



SUBMISSION ON STRENGTHENING THE TREATY BODY SYSTEM

Civil Society Consultation on Strengthening the Treaty Body System

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Introduction

IWRAW Asia Pacific is committed to the realisation of all human rights of women through the pursuit of women's equality. IWRAW Asia Pacific's envisions a world where there is full realisation and enjoyment of human rights by all. Women's equality is integral to this achievement. We believe that through this, societies can be transformed so as to achieve a balance of power, and sustainable and equitable development conducive to realising human rights. To achieve this vision, our mission is to adopt a human rights approach and focus on the experiences of women from the South. We see ourselves as catalysts in building capacity for change and in enhancing the realisation of the human rights of women through:

- The effective implementation of human rights standards, as seen through the lens of CEDAW and other international human rights mechanisms, at all levels of society;
- The inclusion of women in standard-setting processes at the national and international levels, and in the formulation of policies and laws;
- The development of new knowledge and methodologies;
- The mobilisation of women to bring about good governance and sustainable change.

IWRAW Asia Pacific strongly believes that the inclusion of women's experiences into policy, legislation and development programmes is essential to the realisation of ALL human rights and women's efforts towards the elimination of all forms of discrimination must be recognised

IWRAW Asia Pacific programmes are implemented in partnership with constituencies in Asia-Pacific and other regions in such a way as to create synergy between local, regional and international activism. In fact, IWRAW Asia Pacific has transitioned into towards becoming an international human rights organisation based in the Global South, with outreach to national groups working with marginalized communities in a wide-ranging number of countries located both in the North and South. It works



through collaborative projects with women's advocates and women's groups and maintains on-going partnerships with lawyers, judges, human rights advocates, NGOs working with marginalised communities, universities, governments and international organisations. It is an independent, non-profit, non-governmental organisation in Special Consultative Status with the Economic and Social Council of the United Nations. Established in 1993 in Malaysia, where it continues to function, IWRAW Asia Pacific has been facilitating the participation of women from the national level in the CEDAW treaty review process since 1997 and has to date enabled participation by women from approximately 126 countries.

Guiding principles for strengthening the treaty body system

Central to the treaty body system is the universality of basic freedoms and human rights and enhancing States' accountability towards individuals in this regard. As highlighted by the Dublin Statement¹, any reform of the treaty body system must not only purposively aim for the protection of human rights at the domestic level but also ensure its actualisation. It must take a rights-holder approach which keeps the individuals at the centre of the treaty system in the heart of the discussion in order to result in better implementation by States of their obligations. A view of the system which holds the reporting process as the central element does not recognize that, although rights-holders are not directly involved in the core of the reporting process, they are the ultimate beneficiaries of the Treaties and the rights contained therein. Discussions on strengthening the system must begin from the premise that the system itself is comprised of an entire cycle embedded in each Treaty: promotion of education concerning rights and standards as contained in the Treaties, reviewing current and future domestic laws and practices in light of those standards, planning and developing amendments and future initiatives, including incorporation of the Treaties into domestic law, monitoring and reporting on implementation of those plans and following up on recommendations from the Committees.² In this light, the reporting process is a single part of the entire system and secondary to the primary purpose of the Conventions. Importantly, this approach requires that there be political will on the part of States for

¹ Paragraph 7, "The Dublin Statement on the Process of Strengthening of the United Nations Human Rights Treaty Body System", adopted 19 November 2009 by current and former Treaty Body members.

² Anne Bayefsky, "The UN Human Rights Treaty System: Universality at the Crossroads" (April 2001).



this process to result in real fulfilment and protection of rights at the national level and to facilitate their ongoing efforts in this regard.

NGO input is necessary on all aspects of reform as they represent the views and needs of the rights-holders for whom the treaty system was developed. While improving collaboration and systems for input from CSOs is one of the primary concerns of NGOs, NGO investment in the reform process is not limited to this but rather extends to every element of the functioning of the treaty bodies as their effective functioning is essential to meet the single most important aim of NGOs which is to attain fulfilment of human rights at the national level for all rights-holders.

A key component of the process of strengthening the treaty body system must be harmonization of interpretations of standards, use of language and improved communication and collaboration between the Committees on substantive issues as well as procedural. So too must efforts at strengthening the system consider ways to increase collaboration between the treaty bodies and other UN bodies, including but not limited to the HRC, Special Procedures and the UPR. One of the greatest existing strengths of the treaty bodies is that they are composed of independent experts in the relevant fields and therefore divorced from the political dynamics of the HRC and UPR. Their input into these processes is therefore all the more valuable as objective, legal interpretations of accepted obligations and should be maximized in debates and documents produced at the HRC, recommendations made during the UPR and work by other UN agencies at the national, regional and international levels, including implementation of UPR recommendations. However, the highest possible interpretation of human rights standards according to the practice of the treaty bodies, including the interpretation of substantive equality by the CEDAW Committee, must apply consistently and must not be diluted by reform efforts.

In particular, it is essential the process of treaty body system strengthening is informed at all stages by the requirement to mainstream women's rights, substantive equality and the concerns of other marginalised groups. This should feed into the work of all UN bodies such as the UNDP, ILO, UNFPA, UNICEF etc. as well as the treaty bodies themselves and into all areas of their work, including through capacity building for the OHCHR which can in turn support the treaty bodies, capacity building of



Committee members and greater sharing between the different Committees and with other bodies such as the HRC. As discrimination is a cross-cutting issue which is relevant to the work of all treaty bodies, harmonization of interpretation, language and approach on the issue of discrimination must be a paramount consideration. Throughout this process the specificity of the human rights of women and other marginalised groups should not become invisible.

Key concerns

Preservation of existing good practices

We are deeply concerned that efforts to strengthen the treaty body system should in no way undermine existing positive practices of the Committees. These practices within particular Committees need to be identified and adopted by all Committees so that their implementation is consistent and the benefits to the system can be maximized. In our experience of 18 years with CEDAW we have identified the following practices which are extremely beneficial to the functioning of the Committee and should be encouraged as standards for all Committees:

- Consistent and systematic engagement with NGOs during the review sessions, beyond just the informal dialogue of 10 minutes per country; new and emerging contexts, expand scope;
- The Committee's use of General Recommendations as tools to expand and develop the scope and breadth of Convention obligations to address new and emerging contexts;
- The Committee's openness to and active encouragement of NGO input on specific thematic issues and on processes such as the drafting of General Recommendations;
- Holding the pre-session 6 months in advance and the development of the list of issues and questions requiring a response from the State prior to review;
- The recently adopted follow up procedure whereby information on implementation of specific recommendations is required from the State by a given deadline after the review and prior to the next review; and
- The appointment of a Rapporteur within the Committee on follow up;
- Continuing efforts by the Committee to draft more focused and specific Concluding Observations.



We have also welcomed the practice of some Committees which have recently begun engaging States in constructive dialogue even in the absence of a State report where such is over-due. Similarly, we welcome and encourage the practice of some Committees in requesting consultation with representatives of the state in the event their follow-up report is overdue, to discuss the delay and/or progress made in implementing the recommendation, and strongly recommend that this practice be adopted by all treaty bodies.

Security of human rights defenders throughout the treaty body process

This is a serious and real concern for many individuals engaging with the treaty bodies and needs concerted consideration and action by States and the Committees. Without guaranteed safety for those who present shadow reports, participate in reviews, submit communications or otherwise engage with the treaty bodies, the system loses its credibility and efforts at strengthening it will be inadequate. We welcome recent measures by certain Committees to draw attention to possible reprisals and encourage all Committees to follow suit and to work closely with the Special Procedures, the HCHR and other relevant bodies and agencies to monitor and take action in cases where reprisals occur. Designation of a focal point within each Committee to monitor reprisals as has been done by the Human Rights Committee would be a significant step forward in ensuring the safety of human rights defenders, as would consistent requests to States during the constructive dialogue and follow up activities to provide information confirming that individuals and NGOs have not been targeted, harassed or in any way violated as a result of their interaction with the Committee. The Response by NGOs to the Dublin Statement³ contains these and other specific recommendations in this regard.

Addressing difficulties in reporting

The difficulties for States in meeting their reporting requirements have been a legitimate and significant factor in initiating and sustaining the push for reform and strengthening of the treaty body system. However, there are many reasons, both technical and political, for a State may have such difficulties.

³ Paragraph 13, “Dublin Statement on the Process of Strengthening the United Nations Human Rights Treaty Body System: Response by non-governmental organizations” issued in November 2010.



IWRAW Asia Pacific's experience has highlighted underlying causes such as lack of clarity on the part of States with regard to the content of rights, the purpose of reporting and its role in treaty implementation. Often there is a lack of recognition that the reporting process gives impetus to the entire cycle inherent in the relevant treaty and as such should be used to plan implementation of the treaty, record progress, and move on to further implementation. The CEDAW, CRC and CESCRC Conventions, for example, require policy decisions pertaining to interventions in development processes, allocation of appropriate resources for these interventions, monitoring of their effectiveness and progressive gains made, and trouble-shooting to ensure *de facto* realisation of rights. This in turn requires setting of standards based on human rights norms, identification of base line status, setting of benchmarks and related indicators to measure progress, all of which feed into the reporting cycle and, if properly implemented, can reduce the burden on a State during the preparation of their report.

Inadequate efforts to “adopt measures to give effect to the obligations under the treaty”, make report-writing a mere procedural exercise. This is compounded by lack of consistent efforts to collect appropriate disaggregated data and comparative data, which makes report-writing a tedious and shallow exercise when it must be undertaken solely for this purpose. The practice of many States in hiring consultants in the year or two prior to reporting distances those government officials responsible for implementing the Convention from the drafting of the report and leads to a lack of ownership as to its substance and the commitments outlined therein. The report should serve a very substantive purpose by providing a framework and guidance for fulfilling State obligations. This can only happen if there are appropriate databases developed to ensure monitoring of the effect of the treaties. Specifically, these databases must be continuously updated and actual gains monitored so that the periodic reports can reflect these findings. Treaties only provide a framework, the systematization and an accountability mechanism for State obligations. If these processes are effectively carried out and there is a realization of rights at the country level, the reports will become less voluminous and Concluding Observations less numerous in the long-term.

Provision of technical assistance



Technical assistance services must be provided for States Parties and be cognizant of the fact that failure to report may result less from lack of knowledge as to how to write a report and more from lack of clarity regarding the content of the relevant rights, the purpose of reporting and failure to continuously gather the data necessary for reporting as well as political reasons. Technical assistance services must also take into consideration structural problems as every sector of government has a responsibility to implement the Convention. A multidisciplinary approach and structural connections are needed for the purpose of standard setting, ensuring consistency, monitoring and data collection. Technical assistance must consider all these impediments and help to find solutions rather than focusing on producing the report as an end product in and of itself.

Furthermore, technical assistance and capacity-building should be provided to partners both within and without government bodies. It must be undertaken with the knowledge that technical assistance will only contribute to strengthening institutional capacities if the OHCHR takes a proactive approach as to the involvement of all government branches in preparation of the report and implementation of the Concluding Observations. In relation to this latter, advisory services must focus on promoting national-level activities that can be sustained in following up to the Concluding Observations e.g. providing assistance on how to draft policy and action plans after the issuance of Concluding Observations and how to measure implementation progress. This allows the pursuit of a more holistic approach to follow-up activities. Rather than focusing on one treaty, such action plans should consider all the treaties ratified in order to reduce resource expenditure for monitoring and implementation.

Reports that have insufficient or inadequate data and are submitted for compliance sake must be discouraged as they undermine the treaty system in the same manner as non-reporting. Likewise, as mentioned above, over-reliance on consultants in drafting the report should be avoided.

Treaty body membership

There is a need for a number of measures to be taken to strengthen the composition and election procedures for membership of Committees. We recommend that the Chairpersons prepare and propose guidelines as to eligibility of candidates for positions on Committees and their independence, in line



with the recommendation contained in the Poznan Statement⁴. These guidelines should ensure the independence of candidates, including through prohibiting membership where the candidate holds a Governmental or other position or function which threatens or could be perceived to threaten their impartiality and independence. The guidelines need to ensure that nominees to Committees have a minimum level of practical experience and knowledge in the subject matter of the Treaty in question, the availability and willingness to regularly attend sessions and contribute sufficient time to their duties throughout their term, and recommend ways to encourage sitting Committee members to keep up to date with relevant practical and conceptual developments during their terms, including through systematic engagement with NGOs, academics and other actors.

We recommend in addition that the guidelines give consideration to ways in which the election procedures can include an evaluation of the distribution of skills and experience among Committee members so that action can be taken to encourage a diverse range of expertise covering as many aspects of the relevant Treaty as possible. Committee members must represent a mix of practical and academic experience and be chosen from diverse socio-economic, cultural, ethnic and educational backgrounds. Given the current significant gender imbalance in Committee membership, the guidelines should recommend measures to ensure better representation of women and of members of minority communities, for example, through quotas, term limitations to ensure diversity etc, and/or requiring specific measures at the national level to encourage women and minorities to get involved in the process such as awareness raising around elections and the functions of the Committees as well as increased engagement with CSOs through broad consultations prior to nomination. Further, elections to the treaty bodies should result in election of the most qualified and appropriate candidates and not fall prey to national or international political dynamics and agendas.

Individual complaints procedures

Individual complaints procedures have been under-utilised for a variety of reasons. In addition to the recommendations above relating to security of those who submit communications or requests for

⁴ Paragraph 19, “The Poznan Statement on the Reforms of the UN Human Rights Treaty Body System” adopted on 29 September 2010 by current and former Treaty Body members.



inquiries, action should be taken to raise awareness of the availability of the procedures and the substantive and procedural requirements for accessing them. The system of individual complaints would be greatly strengthened if the OHCHR carried out analysis and evaluation of ways in which admissibility requirements such as exhaustion of domestic remedies can be applied in a more human-rights sensitive manner as there is often insufficient clarity and examination regarding how the relevant substantive principles of the treaties themselves apply to the more technical aspects of the complaints procedures. The system would also benefit from increased information regarding the submission of complaints. While still preserving the safety and anonymity of applicants, information could be made available, for example, on the number of communications/inquiries received by each Committee, how many of those are found admissible and inadmissible, in how many violations were found and of which rights.

Maximising new technologies

The treaty body system has not kept pace with the development of new technologies which can be used to improve the system in a variety of ways, including by increasing effective information dissemination, engagement with NGOs and accessibility of the system for persons with disabilities. We echo the Response by NGOs to the Dublin Statement by urging the High Commissioner for Human Rights to appoint a senior advisor to the OHCHR and the treaty bodies with the mandate to provide strategic direction for taking full advantage of available new technologies such as video conferencing and webcasting during the review which enables more government and non-government persons to participate and/or observe the process⁵.

Securing sufficient funds

As the Dublin statement recognizes⁶, work on strengthening the treaty body system needs to take place at multiple levels by and within all relevant bodies and institutions including both States and the OHCHR. Regardless of any reform or harmonization of the treaty body system, there will thus remain a strong need for States to increase their commitments to fund the system nationally and internationally so that it can operate adequately. Increased funding from core UN funds is required as well as from voluntary

⁵ supra, paragraph 10.

⁶ supra, paragraph 11



contributions. The need to reduce financial and other burdens on States must therefore be no more than a secondary consideration guiding the reform process.

Strengthening the initial phase of the reporting procedure

NGOs will be able to provide more targeted inputs not just to the reporting procedure but to other work of the treaty bodies if there is greater transparency regarding treaty body processes and procedures including the drafting of Rules of Procedure, General Recommendations/Comments and other documents, decision-making processes and practices and procedures adopted by the Committees such as follow-up procedures. Greater harmonization of these processes across treaty bodies and greater understanding by NGOs of these processes will allow NGOs to provide more targeted and relevant input in a more consistent and timely manner. In terms of General Recommendations/Comments in particular, there needs to be an evaluation of best practices in methods of deciding to elaborate a General Recommendation/Comment, prioritization of themes, consultation with NGOs and other relevant actors, transparency in the drafting process and coordination with other Committees and their jurisprudence on issues of joint concern.

We continue the repeated call of NGOs over a long period for improved scheduling and the development of a master calendar. The calendar should contain information on which States have submitted their report and when, which reports are overdue and by how long, dates when reports will be due and of proposed reviews at least 2 years in advance, and all relevant deadlines, including for NGO input both to pre-sessions/list of issues and to review sessions, into the development of General Recommendations/Comments and other documentation, for follow-up information, and for nominations to Committees. This would give NGOs more time to better coordinate and prepare input far in advance so that it is also more focused.

Further information which should be made available regards preparation of the State report available while the report is being researched and drafted as this would facilitate engagement by NGOs at the



national level prior to reporting. Particularly useful would be information regarding governmental contact points.

Enhancing the constructive dialogue between Treaty Bodies and States parties and the cooperation with civil society

Efforts to strengthen the constructive dialogue should not reduce face-to-face dialogue between the Committees and State parties. The physical presence of State representatives in front of an international audience of experts and NGOs as well as their own citizens from national and grassroots NGOs is a central element of the accountability provided by the treaty body system. The impact of this process on States' commitment to fulfilling their obligations and on the legitimacy and relevancy of the treaty body system should not be underestimated. It also provides often one of the only opportunities for national level NGOs to have direct access to their State's representatives, particularly where the importance of the review encourages high level delegates to attend. Further, it provides a physical gathering point for NGOs from the national, regional and international levels to network, interact and share strategies and experiences amongst themselves as well as directly with the Committee.

Any action taken with regard to the constructive dialogue should therefore focus on the manner in which the review is conducted (for example, adopting the practice of webcasting the review) and increasing its effectiveness. In this regard, an evaluation of the methods of different Committees in structuring the dialogue, posing questions and seeking clarifications from the State parties would be welcome. For example, while all articles must be discussed with every State during every review, the ordering of the review of articles should be flexible according to issues which are of direct relevance to that particular State. This would relieve the problem whereby later articles in a treaty sometimes receive less attention due to time constraints even in cases where they relate to fundamental and widespread violations in a given State.

In terms of strengthening cooperation with civil society, holding regular review sessions out of Geneva could contribute substantially to this. Sessions could, for example, be held in a particular region when



there are a large number of States reporting from that region. This would increase national level participation in the review and accessibility of the system as well as encouraging regional awareness and education about the relevant Treaty.

Reform of the constructive dialogue and/or review session must bear in mind the priority of preserving space during the review session for national and grass roots NGOs. It is sometimes the case that these NGOs lack experience with the treaty body process or international procedures and face obstacles of knowledge, skill and language in addressing their issues. However, they provide critical information on actual implementation, violations and adherence by States to their obligations and give reality to the otherwise potentially abstract process. National and grassroots NGOs need to be encouraged to have ownership in the process as the ultimate purpose of the review and the treaty body system as a whole is to improve access by these stakeholders to their rights and fulfilment and protection of those rights. As other NGOs have pointed out at various times, this encourages formation of these groups at national level but it also encourages them to pursue activities post-review to advocate for implementation of the Concluding Observations – a task for which they are uniquely qualified. As a corollary to this, States should be questioned as standard during their review about the level of consultation carried out at the national level in the preparation of the report and about plans to continue such consultations during follow-up and implementation of Concluding Observations.

Follow-up and impact on the protection of rights holders

We welcome the establishment by the ICM of the new Working Group on Follow-up as a strong step forward in addressing the lack of concerted and effective follow-up to Concluding Observations and decisions and recommendations regarding individual complaints. We recommend that the Working Group develop a coherent and systematic method of proactive follow up by the treaty bodies, including measures to ensure the safety of participants in the treaty body process. However, we are concerned about the lack of transparency regarding the mandate and sessions of the Working Group, particular as, during its first meeting in January 2011, the entire session was closed and NGOs (and NHRIs) were only permitted to input during one 90 minute session without any other opportunity even to observe the



inputs from other actors and agencies. The work of the Working Group and all treaty body follow up procedures must be transparent and accessible to all relevant actors, including NGOs.

In order to increase the actual impact of the treaty body system on the ground, Committees cannot act on follow-up in isolation. They must systematize and harmonise their efforts, not just amongst themselves but also their methods for seeking input and support from other UN entities. We recommend that practices such as regular consultations with the Special Procedures be formalized and mandatory. Existing informal relationships between certain Committees and Special Procedures and practices such as undertaking joint missions should be facilitated and institutionalized as part of the Committees official working methods.

Other UN entities also have an important but so far ad hoc role in following up at the national level. For example, the OHCHR, UN Women, HRC and its mechanisms, UNDP, UNFPA, UNICEF and other relevant agencies need to make a concerted effort to systematically integrate implementation of Concluding Observations into their work at the ground level. These agencies might also work with the treaty bodies to facilitate country visits by the Committees' Rapporteurs on Follow-up.

Finally, NGOs' role in follow up would be greatly strengthened by efforts by the OHCHR to facilitate the dissemination of governmental contact points for implementation of all aspects of the Concluding Observations for each country on the OHCHR website.