**Kingdom of the Netherlands’ response to OHCHR’s questionnaire on the UN Treaty Body System review**

**Introduction**

The Kingdom of the Netherlands greatly values the UN Treaty Body System, which makes a significant contribution to the implementation of the UN human rights treaties. With the system already overburdened, and with more ratifications of treaties and individual complaints protocols to come, it is of the utmost importance to identify ways of increasing the effectiveness and efficiency of the system. It is in this spirit that the Netherlands is submitting the following ideas and proposals, with appreciation for the progress already made on implementing resolution 68/268.

1. **Procedural aspects of reporting procedures**

Like most states, the Kingdom of the Netherlands has substantial reporting obligations under the Treaty Body System, the Universal Periodic Review and the Special Procedures, in addition to its obligations under regional human rights monitoring mechanisms. This entails a heavy workload. In particular, preparing for and taking part in treaty body hearings requires a great deal of time and capacity. Due to the long time span between a report’s submission and its discussion, it is often at least partially outdated by the time the meeting is actually held. In addition, it should be noted that reporting and replies to questions of the different treaty bodies often overlap.

The Netherlands therefore submits the following recommendations:

• The treaty bodies’ practice of requesting states to send intermediate information or updates in addition to the regular reporting cycles should be modified. Intermediate reporting should be the exception rather than the rule. The Netherlands suggests that treaty bodies resort to this option only in case of urgent issues and/or serious or large-scale violations that demand constant follow-up and monitoring.

• The simplified reporting procedure, using a list of priority issues sent before countries report, is an excellent way of streamlining discussions and avoiding unnecessary work, both for the reporting countries and the treaty bodies. It can clearly contribute to a more focused and constructive dialogue. Greater use of this method of working should be considered for all monitoring mechanisms and all reporting cycles other than the initial report required under a treaty. Attention should be paid however to a potential danger of this practice: it should not result in such detailed questioning that the workload becomes even heavier than in standard reporting. Treaty bodies should coordinate their lists of issues in order to avoid overlap.

• In addition, a ‘master calendar’ could be developed, with a page for each State and hard deadlines for all the reports due and dates for the hearings (similar to the UPR calendar). The different reports to each treaty body should be posted on these country pages. In order to avoid overlap and promote a more focused approach, States should be able to refer in their reports to their reports to other treaty bodies (already posted or planned, in line with the calendar). This would encourage coordination and complementarity among the different treaty bodies. Common core documents could also be uploaded to these country pages, on a voluntary basis.

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• A maximum period of six months between the submission of a report and the hearing would be preferable. In addition, it would be helpful if written questions or an indication of important themes could be published in advance, in order to assist States in preparing for the hearing. States should also be given a reasonable amount of time (for example one week) to respond to draft conclusions and recommendations.

• Further innovations aimed at improving the dialogue between States and treaty bodies should be considered, such as dispensing with written reports and placing more emphasis on hearings or country visits. States that are open to innovative working methods may be willing to participate in pilots to try out and improve new ideas. An innovation lab of this kind could also be used to test new technologies that could help streamline and improve procedures.

2. **Procedural aspects of individual complaints procedures**

Processing times in procedures for individual communications currently tend to be extremely long. In certain cases the parties involved only receive documentation submitted by the other party a year after submission. As a consequence, documents may no longer be available or institutional memory may be lost by the time responses are to be drafted.

In addition, treaty bodies generally consider the admissibility of a communication jointly with its merits. States are allowed to ask for a separate consideration of admissibility, but in the case of the Netherlands these ‘split requests’ are never granted. Especially in cases of evident inadmissibility, for instance for non-exhaustion of domestic remedies, this results in unnecessary work with regard to the merits.

The Netherlands would therefore submit the following recommendations:

• While the informal guidance note (January 2017) has contributed to more clarity and efficiency, there still is room for improvement by harmonising different treaty bodies’ working methods, including through developing common timeframes for the examination of communications.

• Treaty bodies should more seriously consider States’ ‘split request’ regarding the admissibility of a communication.

3. **Quality of conclusions, recommendations, general comments and views in individual cases**

The number of treaty bodies handling individual communications has increased significantly. Going forward, coherence and consistency in the treaty body jurisprudence is key. In addition, jurisprudence that diverges from that of other international monitoring bodies (such as the European Court of Human Rights) may undermine the authority of the Treaty Body System. It is essential that recommendations and views always be thoroughly substantiated, with due regard for a country’s situation and judicial system.

Given the limits on States’ capacity, the large number of recommendations in concluding observations in reporting cycles are challenging to follow up. Sometimes concluding observations do not give States any leeway, but are very directive and detailed about how to follow up and do not seem to respect the principle of subsidiarity. It is not always clear how information provided by States has been taken into account, including States’ comments on draft general comments.

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Therefore the Netherlands submits the following recommendations:

• In order to promote coherence, consistency and complementarity in treaty bodies’ recommendations and jurisprudence of a common platform should be createdfor the treaty bodies to reflect on jurisprudence. This would strengthen the overall effectiveness of the system, including in areas where human rights treaties share similar provisions, such as those on non-discrimination and gender equality.

• Ideally this would be achieved by establishing a joint treaty body working group on communications, composed of experts from different treaty bodies. The draft views that emerge from this working group would be brought to the attention of the plenary of the treaty body to which the communication was addressed for formal adoption (in line with the proposal of the HCHR 2012). Such a working group would enhance the consistency of jurisprudence among treaty bodies.

• A more user-friendly database would be helpful, including a search engine that works better and overviews of new and/or relevant cases.

• To ensure the quality of the concluding observations, recommendations, general comments and views in individual cases, it is important that legal expertise be available within the treaty bodies. Therefore a third of their members should be practising lawyers or have an academic background in law.

• In order to enhance States’ understanding, appreciation and follow-up of recommendations, views and general comments, the treaty bodies should clearly explain the circumstances and interests that have been taken into account and the relative weight given to each of these circumstances and interests.

• Ways to increase interface with regional systems of human rights protection should be considered and developed.

4. **Authority of treaty bodies and selection of experts**

The Netherlands agrees with the guidelines from the Dublin 2009, Poznan 2010 and Dublin II (2011) expert meetings (signed by treaty body chairpersons) on the expertise and independence of treaty body members and the Addis Ababa guidelines (2012) on the independence and impartiality of treaty body members, as endorsed by the treaty bodies themselves. One fundamental point from these guidelines is that treaty body members may not be subject to direction or influence of any kind, or to pressure from the State of their nationality or any other State or its agencies.

In order to ensure the independence of treaty body members and the quality of their expertise, the Netherlands submits the following recommendations:

• A third of the treaty bodies’ members should be practising lawyers or have an academic background in law (see also above under 3). All members should have relevant international experience.

• Candidates should be selected from a broad pool in order to improve the diversity and gender composition of treaty bodies.

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• Experts should be limited to no more than two terms for a given committee, in line with the most recent treaties.

5. **OHCHR secretariat**

Over the last few years improvements have been made to the system without any extra budget (by rationalising processes, setting page limits on documentation, etc.). Nevertheless the system has been stretched to its limits, and the secretariat is unable to fully perform its role of providing legal, procedural, administrative and logistical support, due to a lack of capacity.

The Netherlands therefore submits the following suggestions:

• Efficiency should be increased by developing a tracking system for all communications, with easily accessible information regarding the status of reports, individual complaints, follow-up activities, etc.

• The secretariat’s capacity to assist experts on procedures and content, and to support States in implementing recommendations, should be strengthened. This should not just be a paper exercise; rather, it should ensure that the secretariat and States are true sparring partners. This should be reflected in future budget proposals. Implementation could be covered by technical assistance.

• Procedures and working methods should be further streamlined and harmonised.

• Sessions should be streamed online in real time.

• The calendar of reporting and hearings should be reformed to rationalise work. Treaty bodies should meet back-to-back to enhance coordination between them (instead of just having their chairs meet).

• One expert should serve as case manager for each report or complaint in order to enhance dialogue