
TREATY BODY REFORM

Interview with treaty body experts – taking stock of the reform process



Photo: ISHR

Left to Right: Rachel Brett (Quaker United Nations Office), Heather Collister (ISHR), and Tania Baldwin-Pask (Amnesty International).

While the treaty body system continues to grow and develop, coordination and harmonisation of working methods between the treaty bodies remains a challenge. The quality of the work of the treaty bodies also depends on the quality of the individual Committee members, which until now has been uneven, with members often not showing the requisite independence from their governments or sufficient expertise in carrying out the responsibilities entrusted to them.

In order to improve implementation of the human rights obligations of States parties, discussions around the reform of treaty bodies and the treaty body system have been ongoing for a number of years. These have included the annual meeting of Chairpersons of Treaty Bodies and Inter-Committee meetings to discuss harmonisation of working methods. Other significant discussions have been held between treaty body members, in Dublin (Ireland, November 2009)¹ and Poznan (Poland, September 2010),² and national human rights institutions in Marrakech (Morocco, June 2010).³

ISHR spoke with **Tania Baldwin-Pask** (International Advocacy Programme, Amnesty International) and **Rachel Brett** (Representative for Human Rights and Refugees, Quaker United Nations Office, Geneva), to find out their views on treaty body reform. They tell us what's working, what's not and where the opportunities for a more effective system lie.

ISHR: *ISHR and other NGOs have engaged with the process of treaty body reform through participating in the Inter-Committee Meetings and through submitting various joint statements – such as the joint NGO statement to the 7th Inter-Committee meeting in 2008, and the response to the Dublin statement presented in November 2010.⁴ Have you engaged with the process in any additional ways and do you have plans for similar engagement in the future?*

Brett: Tania and I were both invited to the Poznan meeting and I think that was extremely useful, and the Poznan statement is actually pretty good. It was slightly odd because we were then told we were observers, not participants. In practice we were allowed to participate fully but not to endorse the statement. Being able to engage in the meeting was probably one of the most useful opportunities to date, in addition to the submissions NGOs have been making and the statements at the Inter-Committee Meetings.

ISHR: *Do you feel that NGOs have been given sufficient space to contribute to the process?*

Baldwin-Pask: The Dublin statement initiative has been very important, but meetings where NGOs are able to contribute have not flowed automatically from that process. Because of that we [at Amnesty International] decided to try and create our own process with the NGOs that we work with regularly. We wanted to reach out as far as possible to regional and national partners but that's been very difficult. When you look at the statements and submissions that are available at this point, what's missing is a national NGO perspective.

1 <http://bit.ly/dKktpX>.

2 <http://bit.ly/hjr8cd>.

3 <http://bit.ly/dXLOot>.

4 <http://bit.ly/FFt87>.

Brett: I would endorse that because, after all, the whole purpose of the system is to try and improve the situation ‘in country’. Everyone acknowledges that one of the crucial elements to do this is the local and the national, and regional to some extent, NGOs. If they’re not engaged then there’s a real possibility that the end result is something that is designed to assist States and the OHCHR [Office of the High Commissioner for Human Rights] secretariat, but does not improve the human rights situation in the country.

Baldwin-Pask: I think one of the interesting aspects of the discussions is an increased focus on steps that can be taken to connect the treaty bodies directly to what is happening at the domestic level. So from the Poznan statement, and certainly in the NGO submission, came the idea of the treaty bodies being more active on the ground, whether that’s in relation to follow-up or other initiatives. I think there is some recognition that there has to be a more outward-looking focus overall. However, the proponents of this reform initiative haven’t yet reached out to national NGOs in order to get their input.

ISHR: *Do you think reform is best undertaken on an ad hoc basis, taking into account financial and resource constraints, or would you favour a holistic approach?*

Brett: I don’t think the two are necessarily mutually exclusive. This particular process [i.e. the meetings that have taken place since Dublin in 2009] is one element of what has been a much longer, ongoing effort to improve the treaty bodies and their ways of operating. There have been steady improvements in many respects, but if you don’t look at some of the very core elements, such as quality of membership, then you’re not going to make a lot of progress. The system of governments nominating and electing individuals to the treaty bodies as part of a bargaining process means focus on the quality of the individuals gets lost. Whatever results the reform has, if the way in which individuals become members remains the same, without any other safeguards, then the system is not really going to improve.

ISHR: *We’ve heard a lot of talk about harmonisation to give some uniformity to the way the different treaty bodies operate. Do you think this detracts from the main objective of reform, which should be to improve impact on the ground?*

Baldwin-Pask: I don’t think harmonisation should be at any cost. The harmonisation efforts came out of more radical proposals made in previous reform discussions, because it was one thing the treaty bodies could successfully change, and was much needed from an NGO perspective. The value of harmonisation is that it makes the system more accessible and more understandable. It’s incredibly difficult for NGOs trying to find their way around all the different treaty bodies that have slight variations in their working methods.

I’m not sure harmonisation will necessarily be the only focus of this reform effort. I think it has to go further than that. Membership, as Rachel was saying, would be one aspect. I

think we also need some reflection at this time about a system that keeps expanding. States are saying from one side of their mouths ‘we don’t want proliferation’ and from the other side ‘we need more treaties and (inevitably) more treaty bodies’. There really does need to be some reflection about the overall impact of that approach.

Brett: The only thing I’d add to that is that it was really only when there started to be discussions about treaty body reform that individual treaty bodies started discovering what the other treaty bodies did. There was so little connection between them that it was quite a revelation to many of them (and continues to be because the membership turns over) that they don’t all behave in the same way. Even quite recently, it came out that most of the treaty bodies do not have a handbook of their own practice to give to their new members. So they then wonder why some of their new members don’t ‘behave properly’.

ISHR: *There does seem to be resistance from the treaty bodies to harmonising their working methods. Do you have thoughts on the source of that opposition?*

Baldwin-Pask: The treaty bodies have all developed at different times and in different ways and I think some of them hold very dear, and actually sometimes for very good reason, a particular way of working. For example, some treaty bodies are more open about disclosing which member is leading the review of a particular country while others aren’t. There is a history behind that, which is why I think harmonisation can go so far but shouldn’t necessarily be across the board.

Brett: But there are also other issues too, for example insofar as the focus is on harmonising reporting well, we have one treaty body⁵ that doesn’t receive reports at all. So you’ve even got as fundamental a problem as that.

ISHR: *In parallel to discussions about more fundamental reform of the treaty body system, several committees have developed specific elements to improve their work, such as the list of issues prior to reporting (LOIPR) adopted by the Committee Against Torture and the Human Rights Committee. What are your thoughts on the LOIPR?*

Brett: I think it would be very interesting to see how it works. In particular, I can see the advantages in terms of helping to guide the kind of report that you’re hopefully going to get from the State. Potentially, it could be problematic in terms of the additional work that has to be done to produce the list of issues prior to receiving a report – how do they select that list of issues? With that comes the question of how NGOs input to that list of issues. So we’re going to have to see how it works in practice and do a real evaluation. This may be one of the places where different treaty bodies may legitimately do things differently, because if you’ve got a more focused treaty, like the *Convention against Torture*, the list of

5 The Sub-committee on the Prevention of Torture.

issues prior to reporting might work. If you've got a broader one, like even the *Covenant on Civil and Political Rights*, let alone the *Convention on the Rights of the Child*, it might not work. I think that's the kind of differentiated evaluation that would need to be done.

Baldwin-Pask: And in fact the Committee Against Torture is going to be evaluating how it's been working so far, I think at its upcoming session. It will be really important for NGOs to share their experiences.

ISHR: *In terms of increasing impact on the ground, follow-up to recommendations is crucial. What do you think are some possible ways of improving follow-up?*

Baldwin-Pask: If there was a way for the treaty bodies to identify from amongst all of the recommendations that they are producing what the priorities are, I think that would be incredibly helpful for focusing attention of all parties on these priorities. Implementation plans have been very much talked about in the context of the universal periodic review (UPR) but surely there's a space there for treaty body recommendations as well.

Brett: I'm really pleased that there is more focus on follow-up, because this has been one of the weaknesses of the system. One of the key things is having 'in country' or regional OHCHR offices fully engaging in follow-up to the treaty body recommendations. If the States can be persuaded to produce an implementation plan, that would really help because it would be easier to add additional recommendations as they are made by other treaty bodies.

ISHR: *How could the individual communications procedure be improved?*

Brett: I think with more openness. The one that we've been involved with is the Optional Protocol to the *Covenant on Civil and Political Rights* and, to some extent, we know about the cases because we're in contact with the people submitting them. But even then it's quite hard to get information. I understand the confidentiality rule⁶ is needed in some respects, but at a certain point, I'm no longer clear why it needs to be confidential throughout. There's a huge gap in terms of getting cases into the public domain in a way that makes them accessible and comprehensible. If there was a little more transparency, you could start having amicus briefs or third party interventions, which at the moment is effectively impossible.

ISHR: *Do you think the individual communications procedure is being well-utilised?*

Brett: I think it's well-utilised by those who know about it and know how to use it. The problem is that there are a lot of people who simply do not know about it. The Human

Rights Committee on some issues at least is actually far more advanced in terms of its jurisprudence than the European Court of Human Rights or the Inter-American system. But the regional NGOs are much more used to taking their cases to the regional bodies and there is an assumption that the regional bodies are more advanced. There's also, particularly in the European system, the benefit that decisions made by some regional bodies would be legally binding judgments and so people are still preferring to take cases to them. However they would get a better substantive outcome if they took the cases to the Human Rights Committee.

ISHR: *In terms of the process as a whole, given all the talk about financial constraints, what can realistically be achieved?*

Baldwin-Pask: I'm always very cynical about the message that there's no more money. One of the treaty body members described the system as in 'crisis' and I think that's absolutely clear. For example, there are real issues around the UN being able to have States' reports translated in time for treaty body considerations, and that threatens to undermine a process that is dependent on a dialogue based on a State's report. If States are serious about this system, they have to come up with the goods. They have to provide it with adequate resources. ■



Tania Baldwin-Pask
International Advocacy Programme,
Amnesty International



Rachel Brett
Representative for Human Rights
and Refugees,
Quaker United Nations Office,
Geneva

⁶ The confidentiality rule of the Human Rights Committee means oral deliberations and summary records must remain confidential.