

PRETORIA STATEMENT ON THE STRENGTHENING AND REFORM OF THE UN HUMAN RIGHTS TREATY BODY SYSTEM

Civil society consultation on strengthening the UN treaty body system hosted by the Centre for Human Rights, Faculty of Law, University of Pretoria, 20 and 21 June 2011

1 INTRODUCTION

1.1 In 2009, the United Nations (UN) High Commissioner for Human Rights, Ms Navanethem Pillay, appealed to States Parties to human rights treaties, treaty bodies, members, and other stakeholders, such as civil society and national human rights institutions to reflect on proposals which could enable the treaty body system to be more coherent, coordinated and effective. In response to this call, a civil society consultation was held in Pretoria on 20 and 21 June 2011, hosted by the Centre for Human Rights, Faculty of Law, University of Pretoria. This consultation examined and built on previous statements, including the 2009 Dublin Statement on the Process of Strengthening the UN Human Rights Treaty Body System, the 2010 Marrakech Statement and the 2010 Poznan Statement. The participants in this consultation were in particular guided by statements adopted by civil society groupings, namely the NGO response to the Dublin Statement of November 2010, and the Seoul Statement, adopted after a similar civil society consultation in April 2011. Our statement should be read in conjunction with and as complementary to these statements. The Chairperson of the Human Rights Committee, Ms Zonke Majodina, and members of the staff of the Office of the High Commissioner for Human Rights participated as observers to the consultation.

1.2 The following group of national and international NGOs participated in the consultation:

Centre for Human Rights, South Africa

Institute for International and Comparative Law in Africa, South Africa

Centro de Estudios Legales y Sociales (CELS), Argentina

Human Rights Law Centre, Australia

Human Rights Working Group, Indonesia

Foundation for Human Rights Initiative, Uganda

Amnesty International, United Kingdom

East and Horn of Africa Human Rights Defenders, Kenya

International Service for Human Rights, Switzerland

Community Law Centre, South Africa

Liga dos direitos humanos, Mozambique

Asian Legal Resource Centre, Hong Kong

Representatives of the Commission of Jurists, Colombia, and the Cairo Institute for Human Rights, Egypt were also invited to the consultation, but were unable to attend. However, their submissions were also considered in developing this statement.

2 GUIDING PRINCIPLES

We endorse the general principles to guide reform of the treaty body process set out in the NGO response to the Dublin Statement. In addition to those principles, we highlight the following general principles:

2.1 Treaty bodies have a critical role to play in the development and implementation of human rights norms at the international, regional and national levels. In this regard, we strongly support the call for increased and adequate resources to enable treaty bodies to effectively and efficiently fulfil their mandates in the promotion and protection of human rights.

2.2 We stress that the outcome of the process for strengthening and reforming treaty bodies should be necessarily focused on improving the promotion and protection of human rights on the ground.

2.3 We endorse the recommendations on membership of treaty bodies contained in the NGO response to the Dublin Statement. In order to improve the quality of membership of the treaty bodies, we in particular recommend that States Parties give wide publicity to vacant positions for treaty body membership and nominate suitable persons following national consultations. In this regard, we welcome the national consultation processes conducted by, for example, Indonesia, Thailand and the United Kingdom in the selection of members to regional and UN bodies.

2.4 We strongly support the whole range of complementary functions undertaken by treaty bodies, including initial and periodic reviews, elaboration of General Comments, adoption of Concluding Observations and Views, and engagement in follow-up activities. Far from being irrelevant to or outside the scope of their mandate, these activities are integral to the development of human rights standards and the efficient and effective implementation by States Parties of their human rights obligations.

2.5 We reiterate calls for the continuing harmonisation of treaty bodies' working methods.

2.6 We affirm that treaty bodies are the authoritative interpreters of treaties, and that the common practice by States Parties of rejecting or failing to give effect to Views of treaty bodies is incompatible with the essence of the treaties and undermines the State's commitment to upholding its human rights obligations.

2.7 We stress the importance of universal ratification of human rights treaties, and the need for States to desist from making reservations that defeat the object and purpose of such instruments. We encourage States Parties to formulate timely objections to impermissible reservations and treaty bodies to monitor and address the issue.

2.8 We remind States that their obligation to act on the recommendations and Views of treaty bodies applies to all branches and levels of government. The executive, legislature and judiciary should all be directly engaged in the promotion and protection of human rights and the implementation of treaty body recommendations and Views. We remind States that under the provisions of article 50 of the ICCPR and article 28 of ICESCR human rights obligations apply across all parts of federal States and that according to article 27 of the Vienna Convention on the Law of Treaties, provisions of internal law may not be invoked to justify failure to fulfil a treaty obligation.

2.9 States are encouraged to build the capacity within the State, in consultation with NGOs, NHRIs, and OHCHR, to ensure that reports to treaty bodies are timely, focused, and constructive.

2.10 States should welcome robust engagement of NGOs with treaty bodies as contributing to a constructive dialogue and a deeper understanding of the human rights situation in a State and measures taken by the State to its fulfil human rights obligations.

3 KNOWLEDGE AND AWARENESS ABOUT THE WORK OF THE TREATY BODIES SHOULD BE INCREASED

There is inadequate public understanding of the significant and important work of the treaty bodies. We therefore recommend the following:

3.1 OHCHR should enhance dedicated media and communications capacity and expertise to ensure the widespread dissemination of information about the work of treaty bodies, including through national, regional and international media, and through social networks.

3.2 OHCHR should be more proactive in reaching out to and engaging NGOs in the treaty body process. To this end, we recommend that OHCHR:

- a) develop a comprehensive up-to-date list of NGOs;
- b) further enhance civil society communications including through regular, accessible email updates and newsletters; and
- c) enhance the use of social media such as Facebook and Twitter to engage civil society in the work of treaty bodies.

3.3 UN agencies, OHCHR (including field offices) and NHRIs should all take proactive roles in keeping NGOs informed and in facilitating NGO engagement with treaty bodies.

4 NGO ENGAGEMENT WITH TREATY BODIES SHOULD BECOME MORE EFFECTIVE

Effective NGO engagement with treaty bodies can substantially enhance the efficiency and impact of treaty bodies' work and can contribute constructively to States' understanding and implementation of their international human rights obligations. Recognising this, we recommend as follows:

4.1 OHCHR should continue to develop the master calendar, in order that this calendar would include relevant timelines for all forms of NGO engagement, including submissions, oral briefings and engagement in follow-up activities. It should be ensured that this calendar is searchable by State and by treaty body.

4.2 Treaty body reviews should be scheduled as far in advance as possible. Drawing on the experience of the Universal Periodic Review (UPR), we consider it likely that this practice will strengthen State compliance with their reporting obligations, and facilitate coordinated NGO engagement with the treaty body process.

4.3 Treaty bodies should disclose and publicise at the earlier possible date details, such as:

- a) the identity and contact details of country rapporteurs and the composition of country taskforces; and
- b) the contact details of Secretariat members assigned for the review of each country.

4.4 All treaty bodies should appoint NGO focal points and publicise their role and functions.

4.5 OHCHR should develop best practice guidelines for NGOs, covering all forms of engagement with treaty bodies, including preparation of reports, oral briefings, and engagement in follow-up activities.

4.6 OHCHR should develop comprehensive country webpages which include details as to forthcoming reporting dates and opportunities for NGO engagement, together with documentation and correspondence from States and all other stakeholders arising from previous treaty body considerations. Consideration should be given to making country sites interactive to enable on-going updating of country information both by the State and NGOs.

4.7 Treaty bodies should seek NGO input at the earliest possible stage, including particularly in the development of lists of issues prior to reporting. In addition to providing written information treaty bodies should facilitate the provision of oral information and enable briefings using Skype and video-conferencing.

4.8 NGOs should be given the opportunity to formally brief treaty bodies at all relevant stages of the review process, including at pre-sessional meetings for the elaboration of the list of issues and list of issues prior to reporting, immediately prior to the treaty body review (as is the current practice of the Committee Against Torture), during the course of the review itself (for example, by allocating an hour between sessions of the constructive dialogue for NGO comments on States' answers to the questions posed by treaty body members), and within treaty bodies' consideration of follow-up of recommendations.

4.9 We encourage all treaty bodies to hold days of general discussion on thematic issues of interest and ensure NGO participation.

5 EFFECTIVE MEASURES SHOULD BE TAKEN TO PREVENT REPRISALS

States should take all necessary measures to prevent reprisals against human right defenders, victims and witness and take appropriate action to provide remedies for reprisals. We further consider that measures taken by treaty body to prevent against reprisals should ensure the following:

5.1 Every treaty body should appoint a focal point on reprisals.

5.2 Cases involving reprisals should be forwarded to the Special Rapporteur on human rights defenders and other relevant mandate holders, and to OHCHR, for inclusion in the Secretary-General's report on reprisals.

5.3 In cases where there is a concern regarding the safety of victims, witnesses and human rights defenders, the relevant treaty body should assess, as an integral part of the review, the effectiveness of State measures for their protection.

5.4 NGOs should provide to treaty bodies sufficient and well documented information on threats to victims, witnesses and human rights defenders.

5.5 The confidentiality of NGO information in any dialogue with States must be respected, and the practice by which NGO information is not utilised when confidentiality is requested is discouraged.

6 STATE REPORTS SHOULD BE IMPROVED

We are concerned that, in many cases, State reports are incomplete or do not comply with reporting guidelines. The development of comprehensive, constructive, and up-to-date national reports is an essential component of monitoring and implementing State compliance with their obligations. Recognising this, we recommend as follows:

6.1 States, in carrying out their responsibility to engage in national consultations in developing their national report, should ensure full and diverse NGO participation, and inform NGOs of further opportunities to engage with the work of treaty bodies.

6.2 States should ensure that national reports are translated into all relevant national languages and widely disseminated and publicised.

6.3 In the absence of a State report, States should be scheduled for review and considered by the relevant treaty body *in absentia* in full public hearings that provide for NGO briefings.

6.4 States should take into account non-compliance with States' reporting obligations when electing members of the Human Rights Council.

7 QUALITY OF DIALOGUE SHOULD BE IMPROVED

We value the process of constructive and substantive dialogue. We note with concern that some States Parties are inadequately prepared or represented for such dialogue or have withdrawn from the review process at short notice. We recommend as follows:

7.1 States Parties should be represented by well-informed high-level delegations who can respond fully to the issues raised by the treaty body.

7.2 In the event that the delegation does not have relevant expertise, it should ensure direct communication with the capital to ensure that requested information can be provided promptly to the treaty body.

8 INDIVIDUAL COMMUNICATIONS PROCEDURE SHOULD BE IMPROVED

In order to improve the individual communications procedure, we recommend as follows:

8.1 OHCHR should develop a public database of individual communications, anonymised where requested and appropriate, with details as to the nature and status of pending cases. Regular updates should be provided to complainants as to the status and progress of their complaint. This database should be searchable by State, by treaty body, and by rights concerned.

8.2 Where appropriate and relevant NGOs should submit, and treaty bodies should accept *amicus curiae* briefs regarding individual communications.

8.3 Treaty bodies should consider relevant national, regional and international jurisprudence in the development of Views and General Comments in order to promote the development of consistent and progressive human rights standards.

8.4 OHCHR should issue press releases with case summaries when decisions are given on individual communications.

8.5 OHCHR should develop improved guidelines on submission of individual communications in order to reduce the number of inadmissible or unmeritorious cases submitted to treaty bodies.

8.6 Treaty bodies should consider how they can assist with friendly settlement of communications. The experience of the Inter-American Commission on Human Rights may be a useful model in this regard.

9 QUALITY OF CONCLUDING OBSERVATIONS AND REMEDIES IN VIEWS SHOULD BE IMPROVED

With regard to the quality of Concluding Observations and remedies in Views, we recommend:

9.1 Treaty bodies should enhance the quality of Concluding Observations and remedies within Views by ensuring that they are formulated in a targeted, specific, measurable, achievable and time bound manner. Treaty bodies should identify as far as possible the actors and entities within the national and local authorities specifically responsible for the implementation of Views and Concluding Observations.

9.2 We fully endorse the Seoul statement's appeal (Para 10. B) for recommendations that call for structural change, including reforms in national legislation, to be made systematically so as to ensure as far as possible the non-repetition of similar violations in the same country

9.3 Treaty bodies should consider classifying Concluding Observations into short, medium and long-term categories to aid in their implementation.

10 FOLLOW-UP PROCEDURES SHOULD BE IMPROVED

All relevant stakeholders should provide strong support to ensure the further development of follow-up activities by treaty bodies. In respect of particular stakeholders, we recommend as follows:

10.1 With respect to treaty bodies, we recommend as follows:

a) Treaty bodies should formalise a process whereby NGOs are given an opportunity to provide input on the veracity of the information provided by States regarding the implementation of Concluding Observations and Views and contribute additional data on the matter.

b) Treaty bodies should institutionalize oral briefings by NGOs at meetings on follow-up. Video conferencing and Skype should make possible the participation of national and local NGOs without them having to be physically present.

c) Building from the experience of some treaty bodies, all Committees should institutionalize the practice of identifying a smaller number of high priority recommendations for a more engaged follow-up including a report back by States as to implementation within 12 to 24 months.

d) The requirement of written information from the State within 12 to 24 months on the implementation of a few priority issues should be complemented with public hearings (with due respect for the safety of participants) in which the State Party should be asked to thoroughly explain the concrete measures adopted to comply with the specific recommendations concerned. NGOs should be formally able to participate and orally brief members. Video conferencing should be used to assure broad participation by civil society.

e) Treaty bodies should periodically undertake country visits in order to directly verify levels of implementation. During the visits, broad consultations with civil society and NHRIs should be ensured.

f) Treaty bodies should carry out some follow-up activities between sessions, outside Geneva and New York. For that purpose, partnerships between regional offices of the OHCHR, UN agencies, NGOs, NHRIs, academia and treaty bodies should be further fostered.

g) Treaty bodies should periodically update all relevant stakeholders, including NGOs on the follow-up activities that they have undertaken with respect to each State.

h) Treaty bodies should encourage and support States to develop indicators to monitor the progress of implementation, in cooperation and consultation with NGOs, NHRIs, OHCHR and academia.

i) Treaty bodies should review their procedures so that country task forces or country

rapporteurs have primary responsibility for the conduct of follow-up activities.

j) Treaty bodies should conduct studies, with the support of OHCHR, to identify obstacles to implementation in individual countries. NGOs should be encouraged to provide inputs within these assessments. A questionnaire to help national NGOs identify implementation obstacles should be developed.

k) Treaty bodies should develop media strategies, with the support of OHCHR, to raise awareness and enhance dissemination and implementation of recommendations at the domestic level.

10.2 With respect to OHCHR, we recommend:

a) There should be better integration of the outputs of treaty bodies into the work of OHCHR, especially through its regional offices.

b) OHCHR should establish a Treaty Body Follow-Up Coordination Unit within OHCHR as proposed in the NGO response to the Dublin statement.

c) OHCHR should, at its regional offices, appoint dedicated focal points for treaty bodies, UPR and Special Procedures.

d) OHCHR should reach out to NGOs that participated in the treaty body review of the State concerned to solicit adequate and comprehensive information on actual levels of implementation of Concluding Observations and views and provide this information to relevant treaty bodies.

e) States' follow-up reports and NGO submissions related to implementation should point out the different measures, including correspondence with the treaty bodies concerned seeking adequate execution of Concluding Observations and views, and should be made accessible on the OHCHR country web pages.

f) OHCHR should ensure that discussions on follow-up are webcasted and audio and visual material provided to the media. Regional OHCHR offices should target national media including traditional media and social networks with relevant information on follow-up activities being undertaken.

10.3 With regard to UN special procedures, agencies and country teams, we recommend:

a) Special procedures of the Human Rights Council should enhance their cooperation with treaty bodies, requiring information from States on the implementation of Concluding Observations and Views as part of their country visits.

b) UN programmes and specialised agencies should incorporate into their annual work plans, actions for monitoring the implementation of Concluding Observations and Views. They should coordinate this work with the focal points from each regional office of the OHCHR.

c) The full involvement of UN country teams should be ensured in the entire reporting and follow-up process with special emphasis on supporting implementation of recommendations in each State party. Other stakeholders including NGOs should be called upon to participate in UN country team meetings on this subject.

10.4 With respect to the Inter-Committee Meeting on Follow-up:

a) We welcome the recent *Report of the Inter-Committee Meeting Working Group on follow-up to concluding observations, decisions on individual complaints and inquiries*.

b) We support the initiative of the Inter-Committee Meeting to develop a study on best practices on follow-up and implementation and suggest the inclusion of procedures and experiences within regional human rights systems. NGOs should be encouraged to identify and submit meaningful examples.

c) We strongly support the elaboration of procedural and reporting guidelines, as suggested in the *Report of the Inter-Committee Meeting Working Group on follow up to concluding observations, decisions on individual complaints and inquiries*. NGOs should be called upon to provide inputs.

10.5 With respect to State Parties, we recommend:

States should use the annual meeting of State Parties held with individual treaty bodies to address, among other things, follow-up and implementation of Concluding Observations and Views. NGOs should be allowed to orally present information within this framework.

11 IMPLEMENTATION BY STATES PARTIES SHOULD BE IMPROVED

State Parties have the obligation to implement in good faith the decisions of treaty bodies, and the common practice of rejecting views and recommendations of treaty bodies is fundamentally incompatible with treaty obligations. States have the primary obligation to implement views and recommendations. All branches of government must be involved in the process of domestic implementation, and States should have in place a wide range of implementation mechanisms. In this context, we recommend as follows:

11.1 Within parliaments, appropriate standing committees or similar bodies should be established and involved in monitoring and assessing the level of domestic implementation. National meetings between NGOs, parliamentary committees and treaty body members should be organised. The emerging practice of States tabling national reports and Concluding Observations in national parliaments is welcomed.

11.2 Within the executive, a high level focal point responsible for implementation of Concluding Observations and Views should be established. High level inter-governmental committees, chaired by a minister, should be created as a central coordinating point for implementation across government. These should be done in consultation with high level members of the judiciary.

11.3 National judiciaries should play a more prominent role in implementation processes. Members of the judiciary should be targeted for training on best practices related to implementation. Periodic updates on the Views adopted by treaty bodies on individual communications regarding the specific country should be provided to members of the judiciary in order to foster implementation and inform domestic case law. We recommend that civil society explore and make use of innovative ways of enhancing the role of the judiciary in the implementation of Concluding Observations such as by petitioning courts to assess implementation by government and to give targeted orders in cases of failure to implement.

11.4 States should, in coordination with NGOs and NHRIs, develop a public chart that includes all recommendations made by the different mechanism of the UN human rights system (including treaty bodies, special procedures and the UPR) and details as to the status of implementation of each. This would strengthen transparency and accountability in implementation and should also be made available to treaty bodies so that each treaty body has the benefit of seeing what recommendations other treaty bodies have made and the state's response thereto. This would encourage reviews to be more streamlined and complementary and to decrease unnecessary duplication. States should organize, with the support of the OHCHR, workshops with NHRIs and NGOs to discuss the elaboration

of national action plans for the implementation of recommendations from the treaty bodies, special procedures and the UPR process. Treaty body members should be invited to participate in these events. Such implementation action plans should be included in National Human Rights Plans and should include:

- a) the identification of responsible authorities for the implementation of all Concluding Observations and Views;
- b) the specific actions required for achieving full compliance; and
- c) the timeframes for compliance.

11.5 States should present mid-term reports to treaty bodies on implementation of all recommended measures.

12 MEASURES TO REFORM THE OVERALL FUNCTIONING OF TREATY BODIES SHOULD BE CONSIDERED

12.1 Treaty bodies should where appropriate consider the possibility of dividing into chambers in order to consider more reports per session. Broad regional and professional representation should be ensured in each chamber.

12.2 We encourage the treaty bodies to hold some meetings outside of Geneva and New York in particular in relation to the examination of States Parties reports and schedule countries together on a regional basis for this purpose.

The following NGOs co-drafted and endorse this statement:

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