UNITED NATIONS TREATY BODIES

ISSUES FOR THE INTER-GOVERNMENTAL PROCESS ON STRENGTHENING THE EFFECTIVE FUNCTIONING OF THE HUMAN RIGHTS TREATY BODY SYSTEM

A Joint NGO Contribution

> *"[T]he treaty bodies… need to be much more effective and more responsive to violations of the rights they are mandated to uphold. The treaty body system remains little known; is compromised by the failure of many states to report on time if at all, as well as the duplication of reporting requirements; and is weakened further by poor implementation..."*
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> *Former UN Secretary-General Kofi Annan*[1]

INTRODUCTION

On 24 February 2012, the United Nations (UN) General Assembly (GA) adopted Resolution 66/254 entitled: "Inter-governmental process of the General Assembly on Strengthening and Enhancing the Effective Functioning of the Human Rights Treaty Body System". The resolution recognizes the important, valuable and unique role and contribution of the treaty bodies to the promotion and protection of human rights. It mandates the President of the GA to launch an open-ended inter-governmental process to conduct open, transparent and inclusive negotiations on how to strengthen and enhance the effective functioning of the treaty body system. The inter-governmental process shall not start earlier than April 2012 and the President of the GA is to present a report to the GA on the deliberations and recommendations of the process by the end of its 66th session (17 September 2012) for further consideration, including a possible extension of the process.

A paper that was endorsed by 24 international and regional non-governmental organizations (NGOs), which outlines four recommendations to enable the effective participation of NGOs in the inter-governmental process, was issued on 9 March 2012.[2]

The adoption of GA Resolution 66/254 has happened at a time when States Parties and other stakeholders in the treaty body system have been participating in a consultation process that was launched by the High Commissioner for Human Rights in September 2009 – the so-called "Dublin Process".[3] Those multi-stakeholder consultations have resulted in rich and varied proposals, many of which reflect the complementary and mutually reinforcing nature of different treaty body activities. It is critical that the inter-governmental process now builds on those recommendations.

This document has been prepared by NGOs that regularly contribute to the work of the treaty bodies and that firmly believe that the treaty body system requires strengthening to improve its effectiveness. Efforts to enhance the treaty bodies and the system should aim to improve the fulfilment of States Parties' obligations and strengthen the capacity of rights-holders to enjoy their human rights. To meet this aim, the following issues should be addressed in the inter-governmental process.

1. UNIVERSAL RATIFICATION OF THE CORE INTERNATIONAL HUMAN RIGHTS TREATIES AND THEIR OPTIONAL PROTOCOLS

It is nearly 20 years since the World Conference on Human Rights called on all States to ratify the

1 UN Doc. A/59/2005, In Larger Freedom: towards development, security and human rights for all, Report of the UN Secretary-General, 21 March 2005.

2 "Strengthening the United Nations Treaty Bodies: four recommendations to ensure the effective participation of non-governmental organizations". The paper is available at: http://www.amnesty.org/en/library/info/IOR40/003/2012 .

3 Further information including written submissions by States, NGOs, national human rights institutions, academics and UN agencies is available from: http://www2.ohchr.org/English/bodies/HRTD/hrtd_process.htm .

international human rights treaties and protocols and to limit the extent of any reservations to those treaties.[4]

Significant progress has been made in respect of some treaties towards the goal of universal ratification: nearly all States are parties to the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and a majority of States have ratified most of the remaining treaties.[5] Yet there are still significant gaps, particularly when considering that some States with large populations have yet to ratify either the International Covenant on Economic, Social and Cultural Rights (ICESCR) or the International Covenant on Civil and Political Rights (ICCPR). In addition, the International Convention on the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance have been ratified by less than half of all UN Member States. Similarly, too few States have accepted the individual communications procedures under the core international human rights treaties. [6]

Ratification of the international human rights treaties is undermined by reservations or declarations that seek to limit obligations under the treaty. Despite the near universal ratification of the CEDAW and CRC, these treaties have also attracted a high number of reservations. However, all States have pledged and have been encouraged to limit the extent of any reservations, and to regularly review reservations with a view to their withdrawal. [7]

RECOMMENDATIONS

❖ The inter-governmental process should develop strategies aimed at achieving universal ratification. Those strategies should take into account the impact of new initiatives to encourage ratification including the Secretary-General's annual treaty event, the Human Rights Council's Universal Periodic Review (UPR) mechanism and voluntary pledges made by States standing for election to the Human Rights Council.

❖ Targeted and time-bound strategies to encourage ratification should be developed for:

- States that are party to five or less of the core human rights treaties;
- States that have not ratified the ICESCR and ICCPR or either of them;
- States that face technical difficulties in becoming party to a particular treaty;
- Responding to the challenges facing the Least Developed Countries in ratifying the core human rights treaties; and
- States to accept the individual communications procedures under the treaties they have ratified.
- The inter-governmental process should reaffirm the commitment of States to minimise the extent of any limiting reservations or declarations, and encourage States to regularly review them with a view to withdrawal, including at the time when they are examined under the UPR mechanism. All States Parties should remain alert to reservations and declarations entered by other States to the treaties to which they are party and take appropriate action in response.

2. COMPLIANCE WITH REPORTING OBLIGATIONS

Many States Parties fail to comply with their reporting obligations enshrined in the core international human rights treaties. As of May 2011, 621 reports were overdue, of which a total of 316 were initial reports. These include the following overdue initial reports: 41 under the Convention on the Rights of Persons with Disabilities (CRPD), 38 under the ICESCR, 30 under each of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the ICCPR.[8] The initial reports of some States Parties are more than 20 years overdue. In contrast, the first cycle of the UPR mechanism secured 100% compliance with every State managing to report, which suggests that in some cases compliance has more to do with political will than other impediments. The failure of States Parties to produce their reports and/or submit them on time undermines

4 See para. 26 of the Vienna Declaration and Programme of Action. Note also that Section II, para.6 reaffirms the importance of General Assembly resolution 41/120 relating to the elaboration of new international instruments aimed at avoiding the proliferation of treaties.

5 As of 11 August 2011, there were 1,206 ratifications to nine of the core international human rights treaties. This figure does not include ratification of the Convention for the Protection of All Persons from Enforced Disappearances. See UN Doc. A/66/344, Measures to improve the effectiveness, harmonization and reform of the treaty body system, Report of the UN Secretary-General, 7 September 2011.

6 http://www2.ohchr.org/english/bodies/treaty/index.htm

7 See Vienna Declaration and Programme of Action. Some of the treaty bodies have also addressed the issue of reservations; for example, the Human Rights Committee through its General Comment no. 24.

8 See UN Doc. A/66/344, Measures to improve the effectiveness, harmonization and reform of the treaty body system, Report of the UN Secretary-General, 7 September 2011.

the functioning of the treaty body system.

RECOMMENDATION

- The inter-governmental process should promote better compliance by States Parties with their treaty reporting obligations, including through recommending arrangements for greater provision of technical assistance where this is necessary.

3. IMPLEMENTATION OF RECOMMENDATIONS AND VIEWS

Under the general principle of implementing treaty provisions in good faith, States Parties should make a concerted effort to implement the concluding observations/recommendations and views issued by the treaty bodies, as the advice of the treaty's supervisory body on how to better implement the treaty.[9] However, implementation of both concluding observations/recommendations and views by many States is poor - this is often evident from the review of States Parties' reports which reveal that many of the previous concluding observations have yet to be given effect. Not surprisingly, therefore, implementation has been a recurring theme of the treaty body strengthening discourse to date.[10]

RECOMMENDATIONS

- Implementation at the national level is enhanced by a strong domestic constituency. Therefore States committed to strengthening the treaty body system should use the inter-governmental process to pledge to conduct open consultations with their civil society in the preparation of their reports and following the review, and to establish a high-level focal point within the executive branch of government to ensure implementation of treaty bodies' observations/recommendations and views.

- The inter-governmental process should solicit good practice examples of how observations/recommendations and views have been addressed at the national level to encourage greater implementation by more States Parties.

- The inter-governmental process should encourage good practices in implementation and national reporting processes.

4. ANNUAL MEETINGS OF STATES PARTIES AND REPORTS TO THE GA

In general, the annual meetings of States Parties and the discussion in the GA's Third Committee of the annual reports of the treaty bodies do not give sufficient attention to implementation of treaty body observations/recommendations and views.

It is a welcome development that the GA has decided to invite the treaty body chairpersons to its annual debate; this promises to foster a much more substantive discussion with a focus on States sharing good practices with regard to implementation of the observations/recommendations and views of the treaty bodies and the strategies discussed above regarding ratification.

The meetings of States Parties to the CRPD with their focus on implementation of the Convention offer interesting ideas for how other meetings of States Parties could play a role in encouraging treaty implementation.

RECOMMENDATIONS

- The inter-governmental process should make recommendations for how the annual meetings of States Parties should be enhanced to better encourage and support implementation of obligations under the treaties as well as the treaty body observations/recommendations and views.

- The inter-governmental process should also review the format of the annual discussion in the GA of treaty body reports and ensure that the chairperson of each Committee participates in the debate, which should focus on the sharing of good practices regarding implementation of treaty body observations/recommendations and views.

- States Parties to each treaty should review the format of the annual meeting of States Parties with a view to strengthening its potential to contribute to the implementation of treaty body observations/recommendations and views, including through sharing of best practices. The meetings of States Parties to the CPRD should be considered as a model for others.

9 The Vienna Convention on the Law of Treaties states in Article 26 that "Every treaty in force is binding upon the parties to it and must be performed by them in good faith".

10 See in particular the Pretoria Statement and Seoul Statement on treaty body strengthening, available at http://www2.ohchr.org/English/bodies/HRTD/hrtd_process.htm and the report of a high level seminar organized by the Human Rights Implementation Centre at the University of Bristol, 19-20 September 2011, available from the same website.

5. ENHANCING THE MEMBERSHIP OF THE TREATY BODIES

The treaties require States Parties to elect committees comprising individuals of high moral character and recognized competence in the field of the treaty, giving consideration to the representation of the world's principal legal systems. The independent experts are to serve in their personal capacity. Some treaties recommend the inclusion of experts with specific professional or other expertise.[11] However, some treaty body members fall short of meeting these criteria. The need to ensure that candidates for election to the treaty bodies are both expert and independent has been a recurring theme of all treaty body strengthening efforts over the last decade. While some State Parties have adopted open and transparent processes at national level for the selection of highly qualified and independent candidates who are able to commit the necessary time to undertake their treaty body responsibilities, State Parties as a whole have yet to come to grips with the weaknesses of the current system and identify solutions.

Despite the call in the "newer" treaties for "balanced gender representation" [12] , the GA has failed to pay attention to the imbalance between men and women elected to sit on different committees. Consequently, with the exception of the Committee on the Rights of the Child, there are too few women elected to sit on nearly all of the treaty bodies, and too few men elected to the Committee on the Elimination of Discrimination against Women.

The need to encourage a more diverse membership of treaty bodies is one of a number of detailed recommendations made by NGOs in a document entitled "Dublin Statement on the Process of Strengthening the United Nations Human Rights Treaty Body System: Response by non-governmental organizations", issued in November 2010.[13] The proposals in that paper include measures to be taken at the national level to ensure that treaty body vacancies receive wide publicity and that State Parties establish an open, transparent and inclusive process to identify and nominate candidates. The recommendations are also relevant to the role of civil society in the national process. State Parties are discouraged from using "clean slates" in the electoral process and from voting for candidates who fail to meet the highest standards of knowledge, experience and independence.

RECOMMENDATIONS

- ❖ The inter-governmental process should consider good practices in national selection processes and in electoral procedures for other international and regional expert bodies, with a view to making recommendations to State Parties.

- ❖ The inter-governmental process should also review how to improve the diversity of the treaty body membership including in respect of balanced gender representation.

6. PROVIDING ADEQUATE RESOURCES TO THE TREATY BODY SYSTEM

Over time, a greater number of States have ratified an expanding body of core international human rights treaties and their protocols. This has resulted in an increase in the number of treaty bodies, members and workload. However, as noted in the 2011 Secretary-General's report to the GA, the growth in the treaty body system has never been reflected in a commensurate growth of the resource allocations for the treaty body system.[14] Support for treaty body activities comes from the Office of the High Commissioner for Human Rights (OHCHR) and from the Division of Conference Management (DCM). For the biennium 2010-2011, support from OHCHR amounted to US$39.3 million, while DCM allocated US$60 million.[15] Because the activities and services in support of the treaty bodies are mandated by the treaties themselves, they are core activities of the UN and should be financed from the regular budget. However, regular budget allocations have not been sufficient and the OHCHR has had to rely on voluntary contributions to support the treaty bodies. Recommendations made elsewhere in this document – for example, for increased ratifications

11 The CAT indicates that consideration should also be given to the usefulness of the participation of some persons having legal experience. In addition, the CAT recommends the nomination of persons who are also members of the Human Rights Committee. The CRPD calls for the participation of some experts with disabilities. The CED calls for the participation of experts having relevant legal experience. The Sub-Committee on Prevention of Torture is to comprise experts with proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in various fields relevant to the treatment of persons deprived of their liberty.

12 The CRPD, CED and OP CAT all recommend balanced male and female representation.

13 Available in English, French and Spanish from: http://www.amnesty.org/en/library/info/IOR40/023/2010.

14 UN Doc. A/66/344, Measures to improve the effectiveness, harmonization and reform of the treaty body system, Report of the UN Secretary-General, 7 September 2011.

15 The UN's budget for 2012-2013 is US$5,152 million. The percentage given to human rights is approximately 3%.

and compliance with reporting obligations – will have immediate and negative consequences for committees that are struggling to address significant backlogs in their consideration of State Parties reports and individual communications. It is clear that additional measures are urgently needed to put the treaty body system on a firm financial footing.

At a time when many States are under domestic pressure to reduce expenditures, including at the international level, it may be tempting to "increase" the resources available to the treaty bodies by finding solutions that appear to deliver immediate savings. However, States must not use the lack of resources as an excuse to target or interfere with activities of the treaty bodies, particularly those that are aimed at improving the effectiveness and rigour of the system.

RECOMMENDATIONS

- The chronic under-funding of the human rights treaty bodies casts a shadow on the otherwise successful development of a system of international monitoring that has had a very positive impact on the promotion and protection of human rights. As stipulated in GA Resolution 66/254, the inter-governmental process must ensure the availability of adequate funding for the treaty bodies, particularly through the provision of more funding from the regular budget of the UN.

- In recognition of the challenges facing some State Parties in sending delegations for treaty body reviews of their reports, the inter-governmental process should consider establishing a fund to assist such States.

- The inter-governmental process should also consider establishing a fund to support individuals wishing to present a communication to the treaty bodies.

7. PREVENTING AND ADDRESSING REPRISALS

In order to undertake their tasks effectively, the treaty bodies depend on information from human rights defenders and victims of human rights violations. Intimidation and reprisals, often in the form of threats and even violence, are generally carried out to silence human rights defenders and victims and discourage others from engaging in human rights promotion and protection. Failure to address reprisals inhibits the participation by individuals and organizations with treaty bodies. An attack on persons cooperating with the treaty bodies is an attack on the treaty body system and the UN itself. The treaty bodies have taken steps to address the issues of intimidation and reprisals. It is important that States also take appropriate action to prevent and address intimidation and reprisals.

RECOMMENDATION

- The inter-governmental process should develop strategies for States to prevent and improve the response to any form of intimidation or reprisal against persons that appears to be linked to their engagement with the treaty bodies. This should include investigating, prosecuting and punishing those found responsible. Victims of acts of intimidation or reprisals should receive appropriate forms of redress.

LIST OF SIGNATORY NGOS

Alkarama
Amnesty International
ARC International
Asian Forum for Human Rights and Development (Forum-Asia)
Association of Prevention of Torture
Canadian HIV/AIDS Legal Network
Centro de Estudios Legales y Sociales (CELS)
Centre for Civil and Political Rights
Conectas Direitos Humanos
Corporación Humanas – Centro Regional de Derechos Humanos y Justicia de Género
Human Rights House Foundation (HRHF)
Human Rights Law Centre
Human Rights Watch
International Commission of Jurists
International Disability Alliance
International Federation of Action by Christians for the Abolition of Torture (FIACAT)
International Federation for Human Rights (FIDH)
International Rehabilitation Council for Torture Victims (IRCT)
International Service for Human Rights
International Women's Rights Action Watch (Global)
International Women's Rights Action Watch (IWRAW) Asia Pacific
Mental Disability Advocacy Center
NGO Group for the CRC
Open Society Justice Initiative
Quaker UN Office, Geneva
World Organisation against Torture (OMCT)