

UPR: Making it work
Panel debate with the Government of the Netherlands
(15 April 2008)

Distinguished State Secretary Ms. Nebahat Albayrak,
Ladies and Gentlemen,

It is my privilege to exchange, on behalf of the International Commission of Jurists (ICJ), with the Government of the Netherlands on the early experience with the Universal Periodic Review in order to make this new mechanism of the UN Human Rights Council a meaningful and effective instrument.

At the outset, I wish to acknowledge the Dutch Government's openness to the engagement with the civil society, both domestically, when drafting the national report, as well as on the margins of the Council's working group. It should serve as an example and guidance to other Governments, which have insisted on restrictions for the NGO involvement at the working group. I wish to stress that an NGO interaction with the State under Review, be it on the margins of the working group, is essential to a success of the outcome of the review, and especially to its follow-up. Similar interactions with the States under Review should become a regular feature of the review process.

Having this opportunity, I would like to flag some observations on the early experience made during the 1st session of the UPR, including the UPR of the Netherlands. My comments will build on the background of the key parameters of the UPR.

As you know, the Universal Periodic Review was designed as a cooperative mechanism, which is expected to:

- A. Engage** the SuR in the assessment of the domestic human rights situation through national consultations and the national report; **review** States' performance on the basis of the three documents (i.e. national report, OHCHR's compilation and a summary of the inputs by other stakeholders); **provide for a meaningful interaction with States as well as with NGOs**; and **ensure follow-up to recommendations**.
- B.** Regarding the civil society interaction, NGOs should be allowed to **meaningfully engage in the national consultations** to facilitate the preparations of the national report; **observe the review** in the Working Group; **intervene** during consideration of the outcome in the plenary; and **contribute to the follow-up**.

At the 1st session of the UPR, we made the following positive experience:

- **States under Review (SuR) submitted, with one exception (SA), their reports** to the UPR, in which preparation NGOs were engaged. States were thus subject to equal scrutiny; however, the extent of the scrutiny differed depending on the frankness and openness of the SuR (differences between the review of UK and Tunisia etc.). The Council managed to **review 13 countries** (6,5 days), including the NL, and benefited **from the interventions raised rightly in the national capacity** and not on behalf of the political groupings;

At the same time we faced also numerous challenges:

- Occasionally, the review **primarily reflected on the contents of the state reports**, leaving NGO submissions and OHCHR compilation aside. As a result, some of the key human rights concerns in individual countries remained unaddressed;

- A few **NGOs complained that their input to the national report was not sought** by the Government and they were consulted only in general terms, sometimes even after the compilation of the national report;

- Unfortunately, certain delegations attempted once again, shortly before and during the UPR process, to **weaken the NGO contribution to the UPR** as NGOs were discouraged from holding **parallel events/panel debates**. Upon the negotiations of the modalities through the presidential statement of 9 April 08, we managed to get rid of a request to prevent **non ECOSOC NGOs** from engaging in the UPR. However, it was decided that individual NGO submissions will not be posted on the OHCHR website.

Secondly, I will speak on meeting the UPR's central objective, which is to address key human rights concerns, without distinction, and enhance the **implementation of the existing human rights recommendations**, and if necessary, **seek a relevant assistance** to this end. However, focusing only on either of the two elements would diminish the UPR's capacity to improve the human rights situations.

In this regard, we witnessed the following positive developments:

- **Large number of delegations** was interested in raising substantive questions for the review in the Working Group;

- **Both civil and political rights as well as the ESC rights were addressed**, with minor emphasis on the ESC rights;

- There was an **adequate attention to the situation of marginalised groups and issues of non-discrimination**;

- In general, the WG managed to **focus on current HR challenges** (HR and counter-terrorism, attempts to redefine the prohibition of torture, suppression of rights and freedoms of political dissent or incitement to racial and religious hatred);

However, the following shortcomings were observed:

- We witnessed numerous **interventions praising the SuR' achievements**, which left a little space to meaningfully address the most serious challenges;
- **States under Review often highlighted their general achievements**, and did not always systematically respond to the substance of the questions (the case of all).
- The UPR also **suffers from a wide focus** and from assessing all human rights issues, rather than emphasising the implementation of existing recommendations (need for streamlining). The restriction of the mandate of the TM of 18 March 08 was unhelpful, disregarding the fact that may not be in line with the IB document;
- Another **drawback is, that questions were not shared in advance of the review**, limiting a space for effective lobbying for key HR concerns and that **questions and recommendations came from a few corners only**;
- On the other hand, an inherent **political character of the UPR led to too general questions and recommendations**, which might be difficult to implement and follow-upon;
- Finally, the recommendations give impression of the **new assessment of the HR situation, and do not support the recommendations already made by the HR mechanisms**;

A **separate concern was a major attack on the universality of all human rights** (non-discrimination on the basis of SOGI vs. voluntary commitments), whereby the delegation of Egypt objected the inclusion of the recommendation to curb the discrimination on SOGI into the report on Ecuador, despite the insistence of Ecuador to do so.

Lastly, I will dare to make 8 following suggestions, in an attempt to respond to the current constraints:

- 1) NGOs must be meaningfully engaged in the preparation of the national report, and be allowed to comment on its draft;
- 2) For the dialogue in the working group to be genuine, it will need to **address the cross-cutting and structural human rights challenges**. Achieving this would require revisiting the role of the Troikas of Rapporteurs and bring their role in line with the IB text;
- 3) **Questions** to be responded as part of the review should be **circulated well in advance** of the WG;

4) **Concerns or questions** expressed in the dialogue will have greater impact if **complemented by the relevant recommendations** to be reflected in the report;

5) **It is important**, that all the questions be answered, even if in writing subsequent to the review;

6) When considering the report of the working group, the primary objective should be to try to reflect **all the conclusions and recommendations raised during the dialogue**. It is regrettable that more attention was paid to the issue whether the particular recommendations enjoy the support of the SuR. **Renegotiation of the IB text in this respect, and establishing a formal reporting procedure at the working group was unfortunate, if not illegal;**

7) At the **Council's plenary**, it must be made possible to amend or revisit the working group's report, in light of the comments and explanations of the SuR;

8) And lastly **both consensual and contested recommendations of the UPR should be subject to the follow-up**, at the subsequent UPR rounds as well as by the special procedures. States under Review are also encouraged to consult with NGOs and seek their perspective on the adequacy of the envisaged follow-up.

In conclusion, I wish to appeal to all delegations to revert a trend of particular recommendations being attributed to the state/states that made them and to the State under Review, which accepted them, without bearing support of the Council.

Ultimately, the Council will need to lend its support to all individual recommendations at the plenary. Otherwise, the Council's follow-up would be compromised, as certain recommendations might be questioned as to whether they should be subjected to follow-up, if not enjoying the Council's blessing.

With that I thank you, Mr. Chairman.