Japan’s comments on the Questionnaire in relation to General Assembly resolution 68/268

I. Introduction

Japan firmly believes that full and effective implementation of international human rights treaties is of major importance to promote universal respect for and observance of human rights and fundamental freedoms. The human rights treaty bodies play a unique and critical role in this regard and their effective functioning is indispensable. Japan therefore attaches great importance to strengthening the human rights treaty body system.

Regarding the review of the human rights treaty body system to be scheduled no later than April 2020 as decided by General Assembly (GA) resolution 68/268, Japan highly appreciates the efforts by the treaty bodies, OHCHR and many other stakeholders to implement the said resolution as well as the achievements made so far. The 2020 review provides an invaluable opportunity to make practical improvements on the issues taken up in the GA resolution 68/268 and further strengthen the treaty body system.

II. Parameters to be considered for practical improvements of the treaty body system

*1. Enhance promotion and protection of human rights on the ground*

The aim of the review should be to enhance promotion and protection of human rights, particularly to make progress in addressing the most serious and urgent challenges on the ground. For this purpose, it is crucial to engage States parties further in order to realize increased participation and implementation of the recommendations.

*2. Preserve the existing normative framework of the human rights treaties*

The focus of the review should not be on drastic changes which may require the revision of the conventions but on practical improvements to the current treaty body system. The independence and impartiality of the human rights treaty bodies, including their members should be preserved and enhanced.

*3. Prevent unsustainable growth of the treaty body system*

As the treaty bodies need to work with ever-increasing numbers of States parties, and accordingly deal with an increasing volume of reports and individual communications, the 2020 review should ensure the effectiveness, efficiency, and sustainability of the treaty body system within the limitation of resources. In order to enable such improvements to the system, the treaty bodies should place greater emphasis on their core functions and avoid duplication. Doing so would also reduce the burden for the States parties, in particular for Least Developed Countries (LDCs) and Small Island Developing States (SIDS). Each treaty body would also be asked to prioritize issues to be addressed for each State party review and its annual work based on its core functions and comparative advantages.

*4. Advance coherence and consistency of recommendations and jurisprudence in accordance with treaties*

Coherence and consistency of recommendations and general comments among different treaty bodies are crucial to maintain the credibility of the treaty bodies. The treaty bodies should work more coherently through mutual information-sharing and coordination including efforts to avoid duplication. States parties should not receive duplicated or contradictory recommendations.

For this purpose, it is a prerequisite that factual accuracy and legal consistency should be ensured. Some reviews disregard the explanation of the States parties without sufficient grounds and careful consideration and present inaccurate concluding observations with factual errors. The human rights treaty bodies should be given sufficient time and information to understand the reality of the States parties, including understanding of legal systems, social backgrounds, and other complicated issues.

*5. Strengthen complementarity with the Human Rights Council and its subsidiary bodies, including the Special Procedures and the UPR*

The treaty bodies will be strengthened by enhancing coherence, consistency, and synergy with the work of the Human Rights Council and its subsidiary bodies. This element constitutes a missing piece of the treaty body system review, but it is important to enhance the efficiency, effectiveness, and relevance of the respective human rights treaty bodies while addressing the heavy burden for the States parties. In order for the treaty bodies to sharpen their focus and priorities, the reference to the work of the HRC and its subsidiary bodies for ensuring coherence, consistency, and synergy needs to be enhanced. In this regard, it is crucial for the UN mechanisms to ensure avoiding duplication of work and to appropriately share their burdens based on their respective mandates.

III. Remaining challenges and some practical ideas for improvement

Concerning the status of the implementation of GA resolution 68/268, it is encouraging to see that some progress has been made so far, as stipulated in the Report of the Secretary-General (A/73/309). Japan considers, however, that the achievements remain partial and insufficient and that many challenges still remain to be addressed in a more appropriate and comprehensive manner. From the standpoint of the States parties, we are obliged to point out that the progress on the following issues, for example, remain unsatisfactory.

Japan therefore believes that it is of great importance to identify the remaining challenges and wishes to propose some practical ideas for improvement as shown below.

The following items are not exhaustive and the ideas they comprise are exemplary and not comprehensive.

1. *Use of the simplified reporting procedure (OP 1 and 2 of the GA resolution 68/268)*

Not all human rights treaty bodies have adopted the simplified reporting procedure. Therefore we propose:

* To introduce the simplified reporting procedure in all human rights treaty bodies
* To adopt more focused LOI which can contribute to practical and real improvement of human rights on the ground
* To avoid duplication with LOI of other human rights treaty bodies

1. *Common core document (OP 3)*

The current practice relating to the common core document has not resulted in the expected substantial reduction of the reporting burden for the States parties. Therefore we propose:

* To make effective use of the documents that States parties submit to the various treaty bodies, the UPR and the Special Procedures.

(Inversely, the Special Procedures should make use of the documents that States parties submit to the human rights treaty bodies.)

(3) *Harmonization (alignment) of the working methods (OP 5 and 9)*

Substantial improvements are still needed. A significant number of duplications are observed in questions and recommendations. Therefore we propose:

- To focus on core competencies and priority issues of each human rights treaty body (by making clear the division of labor, each treaty body can make full use of its expertise and States parties can benefit from a reduced burden)

- To adopt a shorter and more focused review format after the first cycle of the review

* To adopt a task force system, in principle, for all the treaty bodies
* To avoid digression from the LOI

(Discussion under the scope of the LOI will enable States parties to better prepare for the review and to conduct better dialogue, while the human rights treaty bodies can focus on areas seen as priority issues, thus leading to more in-depth dialogue. If circumstances change after the issuance of the LOI, the human rights treaty bodies can add such new issues.)

- To make available all sources and inputs that the treaty bodies refer to—while allowing necessary exceptions to those relating to safety and security of informants—in order to allow the verification of relevance of observations and recommendations, as is the case in the UPR process

* To consider restricting the amount of time allotted for questions and answers in order to promote truly constructive dialogues with States parties
* To clarify the definition of terms used in the dialogue to ensure that States parties respond to questions effectively

(In previous reviews, we have sometimes received so many questions that it is difficult to answer them within the allocated time. Also, we have observed some references in the concluding observations that are clear misunderstandings of the facts or are not based on the dialogue with States parties during the review.)

(4) *Short, focused and concrete concluding observations, including the recommendations therein, that reflect the dialogue with the relevant State party (OP 6)*

It seems that many human rights treaty bodies have not followed this recommendation. Therefore we propose:

- To adopt recommendations focusing on the core competences of the respective treaty body (recommendations focusing on actions, addressing specific goals and using clear and concise language)

- To adopt recommendations contributing to improvement of the human rights situation on the ground

- To make clear that only the issues discussed should be reflected in the concluding observations

- To engage States parties more substantially, including with informal and closed settings, to understand different legal, social, judicial and administrative systems and situations

(This mechanism may allow for a more frank exchange of views in order to deepen the understanding of problems on specific human rights issues and to facilitate genuine dialogue and formulation of the recommendations contributing to improvement of human rights situations on the ground. More focused consideration of key issues and deeper analysis of the situation will help produce concluding observations that may be useful for other countries in similar situations. Currently, it seems that rather than being a reflection of dialogue and deep analysis, concluding observations for States parties take a one-size-fits-all format and are not geared towards making a difference on the ground. This results in a failure to learn any lessons from individual State party reviews.)

1. *More efficient and effective use of the meetings of States parties (OP 7)*

The meetings of States parties have not been used effectively and sufficiently in order to improve the works of treaty bodies. We therefore propose to hold a dedicated session for a substantial discussion on the following issues:

1. Views of States parties on the activities of the human rights treaty bodies, including the general comments;
2. Evaluation of the activities of the human rights treaty bodies;
3. Possible cycle of reports and reviews; and
4. Expected role of the human rights treaty bodies.
5. *Independence and impartiality of members of the human rights treaty bodies (OP 35-37)*

It is observed that further improvements are to be desired in relation to independence and impartiality from States parties as well as from other stakeholders. We therefore propose:

* To implement a review based on facts and substantial grounds, not solely based on allegations and hearsay information
* To monitor and prevent possible conflicts of interests not only with the States concerned but also with other stakeholders through such means as reporting requirements of members of the treaty bodies on their contacts and communications with the States and stakeholders other than submission of reports and official meetings set by OHCHR while allowing necessary exceptions to those relating to safety and security of informants
* To avoid such situations where the Secretariat prepares the content of the concluding observations for review and finalization by the Committees

1. *Membership of the treaty bodies (OP 10 and 11)*

As the quality of members of the human rights treaty bodies is key to ensuring an effective and efficient review, we propose:

* To request that States parties consider standardized criteria, including the importance of legal background
* To ensure that the Committees are composed of members with sufficient capacity to draft the concluding observations independently