

Submission to Pretoria consultation on treaty body reform

5 June 2011

Introduction

ISHR has engaged actively in discussions on reform of the treaty bodies, having contributed to the NGO response to the Dublin Statement (November 2010) and the joint NGO submission to the 11th Inter-Committee Meeting (July 2010). Through these statements ISHR has made several constructive proposals for reform of the treaty body system.

Two key weaknesses have been identified: the varying quality of the dialogues with State parties (and resulting recommendations) and the poor level of follow-up on recommendations. This paper focuses on presenting suggestions for how these two areas could be strengthened, by means of improving the relationship between NGOs (particularly national level NGOs) and treaty bodies. These proposals are not new, but the opportunity is taken to present them here again, and to emphasise the importance of a strong and healthy partnership between the treaty bodies and NGOs.

Central to the proposals is the premise that NGOs have a wealth of national knowledge, capacity, and experience that treaty body members would do well to harness and exploit, both as one means of improving the quality of the dialogues, and in order to create valuable partners in follow-up to recommendations at the national level.

With respect to improving quality of dialogues, it is crucial to ensure that alongside improving quality of membership through other means (an area not addressed in this paper), members have access during the reviews to the most relevant information about the human rights situation in a country. This is the only way to ensure that questions posed and recommendations made are pertinent and practical.

In terms of follow-up to recommendations, the key is to encourage longer-term engagement of NGOs with treaty bodies. In this respect, the UPR provides a valuable model. Most impressive has been the way in which NGOs have made the UPR an integral part of domestic advocacy strategies, using it as a catalyst to set up national consultations to identify the human rights problems in a country, to generate coalitions and partnerships, and to coalesce strategies to follow-up on recommendations emanating from the UPR. This has not been seen to the same extent in the case of the treaty bodies, a factor adversely affecting the impact that the system has had on the ground.

There are several obstacles to effective NGO engagement with treaty bodies in both of these areas. The proposals below are presented with a view to addressing those obstacles and in turn improving the quality of the reviews and follow-up.

Recommendations

1. Develop longer-term schedules for country reviews

The practice of the UPR, in developing the schedule of reviews for the next four years, should be emulated. One of the main successes of the UPR, made possible by the predictable and long-term scheduling of reviews, is that any national NGOs have developed entire domestic advocacy strategies around the UPR cycle, starting from national consultations both to input into the national report and to develop an NGO report, and working through to follow-up on the recommendations to come from the review itself. This has not happened in the same regular and predictable fashion in the case of the treaty bodies.

At present, scheduling of reviews by treaty bodies depends upon a State having submitted its report in time for consideration. Rather than making the scheduling dependent upon the State, the schedule should be drawn up several years in advance, and provision should be made for considering a State in the absence of a report. In the UPR process, all States have submitted their reports on time, suggesting that a fixed schedule can be maintained, and indeed may even encourage States to meet their reporting obligations.

Introducing longer-term predictability into the system would greatly enhance the ability of NGOs to incorporate engagement with treaty bodies into their domestic advocacy strategies. The present, sometimes relatively short-term notice (a matter of months) that a country will be reviewed, can result in NGO engagement being *ad hoc*, no more than an afterthought to an already developed

strategy. This inhibits concerted follow-up to the committee's recommendations. In other cases engagement is not possible, because there is no time to put in place the resources needed to draw up and submit the alternative report, or to assemble any other strategy for engagement with the committee.

2. Develop a master calendar

At present the scheduling of reviews for each country is a matter for each treaty body, and schedules are published only on the website of the relevant treaty body. The only way to get an overview of reviews for a particular country is to go to each website in turn. This is a time-consuming and inefficient task, made more difficult by the fact that the review schedules are updated in an *ad hoc* manner by each of the treaty bodies. NGOs have called for many years for the development of a master calendar, containing the dates of when each country is being reviewed under each of the treaty bodies. Combined with the four-year planning cycle suggested above, this would greatly enhance the capacity of civil society to plan its engagement with the treaty bodies and ensure that alternative reports are well-researched and submitted in good time for the committee to benefit from that research. It would also be an invaluable tool in encouraging NGOs to make engagement with the treaty bodies an integral part of domestic advocacy, as has happened in the case of the UPR.

3. Use technology to maximise the ability of NGOs to participate in treaty body sessions

Treaty body sessions are held primarily in Geneva, with CEDAW and the Human Rights Committee also holding an annual session in New York. The cost of travelling to and staying in these cities can make it difficult for many national level NGOs to attend. While these NGOs are able to submit alternative reports to the committees, it has been noted by several committee members that the amount of written materials they might receive on a particular country can be overwhelming, and that oral briefings are in almost all cases a more efficient tool for gleaning insights into a country situation. When national NGOs are unable to attend reviews in person, committee members are therefore deprived of a valuable source of information.

Enabling NGOs to brief committee members over Skype or similar video- or teleconferencing technologies, would allow members to access this source of information. The Human Rights Committee has already benefitted from such briefings.

Further, live webcasting of sessions, as has been trialled at the Human Rights Committee and the Committee Against Torture, would allow NGOs, NHRIs and others to follow the review itself without needing to be physically present. This increases their capacity to follow-up on the concluding observations to be issued by the committee, by supplementing those observations with first-hand knowledge as to how the delegation responded on particular issues. It may also increase the quality of the delegations' responses and scrutiny thereof at the domestic level.

4. Consider holding some sessions in regions other than North America and Europe

There are two possible consequences of the currently limited space in which meetings of the treaty bodies take place. First, the visibility of the treaty bodies is restricted. This precludes wider awareness amongst civil society of the work that the treaty bodies do, both limiting engagement and depriving the treaty bodies of potential partners in follow-up. Second, given that the meetings are held in the global north, and in cities far removed from many real human rights problems, the impression can be created that the committees operate in an esoteric atmosphere, detached from on-the-ground realities. This does not encourage NGOs to see treaty bodies as viable elements of their domestic advocacy strategies.

Holding one session a year in a different region would familiarise many more NGOs with the work of the treaty bodies, with the hope that this would both increase awareness of what the treaty bodies do, and create more interest among NGOs around engaging with treaty bodies. Such regional visits would also be a valuable opportunity for members to meet with key organisations (including NGOs) and officials, with a view to encouraging and assessing follow-up on previous and forthcoming recommendations. It may also increase media attention to the reviews, a useful lesson learned from the UPR.

5. Ensure regular and consistent interaction with NGOs during treaty body sessions

The current degree to which NGOs can formally interact with members during treaty body sessions varies. Some treaty bodies hold pre-sessions, which have been held by some NGOs to be a useful way for civil society and treaty body members to interact. Many do not. The Human Rights Committee currently meets formally with NGOs only once a session. However, NGOs hold

lunchtime meetings prior to country reviews in order to brief members on issues of concern, which members have found extremely valuable. Other Committees hold weekly formal briefings (CEDAW, CESCR), and still others hold briefings prior to each review (CAT).

The key problem with these varying modalities is that NGOs who engage with more than one committee have in each case to learn the particular modalities attached to each committee. Given the general lack of information available on treaty body websites, this can be a difficult and discouraging task. While harmonisation should not necessarily be seen as a goal across the board, it would be beneficial in this particular case. It should not, however, result in engagement being scaled down. Instead best practice should be examined and incorporated throughout the system. It is a subject that could usefully be discussed in Inter-Committee Meetings, in close consultation with NGOs. There may still be room for some variations between the treaty bodies, for example, the consultations carried out with children by the CRC deserve separate consideration. But in general, the differences in subject matter between the different committees do not preclude the need for regular interaction with NGOs during sessions, and it should be possible to develop a basic harmonised approach.

6. Take steps to protect NGOs from reprisals

The issue of reprisals against human rights defenders who cooperate with the UN system is gaining increased prominence. Treaty bodies (acting in concert with OHCHR and other relevant bodies) should take steps to ensure that those who cooperate with the treaty body system are protected. Some treaty bodies do this by holding closed sessions with NGOs, to protect their identity. The Human Rights Committee has appointed a focal point on reprisals. This is not however advertised on the committee's website. Other treaty bodies should follow suit, and clearly advertise which member has been given the role. The treaty bodies should highlight the Secretary-General's report on reprisals, by providing information about the report on their webpages or during their meetings with NGOs, and encouraging human rights defenders who have suffered or face reprisals as a result of their cooperation to submit their cases.

Any follow-up taken by treaty body members to complaints about reprisals should take into account the sensitive nature of the situation and ensure that follow-up does not place the complainant in further danger. Many members have begun to raise concerns about possible reprisals faced by NGOs when they return home in their interaction with the delegation. While this can be a valuable means of raising the profile of a case and can afford additional protection to the individuals

concerned, care should be taken that the NGOs in question are comfortable with their cases being raised in the dialogue with the delegation.

Failure to address the issue of reprisals inhibits participation of NGOs, and shows a blatant disregard for the safety of those whose knowledge and experience committee members depend upon. An attack on persons cooperating with the treaty bodies is an attack on the treaty body system itself, and should therefore be taken up with the state where alleged reprisals happened by the Chair or dedicated person of the treaty body concerned.