

WILTON PARK CONFERENCE

REVIEWING THE WORK AND FUNCTIONING OF THE HUMAN RIGHTS COUNCIL

WHAT ARE THE PRIORITY ISSUES?

14th to 16th January, 2010

Dinner Speaker

Adriana Mejía Hernández,
Deputy Minister for Multilateral Affairs
Ministry of Foreign Affairs, Colombia

ENGAGING WITH THE HUMAN RIGHTS COUNCIL AND ITS MECHANISMS

The transition from the Commission to the Human Rights Council has opened new possibilities for country engagement with the UN Human Rights System and created new opportunities for strengthening national capacities in the field of human rights.

The establishment of the Universal Periodic Review based on the principles of universality, objectivity, non selectivity, and transparency has set the foundation for a new form of interaction among States, and between them and the Council and its mechanisms and, in most cases, has fostered domestic processes that have enhanced national human rights institutional frameworks and have therefore contributed to improve human rights situations on the ground.

The Colombian UPR process, as well as its renewed engagement to the Special Procedures, reflects these trends. In this context, the presentation will be oriented to introduce the Colombian experience as a way to explore the positive incidence of the Human Rights Council and identify those elements that should be preserved in the review process, as well as areas where improvements could be made to overcome current challenges.

ENGAGING WITH THE HUMAN RIGHTS COUNCIL AND ITS MECHANISMS

Adriana Mejía Hernández
Deputy Minister for Multilateral Affairs
Ministry of Foreign Affairs, Colombia
January 14, 2010

Good evening. On behalf of the Government of Colombia, please allow me to express my appreciation to Wilton Park for hosting this Conference in cooperation with the Governments of Norway and Switzerland.

Indeed, reflecting on the work and functioning of the Human Rights Council is a timely endeavor we need to pursue in order to face the challenge posed by the forthcoming reviews set in General Assembly Resolution 60/251, as well as in the Institutional Building Text, as pertains the UPR.

By fostering informed discussions on key issues of the international agenda, Wilton Park certainly offers an excellent environment to exchange our thoughts in the most fruitful way. Allow me then, to join others, in wishing us all a most productive work agenda.

On this first day, we have attentively followed the High Commissioner on the Council's main achievements and those features that could be improved to make its work more effective and visible worldwide. We have also had the opportunity to listen to New York and Geneva representatives from France, India and Norway, as well as to civil society, on lessons learned from the former Commission and on the main aspects that need to be taken in to account during the review process.

Expecting to contribute constructively in these ongoing discussions, I would like to take this opportunity to reflect on Colombia's experience during the last two years of interaction with the Human Rights Council: the differences we observe in contrast with the work of the Commission, our thoughts on the practical functioning of the Council, and the lessons we have learned, particularly from our participation in the Universal Periodic Review and our increased engagement with Special Procedures.

I sincerely hope these thoughts will provide concrete elements to explore those positive aspects that Colombia considers should be preserved in the review process as well as those areas where improvements could be made to overcome pressing challenges.

1. From the Commission to the Human Rights Council: What really changed?

What has made a difference in the transition from the Commission to the Human Rights Council? In the case of Colombia, why do we assess the Human Rights Council as more conducive to cooperation?

According to my country's experience during the last two years, the Human Rights Council has opened new possibilities for country engagement with the UN Human Rights System in a comprehensive manner and, more importantly, has favored new opportunities for strengthening national capacities in the field of human rights.

Colombia values the establishment of the Universal Periodic Review based on the principles of universality, objectivity, non selectivity, and transparency -among others that are equally meaningful- as the Human Rights Council's most significant features. In our view, the UPR has set the foundation for a new means of interaction that has facilitated strengthening relations among States, and between States and the Human Rights Council and its mechanisms, the Office of the High Commissioner and civil society. The UPR has also provided States the opportunity to reflect, in a conscientious manner and on their own account, on realizations and difficulties.

In a significant number of cases, the UPR has fostered domestic processes that have reinforced the national human rights institutional framework; it has motivated States to join international human rights instruments and to update their reporting obligations towards treaty bodies; it has contributed to the empowerment of civil society and it has effectively contributed to improve the situation on the ground on various specific issues.

The increased frequency of sessions -moving from one in March to three along the year- as well as the greater amount of time allocated to each of them also constitutes a positive development: It has allowed both member and observer States to take a more active role in the overall activity of the Council and has promoted their involvement in a wider set of issues during the Council's cycle.

This has promoted diversification and a scenario more conducive to the development of cross regional partnerships which have proven to be useful to advance on sensitive topics.

Colombia values the more frequent interaction with the High Commissioner provided by the Human Rights Council as an opportunity to strengthen the dialogue with her and her Office. As a country committed to work closely with OHCHR, as well as strong supporters of the independence of the Office, we see every opportunity the High Commissioner addresses the Council as an open space to discuss human rights pressing issues, to reflect on the work the Office is undertaking all over the world and to further explore possibilities of cooperation and exchanges between member and observer States and the greater human rights community.

Similarly, we have participated actively in the different dialogues with Special Procedures set in to the Council's yearly working program, and we observe a more engaged and constructive interaction with them. We are aware of the differences that have risen between some mandate holders and some States and we do not ignore the fact that such differences have led to tough discussions during Council's sessions.

In this regard, Colombia considers that States have the right to **respectfully** express their views and considerations on the opinions and assessments provided by Special Rapporteurs. We also consider that States' views and considerations do not exempt them from their obligations under international instruments, although it is important to take them into account to approach each individual situation. However, what we value most is the fact that frank and direct dialogue continues to be carried out in the context of the Council with the different mandate holders, therefore promoting country ownership and engagement, thus fostering results in terms of concrete actions being effectively adopted at the national level.

On another note, we are of the view that the new system of appointment for mandate holders and particularly the creation of the roster and the establishment of the Consultative Group offer an important support to the President to make a suitable selection.

2. The UPR: What did we gain, what is missing, how do we move forward?

Allow me now to refer more in depth to our own experience in the implementation of the Universal Periodic Review, which we consider a key element in the promotion of Colombia's increased involvement with the Human Rights Council and its mechanisms.

In Colombia, the UPR launched a process that has had a direct impact on our Human Rights policies and strategies. The Government approached the UPR preparation with a spirit of openness and transparency and significant efforts were made to engage with the whole of the State Institutions as well as to encourage the participation of the broader community of civil society organizations working on Human Rights.

Among the different actions carried out, it is worth to highlight the set up of an **inter-institutional committee** mandated to consult with State institutions, as well as with civil society, to prepare the preliminary draft of the report, and to provide the input required for the interactive dialogue before the Working Group.

Consultation was carried out through different means, including meetings and workshops with State institutions (which closely involved the Judiciary); consultations with the Organs of Control; interviews with the Representative of the Office of the United Nations High Commissioner in Colombia; electronic consultation through the Presidential Program for Human Rights website (a specific email account was opened to receive comments and suggestions from all interested).

Invitations to the consultations were extended to civil society organizations dedicated to address Human Rights issues. However, a number of such organizations chose to refrain from actively participating in the process. I would like to stress that then, but particularly in the current implementation stage, the State welcomes constructive insights from civil society in order to further enhance public policies and actions.

The reason I take the time to mention all of this in every opportunity I address our UPR path, is to underline that to the Colombian State as a whole, the main benefit of the UPR has been related to the sense of ownership of the process that precisely comes from all these actions.

Such sense of ownership represents a valuable asset in terms of engaging public officials at all levels of the State and has proven to be influential to strengthen our interagency coordination as well as the State capacity to respond in areas of concern related to human rights. It has also had a significant impact in the intensification of our cooperation with the Office of the High Commissioner, both on issues related to the situation in Colombia and in matters connected to the Human Rights Council's agenda.

Advancing in the engagement with civil society organizations in the context of these dynamics remains a challenge to the State and also to the entire Colombian society but, there as well, steps are being taken in the framework of UPR Commitments and recommendations.

However, as important as we see the preliminary process, we certainly consider that the UPR's main challenge lies in the area of following up to the Country's commitments and recommendations. In this sense, transparency and accountability are of the essence, although due care should be taken to ensure that we approach these aspects in a way that do not overcharge the Council's work.

In this spirit, the Colombian Government made the decision to provide direct responses to all questions, comments and recommendations addressed by States during the Universal Periodic Review. We have delivered direct responses twice; the first time, in March 2009, at the formal adoption of our UPR outcome by the plenary of the Council. The second time, more recently, on the first anniversary of our presentation to the working group last December.

Furthermore, the sense of ownership I mentioned before actually generated a momentum that brought us to develop an accountability report, whose results were presented to diverse audiences in Bogotá, Washington, Brussels and Geneva. We decided to make these presentations on informal settings so a wider range of actors could participate. Comments were collected and we will present a formal UPR update at the Council session next March.

Yet the UPR should not simply be evaluated on the frequency of follow up updates, nor on the number of letters being sent or the number of meetings, consultations and events hosted.

These actions are all important because of the dynamics they create, because of the processes they reflect and, moreover, because of the significant impact they have on specific areas of concern in which, because of such dynamics, results are produced.

The UPR has indeed been at the core of meaningful actions that have recently produced verifiable results in the human rights situation in Colombia. This is reflected in areas that range from protection of children's rights, particularly girls', from enforced recruitment, to the formulation of a national policy to address discrimination against afro-colombian population. Also, from the State's unilateral declaration in support for the UN Declaration of the Rights of Indigenous Peoples, to the setting of an agreement with the Office of the High Commissioner to Monitor progress and setbacks in the fight against extrajudicial killings.

To the UPR, as well as to the overall functioning of the Human Rights Council, and even to very skillful work undertaken by the Office of the High Commissioner for Human Rights, this idea could apply: **It is not only the self reflecting and diagnosis process that adds value to State's policies and actions, but the impact it generates in people's lives.**

The value added can certainly be measured in terms of capacity development both at the national and local levels of government, in terms of the strengthening of State Institutions so they can promote, prevent and protect while remaining accountable on their actions and oversights. It can, no doubt, be measured in terms of the empowerment of a wider range of civil society organizations, allowing them to be heard in all of their diversity, and not only favoring those who have more access to international conferences.

The role of the Council, and that of the Council mechanisms, will be ultimately tested against this value added:

- Their ability to foster domestic institutions and societies to take the lead of their own processes,
- Their capacity to support advances in any given country, in the fulfillment of the State's international commitments under Human Rights Instruments, and, definitely,

- Their competence to encourage members of society to advocate, within their own system, with their own people, taking into account their own needs and views, the changes required to overcome challenges and setbacks that hamper democracy and affect the enjoyment of human rights in their territories.

International interest, international cooperation, international mechanisms of assistance are central elements to support these processes. However, fostering domestic engagement and participation from international organs such as the Human Rights Council are duties that remain at the essence if we want to ensure sustainable advance in human rights, worldwide.

3. Special Procedures: ensuring objectivity, fostering engagement

I would like to devote the last part of this presentation to make a few remarks on our recent experiences with Special Procedures, another aspect that gained a new dynamic in the context of our UPR presentation, but one that was also fostered from the developments in the Human Rights Council.

It has to be said that Colombia felt that the adoption of the Institutional Building Package, as well as the Code of Conduct, provided an element of balance to a System where, in few although meaningful occasions, the State felt treated in an unfair manner.

In this sense, I think is healthy to state that Colombia does not view the Code as an element intended to hinder the work of Special Procedures, nor we consider it as a tool to be consistently used in the many times disagreements arise with mandate holders. We see it as a reminder of the nature, the importance and the sensibility of the role of Special Procedures, **the duty for States to respect their independence and to carefully analyze their assessments** and, at the same time, the need for the mandate holders to honor their functions and to acknowledge the scope of their given terms of reference.

In our view, the institutional building framework for Special Procedures, as well as the already mentioned dynamic of the interactive dialogue with mandate holders, has brought in new elements of trust that have favored a more active engagement of States with this system.

In fact, the decision of the Government to invite, in the course of one year, the four Special Rapporteurs we were recommended to invite in our UPR process, responded in part to our will of playing an active role in the new dynamic we perceived in the Human Rights Council.

Honoring our commitments and the recommendations we voluntarily accepted, during 2009 we received the four requested visits of the Rapporteurs on Extrajudicial Executions, Rights of Indigenous Peoples, Human Rights Defenders and, just last December, Independence of Judges and Lawyers.

It was a tremendous effort to organize and prepare the four visits in one year, and, at the same time, comply with our commitments Colombia to regional mechanisms under the Inter American Human Rights System. I take this opportunity to express our appreciation to what we also recognize as a remarkable effort on behalf of the mandate holders themselves, and the support we received by the Office of the High Commissioner. All of our interlocutors accommodated their schedules to fulfill our aspiration of effectively meeting our commitments in this matter.

Moreover, not only did we manage to undertake the visits in a way that we consider satisfactory, but the process allowed us to develop methodologies and instruments and, most importantly, positively reinforced our efforts in terms of interinstitutional coordination. In fact, the visits contributed to create momentum inside the country to make, to sustain or to develop sensitive decisions that had to be adopted and enforced in very delicate and pressing human rights issues.

All the visits were complex, demanding, even uncomfortable at times, but we understand that this is precisely the way they are supposed to be. We considered all the visits to be fruitful in terms of furthering and reinforcing efforts at the domestic level. In 2010, we will receive all the reports, a fact that is even more challenging, particularly with the country undergoing an electoral year.

What do we expect from this forthcoming process of reports towards the Human Rights Council? As part of our renewed engagement with the system of special procedures, during the visit I made to Geneva last December to present our UPR accountability report, I had a very productive meeting with the OHCHR team that supports the work of mandate holders.

I would particularly like to mention the useful exchange we had regarding reports and recommendations. There, I mentioned the importance we attach, as a concerned country, to receiving direct recommendations which could contribute to develop specific road maps to address the very concrete concerns identified by the mandate holders. In fact, effectively transforming Special Rapporteurs' recommendations into actions and policies should be the next step in this process.

For the past few months, Colombia has also been asking itself how to reconcile present and past recommendations with new insight we are about to receive. How to handle the situation, which I believe occurs in many countries, where recommendations from Special Procedures are not only numerous but even contradictory amongst them and not necessarily consistent to recommendations formulated by the Office of the High Commissioner or regional mechanisms? It is our view that these issues remain a challenge for System as a whole.

However, in this regard, and in order to address the universe of recommendations we have received -and will continue to receive- from Special Procedures, and to complement them with those made to Colombia from the Office of the High Commissioner and those received in the context of the UPR, we, again, developed another instrument: a matrix of recommendations where we compiled all of them and could be able to classify them according with several criteria.

We are now in the process of examining all recommendations to integrate them with the current efforts being undertaken in the context of our human rights policies and initiatives.

4) Conclusion

Colombia sees its efforts in the overall context of its participation in the dynamic of the Human Rights Council and in the context of our close and cooperative relationship with the Office of the High Commissioner, both in Geneva as through her representation in Bogota.

We have made the decision to assume the Human Rights Council as a renewed opportunity to consistently engage with the UN Human Rights System and its mechanisms.

We see this as a way to take advantage of the instruments the system offers to cooperate with States in the fulfillment of their human rights commitments and to support their efforts to improve the domestic human rights situation.

We recognize, however, that the willingness of the State is a central element in this desired approach of cooperation and engagement. We agree that not being able to guarantee such a political will affects the system's ability to universally promote and protect human rights.

This delicate matter is already reflected in the Institutional Building Package. How to deal with a situation of non-cooperation, particularly regarding issues such as how to define and how to address what are called "cases of persistent non cooperation" is a question that, we consider, has put a significant strain to the functioning of the Council so far, and one that, no doubt, will come several times to our discussions during this Conference.

I will leave these comments here; I thank you all for your attention and will be happy to respond to questions and comments,

Thank you very much.