

Joint NGO views on issues to be discussed at the 11-17 April meetings of the Treaty Body Strengthening Process

Response to “Food for Thought” paper prepared by the Co-facilitators

9 April 2013

As a starting point, we consider that the treaty body strengthening process must lead to greater human rights protection on the ground. Therefore, any proposal must be measured in terms of whether it contributes toward enhancing the ability of rights-holders to enjoy their human rights, including by enabling States to fulfil their international obligations.

We also reiterate that treaty bodies have sole competence to deal with issues related to their working methods and rules of procedure. The independence of the treaty bodies in this respect is enshrined in the international instruments that created them. **As they relate to working methods, many of the recommendations below are directed at the treaty bodies.**

1. FOCUSED TREATY BODY CONCLUDING OBSERVATIONS

We recognize the challenges presented by large numbers of recommendations coming from the treaty bodies as well as other parts of the UN system. NGO engagement and the effectiveness of that engagement can be facilitated at a fundamental level by the quality and quantity of concluding observations. Steps should be taken to ensure concluding observations are clear, sufficiently detailed, relevant to the State party and specific. With regard to the proposed guidelines, we agree that concluding observations should be **country specific, targeted**, should **reflect the issues raised during the review**, and that **previous concluding observations should be the point of departure of each new reporting cycle**. With regard to whether concluding observations should be measurable, we agree that these should be drafted in such a way that **allows for their assessment** and that **indicators** by which to measure achievement could be helpful.

With regard to the proposal that the concluding observations give concrete guidance about the steps to be taken to implement treaty obligations, we agree that concluding observations should be **clear and specific, in terms of whom they are targeted at, the problem identified and the steps to be taken to bring law, policy and practice into conformity with the treaty**.

We consider that the **prioritization of a few concluding observations**, that a State can be reasonably expected to implement within a short time-frame, can be useful. It helps to focus attention and to galvanize domestic constituencies around these issues. Criteria for the selection of issues to prioritize would be useful to ensure consistency. **Prioritization across the treaty bodies** would also be useful particularly for following-up through other UN Mechanisms, for example, as the treaty bodies' input to the Universal Periodic Review and through UN country teams. It would also be helpful for committees to consider the inclusion of recommendations to encourage the engagement of other national actors, for example the suggestion that the concluding observations be tabled in parliament.

However, we do not agree with the premise that shorter is necessarily better, and believe that limiting the number of, or word limit for, concluding observations risks being arbitrary and setting an artificial cut off. While it might be appropriate in some situations to have fewer concluding observations because of the State of implementation at the national level, this may not be the case across the board.

Taking these steps on concluding observations would greatly facilitate and increase the level of engagement of NGOs in follow-up activities, thereby also increasing the support States have in implementation.

2. DUAL CHAMBERS

We recognize the challenge inherent in the need to increase the number of reports that can be considered in any one session, in a situation where some treaty body members do not have the capacity to spend any more time fulfilling their responsibilities as committee members than is currently the case. We note that the model of two committees functioning in dual chambers has proved a useful solution in the short term to addressing backlogs. While this meant that those committees could consider a greater number of reports, we observed some shortcomings with this in particular the division of the committees which at times resulted in an imbalance between the professional experience and skill set. This in turn had an impact on the quality of the dialogue and concluding observations.

We therefore recommend that if this model is pursued, the chairpersons of the committee **give careful consideration to establishing chambers that not only take into account geographic and gender balance, but also reflect a mix of professional experience and number of years on the Committee.** In doing so, the chairpersons can exercise flexibility about moving members between chambers in light of the States parties reports to be reviewed and the priorities identified through the lists of issues.

The model also needs to take into account the situation for the smallest treaty body, the **Committee against Torture**, which comprises only 10 members. If it is decided to divide this body into two chambers, it will require significantly greater secretariat support to assist it in dealing with its workload.

3. ALIGNED CONSULTATION PROCESS FOR ELABORATION OF GENERAL COMMENTS

In order to create clear channels for stakeholder participation, there is a need for greater **procedural transparency at the stage of proposing a general comment, as well as when it is discussed and adopted.** It is important that the treaty bodies adopt **guidelines** detailing the procedures followed in the development of general comments, including the role of the general discussions days and thematic debates in the overall process. Several principles should underlie any such procedural guidelines.

The **selection of topics** should be transparent and motivated by a real need for the clarification of ambiguous provisions or the bringing together of principles applicable to complex rights or rights in respect of which there has been a large body of jurisprudence. This should be grounded in the Committee's experience of reviewing States parties' reports, developing concluding observations and consideration individual communications.

Procedures should establish channels for consultations to ensure that the process can **benefit from the input of stakeholders with relevant expertise in the issue covered by**

the general comment, including States, NGOs, national human rights institutions, UN agencies and other relevant stakeholders. Consultations should be undertaken at all stages of the process, including allowing stakeholders to make suggestions about the selection of themes, and the submission of preliminary observations as well as comments on the final draft. This should not undermine the independent role of the treaty bodies, which are able to take stakeholders' comments into account but are in no way bound by them.

4. ALIGNED MODELS OF INTERACTION BETWEEN TREATY BODIES AND NATIONAL HUMAN RIGHTS INSTITUTIONS, AS WELL AS CIVIL SOCIETY ORGANIZATIONS

We agree with the High Commissioner that the modalities for cooperation between NGOs and treaty bodies is one area in which coordination on the basis of treaty bodies' good practice would be beneficial. Good practice is that which promotes **regular interaction** between NGOs and Committees.

Where NGO briefing sessions are held concurrent with State party reviews, these should be **held in proximity to the State Party reviews** in order to limit the number of days that NGOs must be in Geneva to be present at both. Ideally, this should be the day before the State Party review.

Further, while we agree that meetings with NGOs should be **formal**, take place within **official meeting time**, and benefit from **interpretation services**, we reiterate that this interaction should take place in **closed sessions**, both to enable participation by NGOs who may be unable or unwilling to speak in public and to protect NGOs from reprisals. We disagree that these meetings should take place in public. The practice of one-hour private lunchtime briefings organized by civil society organizations should continue.

We believe that it is important for NGOs to have clear information about the procedures and deadlines for NGO contributions to the treaty body processes. NGOs also benefit from guidance about how best to prepare written briefings for the committees, including advice that encourages the authors to present their information in the most succinct way possible. However, the proposed limits do not take account of the differing mandates of different NGOs, and their internal working practices and priorities that might make it difficult for them to work in coalitions. It is also worth noting that NGOs have always borne all responsibility and costs for their contributions—including translation, copying, mailing and distribution—as NGO contributions are not processed as formal UN documents. In light of this, while it may be reasonable for treaty bodies to set parameters for NGO reporting, we suggest that any potential limits take into account the factors set out above and that NGOs be able to provide additional information in an annex, as we have proposed for State reports.

In addition, the number of NGO reports might be minimized if—with the exception of confidential reports—these were indexed and stored by OHCHR by country and theme so that they are available for use by other treaty bodies, where there is overlap.

5. ESTABLISHMENT OF A TREATY BODY JURISPRUDENCE DATABASE ON INDIVIDUAL CASES INCLUDING INFORMATION ON THEIR FOLLOW-UP

Regarding the **individual communications procedures**, we welcome the HCHR's proposal to establish a database on jurisprudence and to distribute summaries of the views on each case. This should also include information on follow-up. It is also incumbent on States to provide information about the procedures and widely disseminate treaty body jurisprudence at the national level, including in local languages, and to include this jurisprudence in legal and judicial education.

6. REPRISALS

We welcome the importance placed in the "food for thought" notes on the need to address reprisals. Fear of reprisal can hinder the participation of victims and civil society, especially from the country in question, effectively rendering the treaty bodies inaccessible, and depriving Committee members of the knowledge and experience they depend on to carry out their mandates effectively. The discussion notes mention a proposal for all treaty bodies to appoint a focal point among their membership to draw attention to such cases. This is a good starting point but recommendations must go further than this.

The HCHR recommends that treaty bodies take urgent and consistent measures in cases of reprisals, including through '*ensuring mechanisms for action*', appointing reprisals focal points in each treaty body, and '*considering consistent action through other relevant mechanisms*' such as relevant Special Procedure mandate holders, OHCHR, and inclusion in the Secretary-General's report on reprisals. The High Commissioner's proposal goes some way towards addressing the problem, but we also make the following recommendations with a view to building on it further.

- Treaty bodies should ensure that the **identity and contact information of the focal point** on reprisals is properly advertised on the Committee's website and communicated to NGOs participating in the treaty bodies' work.
- Treaty bodies should ensure that **meetings held with NGOs are held in closed sessions and that the contact details of the NGO representatives remain confidential unless they have given their permission to share this information.**
- '*Mechanisms for action*' as recommended by the HCHR, should involve a **direct exchange with the State party** concerned, which would then be **required to respond** to the allegations in a timely manner. Where relevant, treaty bodies should also require States parties to **report back on reprisals cases together with concluding observations requiring more urgent follow-up.** However, any follow-up, including with delegations, should ensure that the complainant is not placed in further danger.
- Treaty bodies should **work closely with OHCHR field presences and UN country teams**, for example by requesting systematic follow-up by these actors with individuals at risk before and after the examination of State reports and the consideration of individual complaints. Furthermore, the focal point on reprisals in the treaty bodies should be **matched with a focal point in the treaty body division of OHCHR.** This focal point would be well placed to coordinate with OHCHR field presences and UN country teams, and to ensure inter-sessional attention to preventing and responding to cases of reprisals.

- The treaty bodies should **highlight the Secretary-General's report on reprisals**, by providing information about the report on their webpages and during their meetings with NGOs, and encouraging those who have suffered or face reprisals to submit their cases.

7. THE TREATY BODIES' FOLLOW UP PROCEDURES

Follow-up to the concluding observations of the treaty bodies and to views issued on individual communications is central to the effective fulfilment of the treaty bodies' mandate and crucial to measuring the realisation of the mechanism's ultimate objective, namely, the improvement of the human rights situation on the ground. As a real-time assessment of progress achieved and challenges remaining, it provides a strengthened basis for treaty bodies' guidance to States parties on proposed policies, laws, and programmes. It is also indispensable to the implementation of concluding observations and views.

An effective and coordinated follow-up procedure to promote and ensure the implementation of views by states should be established by the treaty bodies. The Office of the High Commissioner for Human Rights (OHCHR) should provide consolidated and dedicated secretariat support to this procedure.

8. STRICT ADHERENCE TO PAGE LIMITATIONS

Lengthy State reports to treaty bodies **encourage unfocused reporting**. The imposition of page limits would compel States to include only the most relevant information. This should make it easier for treaty bodies to form an accurate picture of the status of implementation of a treaty.

Page limits exist already in the Guidelines for the Common Core document and for five treaty bodies.¹ The Inter-Committee Meeting and the Meeting of Chairpersons have numerous times reiterated their recommendation that States adhere to these limits. Given that page limits are **applied strictly to many other document submissions at the UN**, it is inconsistent that these are not respected for treaty body reports.

Further, a page limit for the report would not preclude States parties from providing **additional information in an annex** that could be posted on the OHCHR website but would not be processed as an official UN document.

Signatory organisations

- Amnesty International
- Centre for Civil and Political Rights (CCPR)
- International Rehabilitation Council for Torture Victims (IRCT)
- International Service for Human Rights (ISHR)
- NGO Group for the Convention on the Rights of the Child

¹CEDAW, CEDAW/C/2009/II/4; CERD, CERD/C/2007/1; CRC, CRC/C/58/Rev.2; and CMW, HRI/GEN/2/Rev.2/Add.1, CAT <http://www2.ohchr.org/english/bodies/cat/workingmethods.htm#1#1>