

NGO Joint Submission to the 7th Inter-Committee Meeting of the United Nations Treaty Monitoring Bodies, June 2008

In this joint submission to the 7th Inter-Committee Meeting of treaty bodies (ICM), scheduled for 23 to 25 June 2008, the undersigned non-governmental organizations (NGOs) present recommendations developed with the view to enhancing the effectiveness of human rights treaty monitoring bodies, in particular focussing on improving NGO contributions in the treaty bodies' procedures.

These recommendations are based on the broad and long-term experience of the undersigned NGOs in working with treaty bodies. They also reflect "best practices", procedures used by at least one treaty body and which all treaty bodies might consider adopting, in the context of the continuing discussion on harmonization of working methods.

This submission focuses on three aspects of NGOs participation: consideration of state reports; development of general comments; and election of treaty body members. It does not represent an exhaustive list of issues (or recommendations) on NGO contribution to the treaty bodies' activities. Therefore, individual NGOs might make additional contributions in advance of or during the 7th ICM.

1 Consideration of State reports

Treaty bodies have, on numerous occasions, recognized the importance of receiving timely information from NGOs in advance of consideration of states' initial and periodic reports. The recommendations in this section would, if implemented by all treaty bodies, improve the capacity of NGOs to submit information relevant to the consideration of States' reports and related follow-up procedures.

1.1 Calendar of meetings

The sixth ICM in June 2007 reiterated previous recommendations that NGOs should send information well in advance of treaty body sessions. "To that end, the Secretariat was encouraged to establish a user-friendly master calendar that would provide information well in advance on the timetable for all the treaty bodies and for contributions relating to lists of issues and shadow reports for country reviews."¹ While a calendar of consideration of states reports before all treaty bodies is systematically attached to the e-mail notification of treaty bodies recommendations, it is incomplete, lacking, for example,

¹ See A/62/224.

details of deadlines for submissions of written reports or times of Pre-Sessional Working Group meetings and contact details of secretariat staff to whom information should be sent. It is also not accessible directly from the OHCHR treaty bodies website.

Recommendation:

- The ICM could recommend that the secretariat develop, publish and maintain a master calendar of treaty bodies' consideration of states reports that is accessible on the OHCHR treaty bodies website. This calendar could include deadlines for submissions of written reports, dates of Pre-Sessional Working Group meetings, and information on who to send the written submissions to.

1.2 Confidentiality of written information

While the process of submission of NGO written information is, to a large extent, similar across treaty bodies, the rules on confidentiality of NGO submissions are not uniform. In particular, the Committee against Torture's practice is not to consider NGO written submissions when the submitting NGO requests that the information not be transmitted to the State concerned.² Other treaty bodies, such as the Committee on the Rights of the Child (CRC) and the Committee on the Elimination of Discrimination against Women (CEDAW), allow for confidentiality of NGO information. Some NGOs, and/or their members and sources of information, may be at risk of reprisal from the government if confidentiality is breached. The undersigned NGOs believe that all treaty bodies could adopt a common policy on the treatment of confidential information which ensures that all NGOs submission are considered by treaty bodies while NGO information can be kept confidential.

Recommendation:

- The ICM could recommend that treaty bodies, which do not currently have a system to ensure confidentiality of NGO information, allow NGOs to request that the information they submit be kept confidential, but still be considered by the treaty body concerned.

1.3 Oral briefing during Pre-Sessional Working Group and Committee meetings

Oral briefings by NGOs allow treaty body' members to receive up-to-date information, to clarify any points arising from written briefings, and ask other questions with a view to conducting an effective dialogue with the state party concerned.

All treaty bodies, with the exception of the Committee on the Elimination of Racial Discrimination (CERD), arrange for formally scheduled NGO oral briefings, whether in Pre-Sessional or Committee session meetings. However, the modalities and timing of such briefings vary greatly. The undersigned NGOs consider that the approaches adopted by the Committee against Torture (NGO briefing the day before the report of their government is considered), the Committee on the Elimination of Discrimination against Women (NGOs briefing at the beginning of the first and second week of the session and the opportunity to present at the Pre-Sessional Working Group) and the Committee on the

² See HRI/MC/2007/4, paragraph 105.

Rights of the Child (NGOs briefing during the Pre-Sessional Working Group) represent the best practices to ensure effective participation of NGOs in oral briefings.

Recommendations:

- The ICM could recommend that all treaty bodies provide for formally scheduled NGO briefings in advance of the consideration of State parties' reports or the review of a State party in the absence of a report;
- The ICM could encourage all treaty bodies to consider adopting approaches on the basis of the CAT, CEDAW or CRC practices.

1.4 Follow-up to Concluding Observations

The development by some treaty bodies of a mechanism to follow-up specific time-bound Concluding Observations has generated a more continuous dialogue between the treaty bodies and the States parties, as well as improving the clarity of the recommendations for purposes of implementation.

Some follow-up procedures, such as that of the Human Rights Committee, are moving toward a qualitative assessment of the implementation of the Concluding Observations rather than a simple recording of government compliance with the request for additional information. To be sustainable, this welcomed development requires adequate secretariat support for the rapporteur on follow-up. It also provides an opportunity for more systematic NGO engagement in the follow-up procedure, such as submission of written and oral information to the treaty bodies on the implementation of the Concluding Observations or comments on the information provided by the government.

Recommendations:

- The ICM could reiterate³ its recommendation that each treaty body consider adopting a procedure to ensure effective follow-up to its Concluding Observations/Comments, including the appointment of a rapporteur on follow-up;
- The ICM could recommend that treaty bodies develop modalities for considering information provided by NGOs on follow-up;
- The ICM could recommend that any follow-up provide for a periodic qualitative assessment of the implementation of Concluding Observations and that such assessment is conducted in open meetings;
- The ICM could also recommend that additional resources are provided by the secretariat to support the work of the rapporteur on follow-up in each treaty body.

2. General comments

All treaty bodies have developed practices to adopt General Comments to provide authoritative interpretation of treaty obligations. However, procedures for drafting General Comments are not consistent, particularly with respect to consultations with NGO and other experts before and during the drafting process.

³ See A/61/385.

The undersigned NGOs believe that a common and more transparent procedure could prove useful to all concerned. They favour a systematic approach to soliciting timely and useful comments from NGOs, academics, other experts and UN and regional bodies.

Recommendation:

- The ICM could consider recommending to treaty bodies to adopt a common transparent procedure for consulting on and drafting draft general comments. Such procedures could include soliciting and considering contributions from NGOs, academics, other experts and UN and regional bodies; publication of comments submitted (including by posting on the relevant treaty body's website); and holding public discussion on draft general comments during sessions, with the opportunity for NGOs and other experts to intervene.

3. Selection and elections of treaty body' members

The quality of individual members serving on treaty bodies can have a significant effect on the overall quality and effectiveness of the treaty bodies, as well as on perceptions of their independence and expertise.⁴

Criteria related to treaty body' members, such as independence, competence, gender balance, geographical balance and representation of different legal system, are to be found in the relevant human rights treaties. The most recently adopted human rights treaties also contain provisions to limit treaty body members to serving no more than two terms.⁵ The selection process at the national level, leading to nominations of candidates, and the negotiations among States parties around the election are often very opaque and offer limited opportunities for scrutiny or effective NGOs contribution.

Although the selection and election of treaty bodies' members rest ultimately with States parties, there are no obvious institutional reasons that would prevent treaty bodies from providing guidance to States parties on treaty provisions related to the membership criteria and to the nomination and election process. Indeed, the 8th Meeting of Chairpersons of Treaty Bodies adopted a recommendation calling on states parties to "[...] refrain from nominating or electing to the treaty bodies persons performing political functions or occupying positions which were not readily reconcilable with the obligations of independent experts under the given treaty."⁶

To ensure the effective integration of women's human rights concerns across all treaty bodies it is suggested that treaty bodies recommend that states parties ensure a balance of

⁴ This has been emphasized by the High Commissioner, who stated: "The ultimate success of any monitoring system... depends on the calibre and independence of the experts monitoring implementation of treaty standards." See HRI/MC/2006/2.

⁵ See the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of Persons with Disabilities and the Convention against Enforced Disappearances. Similarly the newly established Human Rights Council Advisory Committee has provisions for limiting to its members to two terms.

⁶ See A/52/507.

members with expertise on women's human rights concerns vis-à-vis the treaty specific issue.

Recommendations:

- The ICM could consider adopting a recommendation on the criteria for treaty body membership, including reaffirming the Chairpersons' 1997 statement on independence;
- The ICM could consider recommending that States parties do not re-nominate members who have already served two terms;
- The ICM could consider recommending that States parties nominate and elect more women candidates in order to address the issue of gender imbalance in treaty bodies, as well as ensure the representation of members with women's human rights experience;
- The ICM could encourage the treaty bodies to consider requesting States parties to provide information on their selection and nomination process at the national level.

List of signatories:

Amnesty International
ARC International
Association for the Prevention of Torture
International Service for Human Rights
International Women's Rights Action Watch
International Women's Rights Action Watch – Asia Pacific
NGO Group for the CRC
Quakers UN office
Save the Children
World Organization against Torture