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### 普遍定期审议

2009 年 7 月 9 日爱尔兰和荷兰常驻联合国日内瓦办事处  
代表致人权理事会主席的信函

爱尔兰和荷兰于 2009 年 3 月 20 日在万国宫主办了一次题为“探讨条约监测机构和普遍定期审议进程之间的互补性”的专家小组讨论会。

专家小组试着开始就普遍定期审议进程和条约监测机构如何一起工作问题进行初步的讨论。两个主办国编写的讨论情况总结报告载于附件。

爱尔兰和荷兰谨请将本信函及其附件<sup>\*</sup>译成各种正式语文并作为议程项目 6 下的理事会文件分发。

爱尔兰大使衔常驻代表

Daithí O'CEALLAIGH (签字)

荷兰大使衔常驻代表

Boudewijn J. VAN EENENNAAM (签字)

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<sup>\*</sup> 本信函以所有正式语文分发。附件仅以原文分发。

## **ANNEX**

### **Exploring Complementarity Between Treaty Monitoring Bodies and the Universal Periodic Review Process**

**Palais des Nations, 20 March 2009**

#### **Side-Event Panel Discussion Report by Ireland and The Netherlands**

A side event Panel Discussion, facilitated by Ireland and The Netherlands, was held on 20 March 2009, during the 10<sup>th</sup> Session of the Human Rights Council, to discuss the relationship between the Universal Periodic Review (UPR) and the Treaty Monitoring Bodies (TMBs). H.E. Mr Daithi O’Ceallaigh, Permanent Representative of Ireland and Ms Susanna Terstal, Deputy Permanent Representative of the Netherlands, jointly chaired the discussion.

The panel speakers were;

- Ms Adriana Mejía Hernández, Deputy Minister for Multilateral Affairs for Colombia
- Professor Michael O Flaherty, Human Rights Committee
- Mr Hassan Shire, East and Horn of Africa Human Rights Defenders project
- Professor Cees Flinterman, CEDAW
- Ms Marianne Lilliebjerg, Amnesty International
- Ms Jane Connors, OHCHR

The panel addressed in particular the following questions

- How do we ensure that the distinct roles of the UPR and the TMBs are developed in ways that respect their separate identities and roles?
- Are the outputs of each appropriately calibrated whereby they can be most effectively used and further built upon by the other?
- Can any form of follow-up be envisaged that takes account of both UPR and Treaty Body work?
- How best can the OHCHR ensure optimal continued support to both procedures?

#### **Organiser’s Overview and Summary**

- The conclusion of the panel was that evidence to date suggested great scope for complementarity between the Treaty Bodies and UPR. Both mechanisms had specific strengths and could be used as a form of follow-up to the other, while remaining mindful of the specific mandate given to the Treaty Bodies under the relevant Treaties.

- The national preparatory work being carried out for UPR was also proving to be beneficial for Treaty Body reporting. National processes were being put in place for the UPR process which were making it easier for States to carry out their reporting obligations under the Treaties.
- Treaty Bodies will need to remain particularly attentive to instances where States reject UPR recommendations that are a matter of legal obligation, though this has not happened often to date.
- **Issues for further discussion in the period ahead include the establishment of a more structured contact between the Treaty Bodies and the Council. Treaty Bodies may also wish to consider prioritising their recommendations in order to facilitate the UPR process.**

*Panel Debate*

1. **Colombia (Minister Hernandez)** said that the UPR strengthened the culture of multilateralism, and that its strengths came from its universal, impartial and non-selective nature. Colombia has found that the preparation for UPR had led to a fruitful process of self-reflection at the domestic level. The dialogue with the international community during the UPR had also been of benefit and had opened channels of communication broader than those which routinely took place in Geneva-based work. Colombia saw the international system as providing it with a human rights road map incorporating three elements; the UPR, the annual recommendations from the resident OHCHR office in Colombia and the recommendations of the TMBs. The mechanisms were complimentary. Colombia had ratified seven of nine international human rights Treaties and as a result of the UPR process had streamlined the preparations for the ratification of the remaining two. It had also addressed the issue of updating its reports to the various Monitoring Bodies. The experience of the UPR had been a positive one for Colombia in assisting it to engage with the entire corpus of UN Human Rights system recommendations as a whole.
2. **Professor O' Flaherty** observed that when the TMB mechanism was described as one based on voluntary agreed commitments of States, the submission of a State report and on consultations with other sources, whose format was of a friendly dialogue leading to non-binding recommendations and which had an ill-defined follow-up procedure, it could be seen to look very like the UPR process. Both the UPR and TMB mechanisms shared the same normative basis, the Universal Declaration of Human Rights and the International Treaties, and had a common objective, ensuring country compliance at the domestic level. It was helpful to ask in what respects each mechanism brought a value-added dimension. In the case of the UPR, the review involved the entire UN Membership and not just a dialogue with one treaty body. The UPR re-affirmed the indivisibility of human rights, whereas specific categories of rights were the focus of the treaty Body mechanism. In addition, the UPR gave a high political/public profile to its recommendations. In the case of the TMBs, the added-value came from the in-depth nature of the review, the detailed consensus findings and recommendations and the contribution brought by independent experts.

3. It was important to emphasise that there should be mutual support and mutual learning across the two mechanisms. An example of how complementarity was working was in the manner in which States were using the same organisational framework on a domestic level for UPR reporting and for Treaty reporting, with many States saying that the preparation for UPR had encouraged them to develop the capacity to report to the Treaty Monitoring Bodies
4. The vista that now presented itself was one of considerable potential. It was conceivable, taking account of the possible inter-play of the national dialogue elements of UPR with the high periodicity of TMB reporting, that the UPR and TMB processes could facilitate an ongoing national conversation about strengthening protection of human rights. In addition, the Treaty Monitoring Bodies were appreciative of the extent to which their recommendations were being taken up in UPR and were encouraged by the number of UPR recommendations regarding ratification and the lifting of reservations.
5. The debate about the extent to which TMB recommendations were being explicitly rejected in the UPR process was one that had to be considered carefully. Direct contradictions on matter of legal obligation would be a real cause for concern and, fortunately, remained very rare. However, it was worth noting that not all Treaty Body recommendations concerned the heart of the normative obligation and that recommendations were not binding statements of law. Some Treaty Body recommendations addressed policy choices. Thus not every UPR-related disregard of a TMB recommendation had equal significance.
6. The question had arisen as to whether States should, in making a recommendation, cite the source of a recommendation as a Treaty Body recommendation in the relevant cases. On balance it would seem advisable for States to do so, as it reinforces the merit of the recommendation and reinforces the integrity/coherence of the UN human rights protection systems.
7. It could be envisaged that the UPR will, in effect, act as a form of Treaty Body follow-up procedure. This may precipitate a number of structural innovations, such as some form of engagement of TMB follow up special rapporteurs with the UPR process. A formalised relationship between the TMBs and the Council should be established in a manner that does not compromise TMB independence. For instance, there could be an annual exchange of views between the Council bureau and the Chairpersons of the Treaty Monitoring Bodies
8. **Hassan Shire (East and Horn of Africa Human Rights Defenders Project)** said that from an activist's perspective the UPR was having a positive effect in engaging Governments in Sub-Saharan Africa with the UN system as a whole. The preparation for UPR in countries like Djibouti had led to positive developments, such as the creation of a national Human Rights Commission and increased capacity to submit TMB reports. There were two aspects that needed to be addressed; the capacity of civil society organisations to work together participate and influence the UPR and TMB reporting processes as well as the need to give Government officials the training necessary to fulfil their reporting obligations. An aspect of UPR that was noteworthy was how it had galvanised civil society organisations together. In Burundi there

had been an impressive level of cooperation between civil society actors and the various organisations had worked together to send representatives to Geneva for the review. Civil Society Organisations were collaborating to present a shadow report for the review of Tanzania before the Human Rights Committee in July 2009.

9. A number of key challenges now presented themselves. Firstly, the long-term capacity to follow-up on UN recommendations was an issue. It would be beneficial if national consultations after UPR were to be promoted as an example of best practice.

10. **Professor Cees Flinterman said** it was timely to examine the relationship between the quasi-legal and the political organs of the UN. The overall aim of both mechanisms had to be kept in mind which was the strengthening of the protection of human rights at the domestic level. An important function of the UPR was the scope it provided to put pressure on States to ratify the Human Rights Treaties. It was very helpful to the Treaty Bodies that in the UPR process, it was being recommended to States that they report to the Treaty Bodies and it would be important that in cases where resources were required to help States report that these be provided. The work of CEDAW was negatively affected by far-reaching reservations and it would be useful if the UPR process was used to reduce the number of these reservations, especially those that were incompatible with the purpose and scope of the Treaty.

11. UPR was now functioning as a follow-up mechanism to the Treaty Monitoring Process. In this regard it would be helpful if the TMB could prioritise their recommendations in Concluding Observations to assist and inform States' recommendations at UPR.

12. Professor Flinterman agreed that a structured annual dialogue between the Chairs of each TMB and the Human Rights Council on both matters of substance and procedure would be advisable.

13. **Ms Lilliebjerg from Amnesty International** re-emphasised the common focus of the TMBs and of UPR which was the improvement of human rights protection on the ground. The real value of UPR was the extent to which it was anchored at the national level before, during and after the review. The UPR was leading to a conversation between different sectors of Governments at national level. It also had the distinctive feature of being open to all members of civil society, not just those who had UN accreditation – diverse groups were participating in the consultations including development and environmental groups. In most of the countries that had been reviewed under UPR there had been some form of national consultations.

14. The three UPR preparatory documents were providing a unique perspective on the human rights situation in each country. It was now possible to take a holistic view combining this information with the recommendations of the UPR working group, Special Procedures recommendations and the rigour and authority of the recommendations provided by Treaty Bodies, as contained in the OHCHR compilation.

15. There were a number of points for further reflection; could the national consultation process for UPR be integrated into the Treaty Monitoring Process? In the interests of transparency should the proceedings of Treaty Bodies not be Web cast in a fashion similar to UPR? How best could UPR recommendations be used as a form of follow-up procedure to TMB recommendations?

## **Interactive Dialogue**

### **Rationalisation of reporting Process**

16. During the interactive dialogue, representatives from **Bangladesh and Liechtenstein** referred to the reporting burden now placed on national administrations by the various UN processes. The question was raised as to whether the common core document currently submitted could suffice as a UPR national report. Professor O Flaherty said that the common core document did not address many of the specificities of the individual Treaties and could not, therefore, serve as a comprehensive report on the state of human rights in any country. He also expressed concern regarding any possibility that the UPR report of a State might be submitted to the TMBs as an integrated report – citing in this regard the widespread concerns that have been expressed regarding unified reporting.

### **Emergence of a hierarchical system?**

17. A representative from **Egypt** asked if UPR recommendations might not carry more political weight because of the ‘intergovernmental stamp’ they received. Professor Flinterman said that it was worth recalling that the Treaty Monitoring Bodies had a separate mandate under the relevant Treaties. It was useful to look at ways to increase complementarity between the political and quasi-judicial organs of the UN system, while remaining mindful of this separate and distinct mandate.

18. Professor Flinterman also added that just because a TMB recommendation was not taken up in UPR did not mean that it did not have to be followed up.

### **Scope for Complementarity**

19. A representative from the Quakers Office in Geneva stated that it was actively working with both mechanisms and that UPR and TMB could be mutually reinforcing. An example was given of a State, which had ignored a TMB recommendation to introduce a system of alternative civilian service for conscientious objectors, only to accept the same recommendation during its UPR review. Furthermore, that States upcoming Treaty Body examinations would provide an opportunity to examine how that commitment was being implemented in practice.

20. It would be very important for the Treaty Bodies to engage with States who, during the course of the UPR examination, publicly rejected a recommendation that fell within its jurisprudential purview.

21. The Quaker Office would also like to see more input from regional systems into the UPR process. At present the European regional system was the only one to be frequently referenced. Minister Hernandez agreed that the regional dimension should be emphasised and stressed the importance of the Inter-American Commission for Colombia.

22. The Quaker Office representative suggested that the role of National Human Rights Institutions was not sufficiently acknowledged in the UPR process as a source of information, as an independent commentator and as a means to implement follow-up on the ground. Another interesting dimension of the UPR was how participation in the process by all UN Member States, through listening and/or active engagement, was in itself an educational process for all

participants. The formulation of questions was making Governments engage with the Human Rights realities of systems very different from their own.

23. **OHCHR (Tistounet)** asked about the possibility for TMBs to capitalise on the presence in Geneva for UPR of smaller countries that do not have Permanent Missions there by scheduling its TMB review to coincide? Professor O Flaherty suggested that it might be better for there to be appropriate space between the two processes so that States' implementation of recommendations can be properly assessed and for follow-up across the procedures.

#### ***Other Issues***

24. An independent activist claimed that the integrity of the UPR process was being undermined by the tendency of States to 'flood' the process with comments of praise from allied States and official aligned NGOs.

#### **Summary (Jane Connors, OHCHR)**

25. The general consensus of the panel-discussion was that UPR has proven to be a transparent, collaborative and universal instrument for change, which takes a broad approach. It has been a learning tool for all, providing an opportunity for self-reflection in a constructive spirit. It had been characterised by a full level of participation by the States under Review, with only three States not submitting an advance report. At the national level, the preparation of the State report has created synergies and built capacity of State actors and civil society. It had provided a framework for institutional collaboration across State structures, as well as between the State and civil society. It has also laid the foundation for the creation of sustainable information collection which is essential for ensuring implementation of human rights obligations at the national level. This has potential to facilitate reporting to treaty bodies; while at the same time existing treaty body reporting structures have facilitated the preparation of the UPR. Preparation of the UPR report has also encouraged collaboration amongst civil society actors at the national level, which itself has a knock-on effect for the treaty body reporting process. .

26. During the first two sessions of the UPR working group, more than 600 references had been made to human rights treaty bodies in some way, and more than 200 recommendations made by the working group were based on the recommendations of treaty bodies. Recommendations frequently addressed ratification of treaties, removal of reservations, and submission of reports, (in one case) the work of the SPT, and they frequently reiterated the recommendations made by treaty bodies. Panellists and others noted the positive role of UPR in highlighting the human rights treaty body process, as well as the recommendations of the treaty bodies. It was considered that this had made the treaty bodies more visible, and perhaps provided them with more authority. The recommendation posed by States and the acceptance of such recommendations by the State under review, in addition to its voluntary commitments, strengthens the treaty body recommendations. Several panellists suggested that the implications of rejection by the States under examination of recommendations which reiterate binding treaty obligations or recommendations made by treaty bodies in relation to the State concerned required further exploration as the UPR process develops, although making clear that this has rarely happened to date. One intervention posed the question of the status of recommendations of treaty bodies not picked up during the review; with panellists making clear

that this in no way diminished the validity of such recommendations. It was for the Treaty Bodies to follow-up on recommendations it had made that were rejected by the State under Review or overlooked in the UPR dialogues.

27. Panellists pointed out that the treaty bodies have all discussed the implications of UPR for their work, although only the Human Rights Committee has so far discussed this, based on a document containing preliminary views of two of its members on the Committee's relationship with UPR. These views were predominantly positive, although there is some concern that the resources may be diverted towards UPR to the detriment of treaty bodies, and the importance of treaty body recommendations might be overshadowed by the broader publicity given to the UPR. There was also some concern about the implications of a reviewed State's rejection of treaty obligations or recommendations by treaty bodies. Panellists noted that during 2008 the meeting of chairpersons of the human rights treaty bodies, as well as the seventh and eighth intercommittee meetings) recognized the complementary and mutually reinforcing nature of the treaty body system and UPR and emphasized the importance of a continuing dialogue on this matter. Both meetings include the Council and its UPR mechanism as a standing agenda item. In this regard, one panellist spoke of the importance of ensuring a linkage among the Council and the treaty bodies by providing the various chairpersons with an annual opportunity to intervene at the Council. The eighth intercommittee meeting recommended that human rights treaty bodies should consider further prioritizing concerns in their concluding observations so that these are appropriately reflected in the compilation prepared by OHCHR, and suggested that treaty bodies continue to refer to the pledges and commitments made by States parties in UPR during dialogue with States parties and concluding observations. Participants noted that it is becoming more common for treaty bodies to refer to UPR in dialogue with States parties, only one treaty body has referred specifically to the State's commitment during UPR (this refers to a CEDAW examination).

28. Participants noted that a number of ratifications and acceptance of optional procedures can be directly linked to commitments made during UPR ( three specific cases were cited). Discussions relating to reservations at the national level ( three States were cited) have also occurred as a result of the UPR. Treaty body reports have also been submitted or are now well advanced in preparation as a result of the preparation of the UPR report. This is particularly the case in relation to small States, several of which have indicated that the UPR process has encouraged them to put in place systems to streamline reporting. .

29. One panellist spoke of UPR as being the best thing that had happened to the treaty body system for years, and, with others, made suggestions as to the effect it might have on the treaty body system. Scheduling should take into account the UPR schedule; treaty body recommendations should become more precise, concrete and implementable, and perhaps be prioritized so as to be picked up appropriately in the process. Panellists drew attention to ensuring that the growing emphasis on follow-up to treaty body recommendations takes account of the follow-up to the UPR process, and perhaps develops in a coordinated, complementary, but not replicative manner, as there is potential for UPR to serve as a follow-up mechanism for treaty body recommendations and treaty body recommendations to serve as a follow-up mechanism for UPR. It was important to note however the distinctive mandate of the Treaty Bodies which emanated from their role under the international Treaties.

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