in two ways: i) by citing them during their own review, and ii) by giving recommendations to other states. Thus, this analysis will be based on documents of EU MSs under review, and recommendations given by them. Because of capacity and length limitations the reactions by the states under review (SuR) to these recommendations will not be analyzed in the present study.¹¹

The analysis will take into consideration the two completed cycles of the UPR (2008-2011 and 2012-2016), so that the possible differences between the two cycles can be identified.

The examination will be divided into three parts: a) the whole review process of EU MSs, b) recommendations of EU MSs to each other, and finally, c) recommendations of EU MSs to SuRs not members to the EU. This latter separation is justified by the observation made during the first cycle of the UPR that “EU countries were frequently ‘too

8 HRC Res. 5/1 on Institution-building of the United Nations Human Rights Council, UN Doc. A/HRC/Res/5/1 (2006).

9 Id. Ann., point 4, (d).

10 J.K. Cowan & J. Billaud, ‘Between learning and schooling: the politics of human rights monitoring at the Universal Periodic Review’, *Third World Quarterly*, Vol. 36, No. 6, 2015, p. 1175.

11 Two databases were used as a source of documents: the one prepared and maintained by an NGO, UPR Info, in Special Consultative Status with the United Nations Economic and Social Council, because its practical usability <https://www.upr-info.org/en?gclid=CIquwfOawdQCFdcHKgodxJEJ1w>, and the official website of the Office of the High Commissioner of Human Rights as a reference point. <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>.

kind to each other”¹², and this difference in approach should be shown in the examination too.

From the practice of international organizations, involved in monitoring the protection of human rights (e.g. UN human rights treaty bodies), it is evident that the relevant references in documents are not necessarily explicitly mentioned under the “human right to water” *per se*, but as a part of another human right.¹³ Consequently, all recommendations mentioning water should be examined, even if they target the protection of another, related human right.¹⁴

16.3 WHAT IS SHARED?

16.3.1 EU MSs as SuRs

During the review of the EU MSs, in case of six MSs the right to water and sanitation was not mentioned at all (either in the national report or in other documents of the process).¹⁵ Consequently, the big majority of MSs, the Office of the High Commissioner for Human Rights (OHCHR), or other stakeholders found it important to deal with the human right to water and sanitation. However, naturally, the issues raised were different in nature, in seriousness, in frequency. The main findings, based on the detailed analysis:

- Some of the review documents dealt with issues related to the right to water and sanitation only in the first cycle (four MSs),¹⁶ some only in the second cycle (seven MSs),¹⁷ and some in both (11 MSs).¹⁸ Solely from these numbers it follows that between the first and second cycles the right to water and sanitation gained some, but not significant importance.
- We can consider “real” best practice sharing instances those cases, when a MS willingly mentioned an issue related to the right to water and sanitation in its national report. Out of the 22 relevant review processes, national documents contained references in 13 cases.¹⁹ It is interesting to note that some of the references in the second

12 Cowan & Billaud 2015, p. 1181.

13 M. Szappanyos, *A vízhez való jog*, Veszprém, 2013. p. 25.

14 The following human rights will receive special attention thorough the analysis as human rights closely related to the right to water: right to an adequate standard of living, right to the highest attainable standard of health, right to adequate housing, right to food, right to life and human dignity, right to gain a living by work, right to take part in cultural life, right to education, right to healthy environment, prohibition of torture or other inhuman or degrading treatment. *Id.* pp. 29-30.

15 Austria, Belgium, Czech Republic, Cyprus, Latvia, the Netherlands.

16 Poland, Luxemburg, Germany, Spain. The first cycle references are marked with bold.

17 France, Malta, Portugal, Slovenia, Estonia, Denmark, Ireland.

18 Finland, United Kingdom, Romania, Slovakia, Italy, Sweden, Bulgaria, Croatia, Greece, Hungary, Lithuania.

19 Finland in 2nd cycle, Romania in both cycles, Luxemburg in 1st cycle, Germany in 1st cycle, Slovakia in both cycles, Portugal in 2nd cycle, Slovenia in 2nd cycle, Spain in 1st cycle, Sweden in 2nd cycle, Bulgaria in 2nd cycle, Greece in both cycles, Hungary in 2nd cycle, and Ireland in 2nd cycle.

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cycle national documents were reactions to the recommendations of the first cycle, and/or dealing with problems already discussed in the first cycle.²⁰

– Finally, the issues addressed should be examined:

16.3.1 <i>Right to water and sanitation</i>	United Kingdom, ²¹ Romania, ²² Portugal, ²³ Bulgaria, ²⁴ Lithuania ²⁵
16.3.1 Problems and improvement of the situation (projects, programmes)	
16.3.1 <i>Right to water and sanitation</i>	United Kingdom, ²⁶ France, ²⁷
16.3.1 Violation of the right to water outside of the country, by the legal entities registered in the country	Germany, ²⁸ Italy ²⁹
16.3.1 <i>Right to water and sanitation</i>	Luxemburg, ³⁰ Germany, ³¹
16.3.1 Legislation declaring, protecting the right to water and sanitation	Italy, ³² Slovenia, ³³ Spain, ³⁴ Greece, ³⁵ Ireland ³⁶
16.3.1 Consideration of the human right to water and sanitation in policy-making	
16.3.1 <i>Minorities</i>	Finland, ³⁷ Sweden ³⁸
16.3.1 Right of minorities to participate in political life of their country	

20 Finland, Slovakia, Sweden.

21 HRC, United Kingdom of Great Britain and Northern Ireland, Report of the Working Group (Final), A/HRC/21/9, 6 July 2012, 48.

22 HRC, Romania, National report, A/HRC/WG.6/15/ROU/1, 3 December 2012, 28.

23 HRC, Portugal, National report, A/HRC/WG.6/19/PRT/1, 4 February 2014, 116.

24 HRC, Bulgaria, Compilation of UN Information, A/HRC/WG.6/9/BGR/2, 30 July 2010, 55.

25 HRC, Lithuania, Compilation of UN Information, A/HRC/WG.6/12/LTU/2, 25 July 2011, 64.

26 HRC, United Kingdom, Summary of other stakeholders information, A/HRC/WG.6/1/GBR/3, 11 March, 2008, 32.

27 HRC, France, Summary of other stakeholders information, A/HRC/WG.6/15/FRA/3, 8 November 2012, 76.

28 HRC, Germany, Compilation of UN information, A/HRC/WG.6/4/DEU/2, 25 November 2008, 38.

29 HRC, Italy, Summary of stakeholders information, A/HRC/WG.6/7/ITA/3, 17 November 2009, 4.

30 HRC, Luxemburg, National report, A/HRC/WG.6/3/LUX/1, 26 September 2008, 138.

31 HRC, Germany, National report, A/HRC/WG.6/4/DEU/1, 10 November 2008, 74.

32 HRC, Italy, Summary of stakeholders information, *supra*, 2009, 42.

33 HRC, Slovenia, National report, A/HRC/WG.6/20/SVN/1, 15 August 2014, 17.

34 HRC, Spain, National report, A/HRC/WG.6/8/ESP/1, 19 February 2010, 9-10. & 84-86.

35 HRC, Greece, National report, A/HRC/WG.6/11/GRC/1, 14 February 2011, 15; HRC, Greece, National report, A/HRC/WG.6/25/GRC/1, 22 February 2016, 9.

36 HRC, Ireland, National report, A/HRC/WG.6/25/IRL/1, 9 February 2016, 9; HRC, Ireland, Summary of other stakeholders information, A/HRC/WG.6/25/IRL/3, 23 February 2016, 63.

37 HRC, Finland, National report, A/HRC/WG.6/13/FIN/1, 7 March 2012, 100. (Rights of the Sami people to take part in policy-making related to land rights and water resources.)

38 HRC, Sweden, National report, A/HRC/WG.6/21/SWE/1, 14 November 2014, 29.

16.3.1	<i>Minorities</i>	Romania, ³⁹ Slovakia, ⁴⁰ Portugal, ⁴¹ Italy, ⁴² Slovenia, ⁴³ Denmark, ⁴⁴ Bulgaria, ⁴⁵ Greece, ⁴⁶ Hungary, ⁴⁷ Lithuania ⁴⁸
16.3.1	Need or projects for the improvement of living conditions of minorities, with special regard to sanitation and water supply	
16.3.1	<i>Prohibition of torture</i>	Poland, ⁴⁹ Bulgaria, ⁵⁰ Estonia, ⁵¹ Ireland ⁵²
16.3.1	Improvement of the prisons, detention centers in terms of water supply and/or sanitation	
16.3.1	<i>Right to health</i>	Romania ⁵³
16.3.1	Reasons of poor health conditions, including the lack of water and sanitation	

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- 39 HRC, Romania, National report, A/HRC/WG.6/2/ROM/1, 2 May 2008, 28; HRC, Romania, Summary of other stakeholders information, A/HRC/WG.6/15/ROU/3, 29 October 2012, 8.
- 40 HRC, Slovakia, National report, A/HRC/WG.6/5/SVK/1, 5 March 2009, 65; HRC, Slovakia, Compilation of UN information, A/HRC/WG.6/5/SVK/2, 16 March 2009, 40 & 50; HRC, Slovakia, Summary of other stakeholders information, A/HRC/WG.6/5/SVK/3, 19 February 2009, 24-25; HRC, Slovakia, National report, A/HRC/WG.6/18/SVK/1, 8 November 2013, 64.
- 41 HRC, Portugal, Summary of other stakeholders information, A/HRC/WG.6/19/PRT/3, 21 January 2014, 62.
- 42 HRC, Italy, Summary of other stakeholders information, A/HRC/WG.6/20/ITA/3, 4 August 2014, 83.
- 43 HRC, Slovenia, National report, *supra*, 2014, 18 & 65; HRC, Slovenia, Compilation of UN information, A/HRC/WG.6/20/SVN/2, 18 August 2014, 40; HRC, Slovenia, Summary of other stakeholders information, A/HRC/WG.6/20/SVN/3, 25 July 2014, 50-54.
- 44 HRC, Denmark, Summary of other stakeholders information, A/HRC/WG.6/24/DNK/3, 9 November 2015, 64.
- 45 HRC, Bulgaria, Summary of other stakeholders information, A/HRC/WG.6/9/BGR/3, 28 July 2010, 56; HRC, Bulgaria, Compilation of UN information, A/HRC/WG.6/22/BGR/2, 23 February 2015, 69.
- 46 HRC, Greece, National report, *supra*, 2011, 40-41; HRC, Greece, Summary of other stakeholders information, A/HRC/WG.6/11/GRC/3, 28 January 2011, 63-64; HRC, Greece, Summary of other stakeholders information, A/HRC/WG.6/25/GRC/3, 22 February 2016, 16.
- 47 HRC, Hungary, Compilation of UN information, A/HRC/WG.6/11/HUN/2, 21 February 2011, 58.
- 48 HRC, Lithuania, Summary of other stakeholders information, A/HRC/WG.6/12/LTU/3, 22 July 2011, 44; HRC, Lithuania, Summary of other stakeholders information, A/HRC/WG.6/26/LTU/3, 17 August 2016, 78.
- 49 HRC, Poland, National interim report (March 2011).
- 50 HRC, Bulgaria, National report, A/HRC/WG.6/22/BGR/1, 13 February 2015, 101.
- 51 HRC, Estonia, Compilation of UN information, A/HRC/WG.6/24/EST/2, 23 November 2015, 33.
- 52 HRC, Ireland, National report, *supra*, 2016, 50; HRC, Ireland, Summary of other stakeholders information, *supra*, 2016, 41.
- 53 HRC, Romania, Compilation of UN information, A/HRC/WG.6/2/ROM/2, 10 April 2008, 7.

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16.3.1	<i>Vulnerable groups</i>	Germany, ⁵⁴ Malta, ⁵⁵ Slova-
16.3.1	(Elderly, migrants, disadvantaged and marginalized groups, members of the rural population, refugees)	kia, ⁵⁶ Italy, ⁵⁷ Bulgaria, ⁵⁸ Croatia, ⁵⁹ Greece ⁶⁰
<i>Water management and environmental protection</i>		Slovenia, ⁶¹ Hungary ⁶²

The examination of the documents showed that the compilation of the OHCHR and the submission of other stakeholders are generally limited to listing problems (though naturally the detailed descriptions of problems do have value in the process, they do not contribute to the clarification of best practice) or simply state the need to address these problems, without giving specific suggestions to the “how.”

As for the national reports as effective ways to share best practices: the EU MSs limited themselves to three different remarks. First, they mentioned legislative steps or policy measures made to ensure the right to water and sanitation, generally in a very short remark. For example, Luxembourg in its 1st cycle national report mentioned legislative steps “...to provide basic necessities in terms of medical treatment, housing, food, clothing, mobility, water for human consumption....”⁶³ or Spain reported on an action policy plan to improve the protection and promotion of human rights, including the right to water.⁶⁴ Second, the majority of MSs dealing with the right to water and sanitation in their national report, mentioned specific projects, programmes which target to solve problems. Significant part of these remarks only mention the existence of these projects, but some give further details on their purpose, implementation and time period, for example Romania⁶⁵ or Slovenia.⁶⁶ But also in the latter cases, the information provided by the MSs is usually not longer or more detailed than maximum two paragraphs in the national report. Third, the least numerous remarks: some EU MSs reported on problems they are facing, usually neglecting details, for example Slovakia mentioned that “[M]any Roma live in inadequate living conditions without access to heating, water, gas and electricity.”⁶⁷

54 HRC, Germany, Summary of other stakeholders information, A/HRC/WG.6/4/DEU/3, 14 November 2008, 33.

55 HRC, Malta, Summary of other stakeholders information, A/HRC/WG.6/17/MLT/3, 30 July 2013, 10.

56 HRC, Slovakia, Compilation of UN information, A/HRC/WG.6/18/SVK/2, 11 November 2013, 50.

57 HRC, Italy, Summary of stakeholders information, *supra*, 2009, 42.

58 HRC, Bulgaria, Summary of other stakeholders information, *supra*, 2010, 59.

59 HRC, Croatia, Compilation of UN information, A/HRC/WG.6/22/HRV/2, 23 February 2015, 45.

60 HRC, Greece, Compilation of UN information, A/HRC/WG.6/25/GRC/2, 7 March 2016, 27-28.

61 HRC, Slovenia, National report, *supra*, 2014, 17.

62 HRC, Hungary, National report, A/HRC/WG.6/25/HUN/1, 12 February 2016, 90.

63 HRC, Luxembourg, National report, *supra*, 2008, 138.

64 HRC, Spain, National report, *supra*, 2010, 9-10.

65 HRC, Romania, National report, *supra*, 2012, 28.

66 HRC, Slovenia, National report, *supra*, 2014, 65.

67 HRC, Slovakia, National report, *supra*, 2009, 65.

After the detailed analysis it can be confidently stated that based on the national reports, the compilation of the OHCHR documents and the submissions of relevant stakeholders the best practices to follow are not identifiable. Even if MSs gave out some details of some projects (usually the ones they consider successful), the know-how remains hidden. However, admittedly, detailing all content related to the human right to water itself could also be considered best practice.

16.3.2 Recommendations from EU MSs to Other EU MSs

During the two cycles of UPR, 84 recommendations were made by EU MSs, out of these, 12 were addressed to other EU MSs. The main findings:

- Only eight MSs received recommendations closely related to the right to water and sanitation: Bulgaria (one recommendation), Ireland (one recommendation), Luxembourg (one recommendation), Romania (one recommendation), Slovakia (two recommendations), Slovenia (two recommendations), Sweden (two recommendations), and United Kingdom (two recommendations). Only two of the recommendations were made during the first cycle.⁶⁸
- The number of recommending States is even lower than of addressees, six MSs made the effort to draw attention to problems related to the right to water and sanitation. The majority of the recommendations were made by two MSs particularly interested in the human right to water and sanitation: Spain (six recommendations) and Austria (two recommendations), the other countries, Denmark, Sweden, Portugal, and Germany, made only one recommendation each.
- The topics of the recommendations were:

16.3.2 <i>Right to water and sanitation</i>	Luxemburg (from Spain), ⁶⁹
16.3.2 Legislation declaring, protecting the right to water and sanitation	Romania (from Spain), ⁷⁰ Slovenia (from Portugal), ⁷¹ United Kingdom (from Spain and Germany) ⁷²
16.3.2 Consideration of the human right to water and sanitation in policy-making	

⁶⁸ The first cycle references are marked with bold.

⁶⁹ HRC, Luxembourg, Report of the Working Group on the Universal Periodic Review, A/HRC/23/10, 25 March 2013, 116.18.

⁷⁰ HRC, Romania, Report of the Working Group on the Universal Periodic Review, A/HRC/23/5, 21 March 2013, 109.109.

⁷¹ HRC, Slovenia, Report of the Working Group on the Universal Periodic Review, A/HRC/28/15, 10 December 2014, 115.140.

⁷² HRC, United Kingdom of Great Britain and Northern Ireland, Report of the Working Group on the Universal Periodic Review, *supra*, 2012, 110.104. & 110.105.

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16.3.2	<i>Minorities</i>	Sweden (from Austria – three recommendations) ⁷³
16.3.2	Right of minorities to participate in the political life of their country	
16.3.2	<i>Minorities</i>	Bulgaria (from Spain), ⁷⁴ Slovakia (from Spain and from Sweden), ⁷⁵ Slovenia (from Spain) ⁷⁶
16.3.2	Need or projects for the improvement of living conditions of minorities, with special regard to sanitation and water supply	
16.3.2	<i>Prohibition of torture</i>	Ireland (from Denmark) ⁷⁷
16.3.2	Improvement of the prisons, detention centers in terms of water supply and/or sanitation	

The eight recommendations given by and addressed to EU MSs were limited in terms of issues. Especially so, if we take into consideration the lack of dialogue preceding the recommendations: such discussion took place only in case of four MSs during their review (Ireland, Slovenia, Sweden, United Kingdom). As in the UPR documents analyzed above, three types of comments were made: a) expressing concern over a situation⁷⁸ or praising improvement⁷⁹ by recommending states; b) explaining or promising legislative steps;⁸⁰ and c) mentioning ongoing project or planned improvement⁸¹ by SuRs. Based on these recommendations it seems that EU MSs do not have significant best practice to share amongst each other, and find only minor issues to be improved in each others' practice related to the promotion and protection of the right to water and sanitation.

16.3.3 Recommendations from EU MSs to Non-MSs

From the data above it is clear, that the big majority of recommendations of EU MSs related to the right to water and sanitation were addressed to non EU MSs, 72 altogether during the first two cycles. The main findings following from the analysis:

- Only half of the EU MSs made recommendations for States outside of the EU. The

73 HRC, Sweden, Report of the Working Group on the Universal Periodic Review, A/HRC/15/11, 16 June 2010, 95.72; HRC, Sweden, Report of the Working Group on the Universal Periodic Review, A/HRC/29/13, 13 April 2015, 145.102.

74 HRC, Bulgaria, Report of the Working Group on the Universal Periodic Review, A/HRC/30/10, 8 July 2015, 123.156.

75 HRC, Slovakia, Report of the Working Group on the Universal Periodic Review, A/HRC/26/12, 26 March 2014, 110.137 & 110.140.

76 HRC, Slovenia, Report of the Working Group on the Universal Periodic Review, *supra*, 2014, 115.158.

77 HRC, Ireland, Report of the Working Group on the Universal Periodic Review, A/HRC/19/9, 21 December 2011, 106.44.

78 *Id.* 78.

79 *Id.* 83.

80 HRC, Slovenia, Report of the Working Group on the Universal Periodic Review, *supra*, 2014, 56.

81 HRC, United Kingdom of Great Britain and Northern Ireland, Report of the Working Group on the Universal Periodic Review, *supra*, 2012, 48.

dominant majority of the recommendations were made by Spain (38 recommendations); Slovenia (ten recommendations), Germany (four recommendations) and Portugal (four recommendations) were also relatively active; while the following MSs limited themselves to one or two remarks: Slovakia (two), Sweden (two), Austria (two), Hungary (two), Luxembourg (two), Netherlands (two), Ireland (one), Denmark (one), Italy (one), Cyprus (one). The number of references grew between the two cycles, from 21 to 53.⁸²

- The SuRs being addressed are more various, though their number compared to the whole UN membership is quite low: 50 States (some countries received three,⁸³ others two recommendations⁸⁴). The regions of the SuRs are various too, there are States addressed from different regional groups (Asia – 27 States, Africa – 34 States, WEOG – four States, GRULAC – eight States, EEG – one State).
- Similarly to the recommendations for EU MSs, the topics is also to be analyzed:

82 The first cycle references are marked with bold.

83 Botswana, Canada, Equatorial Guinea, Kiribati, Namibia, Tuvalu.

84 Burkina Faso, Comoros, Kenya, Madagascar, Mongolia, Mozambique, Nicaragua, Panama, Solomon Islands, Vanuatu.

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- 16.3.3 *Right to water and sanitation*
 16.3.3 Problems and improvement of the situation (projects, programmes)
 16.3.3 Ensure the right to water and sanitation
- Comoros,⁸⁵ India,⁸⁶ Kenya,⁸⁷ Madagascar,⁸⁸ Mongolia,⁸⁹ Mozambique,⁹⁰ Nicaragua,⁹¹ Seychelles,⁹² Niger,⁹³ Papua New Guinea,⁹⁴ Samoa,⁹⁵ Swaziland,⁹⁶ Tonga,⁹⁷ Turkmenistan,⁹⁸ Tuvalu,⁹⁹ Vanuatu¹⁰⁰

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- 85 HRC, Comoros, Report of the Working Group on the Universal Periodic Review, A/HRC/26/11, 7 April 2014, 110.68.
 86 HRC, India, Report of the Working Group on the Universal Periodic Review, A/HRC/21/10, 9 July 2012, 138.138.
 87 HRC, Kenya, Report of the Working Group on the Universal Periodic Review, A/HRC/15/8, 17 June 2010, 101.93.
 88 HRC, Madagascar, Report of the Working Group on the Universal Periodic Review, A/HRC/28/13, 23 December 2014, 109.10 & 109.11.
 89 HRC, Mongolia, Report of the Working Group on the Universal Periodic Review, A/HRC/16/5, 4 January 2011, 84.105.
 90 HRC, Mozambique, Report of the Working Group on the Universal Periodic Review, A/HRC/17/16, 28 March 2011, 89.84.
 91 HRC, Nicaragua, Report of the Working Group on the Universal Periodic Review, A/HRC/14/3, 17 March 2010, 54.
 92 HRC, Seychelles, Report of the Working Group on the Universal Periodic Review, A/HRC/18/7, 11 July 2011, 100.71.
 93 HRC, Niger, Report of the Working Group on the Universal Periodic Review, A/HRC/32/5, 12 April 2016, 120.148.
 94 HRC, Papua New Guinea, Report of the Working Group on the Universal Periodic Review, A/HRC/33/10, 13 July 2016, 104.140.
 95 HRC, Samoa, Report of the Working Group on the Universal Periodic Review, A/HRC/33/6, 27 June 2016, 95.72.
 96 HRC, Swaziland, Report of the Working Group on the Universal Periodic Review, A/HRC/33/14, 13 July 2016, 107.64.
 97 HRC, Tonga, Report of the Working Group on the Universal Periodic Review, A/HRC/23/4, 21 March 2013, 79.47.
 98 HRC, Turkmenistan, Report of the Working Group on the Universal Periodic Review, A/HRC/24/3, 5 July 2013, 112.75.
 99 HRC, Tuvalu, Report of the Working Group on the Universal Periodic Review, A/HRC/24/8, 5 July 2013, 82.61.
 100 HRC, Vanuatu, Report of the Working Group on the Universal Periodic Review, A/HRC/26/9, 4 April 2014, 99.76.

- 16.3.3 *Right to water and sanitation*
- 16.3.3 Legislation declaring, protecting the right to water and sanitation
- 16.3.3 Consideration of the human right to water and sanitation in policy-making
- 16.3.3 Accession to international treaties
- Afghanistan,¹⁰¹ Angola,¹⁰² Bhutan,¹⁰³ Botswana,¹⁰⁴ Burkina Faso,¹⁰⁵ Canada,¹⁰⁶ Cape Verde,¹⁰⁷ Costa Rica,¹⁰⁸ Dominica,¹⁰⁹ Equatorial Guinea,¹¹⁰ Equatorial Guinea,¹¹¹ Ethiopia,¹¹² Kenya,¹¹³ Kiribati,¹¹⁴ Marshall Islands,¹¹⁵ Zimbabwe,¹¹⁶ Namibia,¹¹⁷ Solomon Islands,¹¹⁸ Tuvalu,¹¹⁹ Vanuatu¹²⁰

101 HRC, Afghanistan, Report of the Working Group on the Universal Periodic Review, A/HRC/26/4, 4 April 2014, 136.41.

102 HRC, Angola, Report of the Working Group on the Universal Periodic Review, A/HRC/28/11, 5 December 2014, 134.144.

103 HRC, Bhutan, Report of the Working Group on the Universal Periodic Review, A/HRC/27/8, 1 July 2014, 118.78.

104 HRC, Botswana, Report of the Working Group on the Universal Periodic Review, A/HRC/23/7, 22 March 2013, 116.39.

105 HRC, Burkina Faso, Report of the Working Group on the Universal Periodic Review, A/HRC/24/4, 8 July 2013, 135.119.

106 HRC, Canada, Report of the Working Group on the Universal Periodic Review, A/HRC/24/11, 28 June 2013, 128.130. & 128.131.

107 HRC, Cape Verde, Report of the Working Group on the Universal Periodic Review, A/HRC/24/5, 3 July 2013, 116.11.

108 HRC, Costa Rica, Report of the Working Group on the Universal Periodic Review, A/HRC/27/12, 7 July 2014, 128.26.

109 HRC, Dominica, Report of the Working Group on the Universal Periodic Review, A/HRC/13/12, 4 January 2010, 42.

110 HRC, Equatorial Guinea, Report of the Working Group on the Universal Periodic Review, A/HRC/13/16, 4 January 2010, 61.

111 HRC, Equatorial Guinea, Report of the Working Group on the Universal Periodic Review, A/HRC/27/13, 7 July 2014, 134.83 & 134.79.

112 HRC, Ethiopia, Report of the Working Group on the Universal Periodic Review, A/HRC/27/14, 7 July 2014, 158.6.

113 HRC, Kenya, Report of the Working Group on the Universal Periodic Review, A/HRC/29/10, 26 March 2015, 142.147.

114 HRC, Kiribati, Report of the Working Group on the Universal Periodic Review, A/HRC/29/5, 13 April 2015, 84.83.-84.85.

115 HRC, Marshall Islands, Report of the Working Group on the Universal Periodic Review, A/HRC/30/13, 20 July 2015, 75.62.

116 HRC, Zimbabwe, Report of the Working Group on the Universal Periodic Review, A/HRC/19/14, 19 December 2011, 94.31.

117 HRC, Namibia, Report of the Working Group on the Universal Periodic Review, A/HRC/32/4, 16 April 2016, 137.183.

118 HRC, Solomon Islands, Report of the Working Group on the Universal Periodic Review, A/HRC/32/14, 13 April 2016, 99.49.

119 HRC, Tuvalu, Report of the Working Group on the Universal Periodic Review, *supra*, 2013, 82.63. & 82.64.

120 HRC, Vanuatu, Report of the Working Group on the Universal Periodic Review, *supra*, 2014, 99.78.

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16.3.3	<i>Minorities</i>	<i>Mongolia</i> ¹²¹
16.3.3	Right of minorities to participate in political life of their country	
16.3.3	<i>Minorities</i>	Bangladesh, ¹²² Botswana, ¹²³
16.3.3	Need of projects for the improvement of living conditions of minorities, with special regard to sanitation and water supply	Namibia ¹²⁴
16.3.3	<i>Prohibition of torture</i>	Cameroon, ¹²⁵ <i>Haiti</i> , ¹²⁶ <i>Malawi</i> , ¹²⁷ <i>Sao Tome and Principe</i> , ¹²⁸ Namibia, ¹²⁹ Nigeria ¹³⁰
16.3.3	Improvement of the prisons, detention centers in terms of water supply and/or sanitation	

121 HRC, Mongolia, Report of the Working Group on the Universal Periodic Review, *supra*, 2011, 86.3.

122 HRC, Bangladesh, Report of the Working Group on the Universal Periodic Review, A/HRC/24/12, 8 July 2013, 130.15.

123 HRC, Botswana, Report of the Working Group on the Universal Periodic Review, *supra*, 2013, 117.34.

124 HRC, Namibia, Report of the Working Group on the Universal Periodic Review, *supra*, 2016, 137.213.

125 HRC, Cameroon, Report of the Working Group on the Universal Periodic Review, A/HRC/24/15, 5 July 2013, 131.100.

126 HRC, Haiti, Report of the Working Group on the Universal Periodic Review, A/HRC/19/19, 8 December 2011, 88.72.

127 HRC, Malawi, Report of the Working Group on the Universal Periodic Review, A/HRC/16/4, 4 January 2011, 102.26.

128 HRC, Sao Tome and Principe, Report of the Working Group on the Universal Periodic Review, A/HRC/17/13, 16 March 2011, 64.34.

129 HRC, Namibia, Report of the Working Group on the Universal Periodic Review, *supra*, 2016, 137.159.

130 HRC, Nigeria, Report of the Working Group on the Universal Periodic Review, A/HRC/25/6, 16 December 2013, 135.107.

- 16.3.3 *Vulnerable groups*
- 16.3.3 (Elderly, migrants, internally displaced people, disadvantaged and marginalized groups and members of the rural population, refugees, indigenous people, children)
- Botswana,¹³¹ Burkina Faso,¹³² Canada,¹³³ Comoros,¹³⁴ Fiji,¹³⁵ Georgia,¹³⁶ Guatemala,¹³⁷ Japan,¹³⁸ Madagascar,¹³⁹ Mozambique,¹⁴⁰ Pakistan,¹⁴¹ Panama,¹⁴² Solomon Islands,¹⁴³ Tajikistan,¹⁴⁴ Tanzania,¹⁴⁵ Uganda,¹⁴⁶ Namibia,¹⁴⁷ Nicaragua,¹⁴⁸ Panama,¹⁴⁹ United States of America¹⁵⁰
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- Water management and environmental protection*
- Kuwait,¹⁵¹ Kyrgyzstan¹⁵²

- 131 HRC, Botswana, Report of the Working Group on the Universal Periodic Review, A/HRC/10/69, 13 January 2009, 17.
- 132 HRC, Burkina Faso, Report of the Working Group on the Universal Periodic Review, *supra*, 2013, 135.117.
- 133 HRC, Canada, Report of the Working Group on the Universal Periodic Review, *supra*, 2013, 128.132.
- 134 HRC, Comoros, Report of the Working Group on the Universal Periodic Review, *supra*, 2014, 110.38.
- 135 HRC, Fiji, Report of the Working Group on the Universal Periodic Review, A/HRC/28/8, 17 December 2014, 99.78.
- 136 HRC, Georgia, Report of the Working Group on the Universal Periodic Review, A/HRC/17/11, 16 March 2011, 105.94.
- 137 HRC, Guatemala, Report of the Working Group on the Universal Periodic Review, A/HRC/22/8, 31 December 2012, 99.94.
- 138 HRC, Japan, Report of the Working Group on the Universal Periodic Review, A/HRC/22/14, 14 December 2012, 147.153.
- 139 HRC, Madagascar, Report of the Working Group on the Universal Periodic Review, *supra*, 2014, 109.11.
- 140 HRC, Mozambique, Report of the Working Group on the Universal Periodic Review, A/HRC/32/6, 12 April 2016, 128.135.
- 141 HRC, Pakistan, Report of the Working Group on the Universal Periodic Review, A/HRC/8/42, 4 June 2008, 34.
- 142 HRC, Panama, Report of the Working Group on the Universal Periodic Review, A/HRC/16/6, 4 January 2011, 69.27.
- 143 HRC, Solomon Islands, Report of the Working Group on the Universal Periodic Review, A/HRC/18/8, 11 July 2011, 81.54.
- 144 HRC, Tajikistan, Report of the Working Group on the Universal Periodic Review, A/HRC/19/3, 12 December 2011, 90.28.
- 145 HRC, Tanzania, Report of the Working Group on the Universal Periodic Review, A/HRC/19/4, 8 December 2011, 86.46.
- 146 HRC, Uganda, Report of the Working Group on the Universal Periodic Review, A/HRC/19/16, 22 December 2011, 112.24.
- 147 HRC, Namibia, Report of the Working Group on the Universal Periodic Review, *supra*, 2016, 137.183.
- 148 HRC, Nicaragua, Report of the Working Group on the Universal Periodic Review, A/HRC/27/16, 1 July 2014, 114.109.
- 149 HRC, Panama, Report of the Working Group on the Universal Periodic Review, A/HRC/30/7, 8 July 2015, 90.109.
- 150 HRC, United States of America, Report of the Working Group on the Universal Periodic Review, A/HRC/30/12, 20 July 2015, 176.311.
- 151 HRC, Kuwait, Report of the Working Group on the Universal Periodic Review, A/HRC/29/17, 13 April 2015, 157.257.
- 152 HRC, Kyrgyzstan, Report of the Working Group on the Universal Periodic Review, A/HRC/29/4, 9 April 2015, 118.27.

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The issues addressed by EU MSs as recommending States in the review of non-EU MSs do not significantly differ in theme from the recommendations given to EU MSs. To get a more detailed picture of the “best practices” shared by EU MSs, not only the recommendations themselves, but the constructive dialogue before the formulation of recommendations should be taken into consideration.

The biggest number of remarks from EU MSs simply assessed the problems or improvements of the right to water and sanitation in the SuRs with expressions such as: “praised”, “commended”, “appreciated”, “expressed concern”, “welcomed”, “noted the positive achievement”, etc. After such introductory expressions only brief situation descriptions followed, no best practice was shared. Such a neutral language is capable of giving only bipolar feedback: the practice of the SuR is either positive or negative.

Other comments of EU MSs either in the interactive dialogue or in the final recommendations were mainly limited to suggest a general action, for example, “urged steps to address water and sanitation problems”¹⁵³ or to “take effective measures to ensure a supply of water of good quality.”¹⁵⁴ Very small minority of the recommendations went further and gave details and specifics of the actions to be taken for better promotion and protection of the right to water and sanitation. These recommendations can be classified based on the instrument they are suggesting:

- Taking legislative steps or policy-decisions, for example to “[E]nact a new water law as soon as possible giving effect to the right to water”¹⁵⁵ or “[A]dopt the necessary policies to correct existing deficiencies in access to water and sanitation of the population.”¹⁵⁶ A few EU MSs even suggested a change in the national legal system, for example in the competence of the Constitutional Court of Mongolia.¹⁵⁷
- Adopt and/or develop action plan or strategy. For example, according to Slovenia, Tuvalu needs to “[A]dopt and implement a national water strategy and plan of action”¹⁵⁸ and in Spain’s opinion, it should “[I]nclude, among the priorities of the Second National Strategic Development Plan, the access to sanitation along with access to drinking water which is already contained.”¹⁵⁹
- Devote more financial resources, including investing in infrastructure development. For example Spain made such recommendations, among others, to Swaziland¹⁶⁰ and Madagascar.¹⁶¹

153 HRC, Tuvalu, Report of the Working Group on the Universal Periodic Review, *supra*, 2013, 45.

154 HRC, Solomon Islands, Report of the Working Group on the Universal Periodic Review, *supra*, 2016, 99.49.

155 HRC, Costa Rica, Report of the Working Group on the Universal Periodic Review, *supra*, 2014, 128.26.

156 HRC, Cape Verde, Report of the Working Group on the Universal Periodic Review, *supra*, 2013, 116.11.

157 HRC, Mongolia, Report of the Working Group on the Universal Periodic Review, *supra*, 2011, 86.3.

158 HRC, Tuvalu, Report of the Working Group on the Universal Periodic Review, *supra*, 2013, 82.61.

159 *Id.* 82.64.

160 HRC, Swaziland, Report of the Working Group on the Universal Periodic Review, *supra*, 2016, 107.64.

161 HRC, Madagascar, Report of the Working Group on the Universal Periodic Review, *supra*, 2014, 109.11.

- Cooperate on international level with the international community and the bodies designed for promotion, protection and monitoring of human rights (accession to treaties, visit of the special rapporteur, etc.). For example, the Marshall Islands¹⁶² should intensify its participation in international cooperation, Ethiopia needs to accede¹⁶³ to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,¹⁶⁴ while Kiribati should “[H]eed the recommendations of the Special Rapporteur on the human right to safe drinking water and sanitation regarding improvements to water and sanitation infrastructure.”¹⁶⁵

16.3.4 Summary of the Analysis

Based on the documents analyzed in three categories, the following concluding remarks can be made:

- Not all EU MSs considered essential to make recommendations (or even mention) issues related to the right to water and sanitation either for other EU MSs or non-EU members. A very few EU MSs seem to be active promoters of this human right, clearly the two most actives are Spain and Slovenia. However, there is no consistency in the recommendations made by the promoters: recommendations are various and, understandably, tailored for the SuR in question. The points considered most important by the recommending states cannot be identified in a more general level.
- The interest for the issues related to the right to water and sanitation significantly grew over the years. While only 23 recommendations were made during the first cycle, this number increased to 62 in the second.
- The “help” EU MSs can give through recommendations and constructive dialogue is limited to assessment, problem and data identification and giving general guidelines, directions for further development. Though one of the explicit goals of the UPR is sharing best practice, neither the whole process, nor the documents adopted give enough space for detailed consideration of the best practice of EU MSs.

16.4 NOTHING TO SHARE OR SYSTEMATIC PROBLEM?

The final question to be answered is whether EU MSs have no best practice to share as individual states or as an international organization; or the UPR is, contrary to its declared purpose, not the right forum to share the existing best practice?

162 HRC, Marshall Islands, Report of the Working Group on the Universal Periodic Review, *supra*, 2015, 75.62.

163 HRC, Ethiopia, Report of the Working Group on the Universal Periodic Review, *supra*, 2014, 158.6.

164 2008 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, A/RES/63/117, 10 December 2008.

165 HRC, Kiribati, Report of the Working Group on the Universal Periodic Review, *supra*, 2015, 84.83.

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16.4.1 *Is There a Best Practice to Share?*

No doubt, the EU has a highly developed and coordinated water policy: “[T]he entry into force of the Water Framework Directive¹⁶⁶ provided a comprehensive legal framework [...]” The directive is complemented by more specific EU laws regulating specific aspects of water use.¹⁶⁷

But the question remains whether the protection and promotion of the right to water and sanitation is part of this policy or it is ignored in the existing framework. Using the widely accepted definition and analysis of the right to water and its content given by the UN Committee on Economic, Social and Cultural Rights in its General Comment No. 15 (“the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses”)¹⁶⁸ there are several EU legislative acts dealing with issues related to this human right. Amongst them, the most directly related is the Drinking Water Directive.¹⁶⁹ This directive addresses only two requirements of the above mentioned definition: safety and acceptability and fails to declare or generally recognize the right to water and sanitation. However, the EU in documents with no binding force, for example in the Blueprint to Safeguard Europe’s Water Resources,¹⁷⁰ in fact spoke about this human right as a widely recognized category to be promoted in international cooperation by the EU as a whole (and particularly by the Commission, MSs and other stakeholders).¹⁷¹ In lack of documents with binding force it seems that “[W]hile the EU remains committed to reinforcing the access to water as good management practice [...] it does not explicitly recognize the right to water.”¹⁷² And since the access of water is management practice and development strategy instrument, there is no common human rights practice of the EU to share in the framework of the UPR.

166 Commission and Council Directive 2000/60/EC of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ 2000 L 327/2.

167 T. Zandstra, *Water Legislation, Cost of Non-Europe Report*, European Parliamentary Research Service, PE 536.369, May 2015, p. 8.

168 CESCR, *General Comment No. 15. The right to water*, E/C.12/2002/11, 20 January 2003, point 2.

169 Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption, OJ 1998 L330.

170 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, *A Blueprint to Safeguard Europe’s Water Resources COM/2012/0673 final*.

171 *Id.* point 2.6.

172 H. Koff & C. Maganda, ‘The EU and The Human Right to Water and Sanitation: Normative Coherence as the Key to Transformative Development’, *European Journal of Development Research*, Vol. 28, 1, 2016, p. 101.

The examination of the practice of all individual EU MSs in the framework of a single paper seems impossible, thus the current analysis will only make some general remarks. More and more EU MSs recognize the right to water and sanitation in legislative acts, most recently Slovenia declared the access to potable water as a human right in its constitution.¹⁷³ Though the majority of EU MSs have enough water resources available to provide enough water for their population, the coverage is not full,¹⁷⁴ and States have different means to cope with the situation as visible also from UPR documents. Even if EU MSs tend to keep the details of projects to themselves during the UPR, from the documentation it is obvious that they do have a practice on handling issues related to human right to water and sanitation within their legal and financial limits. Even in the lack of details it is also clear that EU MSs have similar methods to cope with similar issues. The sharing of these practices in the UPR would most probably be beneficial for the community of states.

Consequently, we can say that the EU as an organization has a best practice in issues related to the right to water, but it is limited to water management and has no human right nature. While the individual MSs definitely have valuable best practices to share on the promotion and protection of the right to water and sanitation.

16.4.2 *Is the UPR the Right Forum to Share Best Practice?*

Some issues the UPR is facing have already been analyzed by researchers. The challenges bearing importance in the context of effectively sharing best practice are a) limitation of the time and length of the documentation, and b) issues of political considerations.

First, the HRC resolution establishing the UPR and determining its basic process limits the documentation in length: the national report cannot exceed 20 pages, while the OHCHR and other stakeholders' submission cannot be longer than ten pages.¹⁷⁵ Even though there is no limit for the final report adopted by the plenary session of the HRC, the base of the report, the interactive dialogue is only three hours long giving no time for detailed discussion.¹⁷⁶ This limitation forces SuRs to choose issues they would focus attention to,¹⁷⁷ there is no time for covering all human rights. The mentioned

173 Slovenia adds water to constitution as fundamental right for all, *The Guardian*, 18 November 2016, <https://www.theguardian.com/environment/2016/nov/18/slovenia-adds-water-to-constitution-as-fundamental-right-for-all>.

174 European Citizens' Initiative, Annex to ECI Water and sanitation are a human right, file:///C:/Users/15Z960/Desktop/HR/MSs_practice/Annex%20to%20ECI%20Water%20is%20a%20human%20right%20(2).pdf.

175 HRC, HRC Resolution 5/1 on Institution-building of the United Nations Human Rights Council, *supra*, point 15.

176 *Id.* point 22.

177 J. Vengoechea, 'The Universal Periodic Review: A New Hope International Human Rights Law or Reformulation of Errors of the Past?', *International Law: Review Colombian Derecho Internacional [online]* No. 12, Special edition, 2008, pp. 100-116.

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resolution also denied further details on “sharing best practice”,¹⁷⁸ leaving it to the practice to work out its methodology, giving no guidelines.

Second, political considerations influence the activity, the topics discussed and the language of participating states in the UPR. Though the HRC was established to replace the Commission on Human Rights because of its over politicized nature, even the UPR is not free from criticism in this sense. According to observations, states are influenced by their existing international relations, tend to criticize states of different interests and praise political allies.¹⁷⁹ This political reality distorts the content of the recommendations and dialogue.

16.5 CONCLUSION

Among all universal and regional human rights protection systems, the UPR is supposedly the most appropriate forum to share best practice among states for several reasons. First, the UPR process is built on an interactive dialogue, where states can feel free to share information and criticize existing practices, draw attention to and point out problematic issues. Second, the UPR is conducted with the participation of all HRC members (ultimately all UN Member States), examining the protection of all human rights, thus there is no state and no topic excluded.¹⁸⁰

During the first eight years of the UPR, the discussion on the right to water and sanitation was rather limited to general remarks on the need of better promotion and protection without sharing real know-how. Despite all possible potentials of the UPR it seems that even if individual EU MSs do have best practice on the promotion and protection of the human right to water and sanitation to share, the UPR is not the right forum for that and there is no better one.

However, we should also note that the UPR is motivating. Occasionally, the mere existence of a general, neutral remark can trigger meaningful actions, for example, Kenya worked out detailed action plan based on a short, non-specified recommendation to “[I]mprove access to water and sanitation services particularly for rural and suburban communities.”¹⁸¹ Even if the UPR is not functioning as a disseminator of best practice, it does move human rights protection forward.

178 HRC Resolution 5/1 on Institution-building of the United Nations Human Rights Council, *supra*, point 4. d).

179 J.K. Cowan & J. Billaud 2015, pp. 1175-1190.

180 HRC Resolution 5/1 on Institution-building of the United Nations Human Rights Council, *supra*, points 1 & 3 d).

181 Republic of Kenya, Universal Periodic Review Second cycle Implementation Matrix 2015-2019. https://www.upr-info.org/sites/default/files/general-document/pdf/kenya_2nd_cycle_final_matrix_2016.pdf, p. 24.