



OMCT DISCUSSION PAPER

SEOUL CIVIL SOCIETY CONSULTATION

ON STRENGTHENING TREATY BODY SYSTEM

19-20 April 2011

Geneva, April 2011,

The World Organisation Against Torture (OMCT) welcomes the opportunity to contribute to the consultation on the strengthening of the United Nations Treaty body system and to participate to this end at the Seoul consultation meeting.

Created in 1985, the World Organisation Against Torture (OMCT) is today the main coalition of international non-governmental organisations (NGO) fighting against torture, summary executions, enforced disappearances, extrajudicial killings and all other cruel, inhuman or degrading treatment and punishment. With 297 affiliated organisations in its SOS-Torture Network and many tens of thousands correspondents in every country, OMCT is one of the most important networks of non-governmental organisations working for the protection and the promotion of human rights in the world. Based in Geneva, the International Secretariat of OMCT provides personalised medical, legal and/or social assistance to hundreds of torture victims and ensures the daily dissemination of urgent interventions across the world, in order to protect individuals, including children, women and human rights defenders and to fight against impunity. The OMCT has been active since its inception in the submission of alternative reports and individual communications to the United Nations Treaty Bodies (UNTB). It has sought to make the UN treaty system universally accessible to national human rights organisations, notably the members of its SOS Torture network.

The following comments are based on this long-standing engagement with the UN treaty system and on our work on the ground seeking the implementation of its recommendations and views or decisions. They seek to identify a few selected areas of concern and do not intend to be exhaustive.

I. General Observation

There is no doubt that the UN treaty body system is under serious strains and that efforts are required to strengthen the universal human rights machinery. The OMCT hopes that the ongoing discussion on treaty body reform can address some of those challenges.

In this regard, the OMCT wishes to reiterate the comments and recommendations already provided in the joint NGOs response to the Dublin Statement which it co-sponsored.

From the outset of the present round of discussions it wishes to raise the importance of two guiding questions:

- How can treaty body reform help overcoming the implementation gap of UN human rights treaties, including by increasing the domestic impact of treaty body reporting and of individual cases adjudicated by the respective UN committees?
- What measures are needed to enable the UN Treaty body system, especially through appropriate resourcing, to accomplish its ambitious tasks with an increasing universal ratification?

In addition, measures to improve the performance and coordination of the various treaty bodies can play a valuable complementary role in easing the burden on reporting States, ensuring a more focused dialogue, improving the quality of recommendations and its follow-up implementation. However, the success and credibility of the system will ultimately depend on States parties willingness to translate their international obligations into domestic law and practice and their willingness to use treaty reporting as a genuine tool for dialogue on reforms that help implementing their treaty obligations.

II. Continuous evolution of the system

The treaty body system has evolved considerably over the last decades from an initially static procedure with limited or no real domestic impact into an accessible and dynamic process with a potential to contribute significantly to the realization of human rights. The ability of treaty bodies to respond to new challenges has been in the past an important engine for the development of best practices.

In this regard, the OMCT would like to stress the necessity for treaty body assessment to be seen as a continuous process that seeks to identify and rectify shortcomings. This process should seek to increase uniformity and coordination while maintaining the ability for the evolution of best practices.

Some committees, such as CAT (for May 2011), have initiated a welcome process of discussions between the experts and NGOs for an exchange of views on the way the Committee is working, to underline the positive and negative aspects of some procedures and to make concrete proposals to improve the process. We recommend that this practice of having a meeting dedicated to an exchange of views will be widely used by other committees.

There is also need for making relevant data available to all the stakeholders, including NGOs, and for having regularly open consultation meetings with them on the impacts of the UNTB. For example, the work on individual complaints is an area which would require more

information and analysis, especially on the use of the complaint procedure, classified by alleged rights violation and victims, number of communications received, number of admissible cases, number of cases in which one or more violations were found and the nature of those violations, level of implementation. This should be matched with an adequate resourcing of the work on individual complaints. It is worth noting in this regard, that there is in our view need to give more considerations to the complaint functions of UN treaty bodies.

III. Making the system accessible and visible

Accessibility to the UNTB for individual and national and international NGOs is a crucial issue and one of the most important factors of the system.

Increasing participation in the process

We consider that participation in the reporting cycle in Geneva and New York, of all the stakeholders, should be maintained and strengthened.

As the International Secretariat of a Network of 297 NGOs around the world, the SOS Torture Network, the OMCT pays particular attention to this question. Since 2003, the OMCT has implemented projects which have aimed at supporting and enabling national NGOs to participate in the process of reporting and submission of complaints to the UNTB. In light of this experience the OMCT considers the positive impacts of NGOs involvement in the process: firstly, for the work of the UNTB and their credibility and efficiency and secondly for the NGOs which through their direct implication in the process were able to integrate more easily the UNTB recommendations in their daily work especially in the advocacy work at the national level. The access of national NGOs - as the participation of appropriate government representation - ensures an important appropriation of treaty reporting by domestic constituencies and ensures the credibility of the system.

Protection of those participating in the process

Treaty bodies have an important role in addressing the environment in countries under consideration to ensure that individuals and organisations can report and access international procedures without fear from intimidation, hindrance or threats. In this regard, consideration should be given to incidents of reprisals against individuals or organisations which provide information in the framework of the reporting process or bring communications to the UNTB. This is firstly a matter of States parties to ensure that these persons are protected from reprisals. The UNTB could, however, strengthen measures to prevent reprisals and protect the individuals interacting with them. Regional practice on victim and witness protection in individual cases may provide useful guidance in this regard. It would be vital to provide for protection measures also in cases in which witnesses or human rights defenders are providing evidence or testimony in support of individual cases. This is an area in which the inter-committee system could seek to identify best practices.

Increasing domestic impact of reporting

Importantly, the reporting process should also be a domestic process and catalyst for change. It should lead to open debate, hearings and wide consultations at the national level prior and after the reporting.

Thought should be given about how to increase the impact of the reporting, for example through hearings in parliament, consultations facilitated by national human rights institutions, more open discussions between civil society and government actors or the setting up of commissions on the implementation of recommendations with appropriate civil society involvement.

The involvement of national NGOs prior to reporting would surely allow improving the dialogue between UNTB and States parties. It is also crucial to obtain an effective implementation of the decisions and concluding observations, especially to ensure a better dissemination of the recommendations and integration as a domestic instrument in advocacy work. In that respect, a best practice study on what makes the reporting process effective domestically and how States parties can ensure follow-up would be beneficial.

Accessibility and focused dialogue

Encouraging the involvement of national NGOs in the process is not only a question of physical accessibility but also a question of accessibility to the information. It therefore raises the issue of visibility and transparency of the system.

In that respect, we refer to the comments and proposals made in the NGOs response to the Dublin statement, especially regarding the improvement of the website. We also would like to stress again the positive impact of having an advance notice of UNTB examinations of State reports, adoption of the list of issues – the classical one and the one prior to reporting (which we consider to be a helpful addition) - and other opportunities for civil society inputs. We encourage the UNTB to communicate their schedule in advance as much as possible, ideally two years in advance. Advance notice allows to use the reporting as a truly domestic process and to collect better data and information on the situation of the country examined. Better diagnostic on possible implementation challenges will result in turn in more targeted recommendations by the committees.

Also, the need for a “master calendar” with dates of consideration and deadlines for receipt of NGO information, posted on the websites, would enable NGOs to plan their work with the UNTB and make it more efficient.

IV. Improving Membership

Enhancing the independence, quality and integrity within the membership of the UNTB was one of the recommendations of the NGOs in their response to the Dublin statement.

States parties have an important responsibility in this regard to ensure that the process to identify candidates is open and transparent and leads to the nomination of persons with proven human rights experiences, a high degree of expertise in the specific area covered by the treaty and who do not hold positions which would be in conflict with their position as an “independent expert” serving on a treaty body.

The OMCT welcomes the recommendation included in the Poznan statement on independence of UNTB experts which states that “guarantees for independence, availability and competence be strengthened in the context of elections of members to Treaty bodies and during their term of appointment”. The OMCT hopes that, as recommended in this statement, a working group to prepare guidelines on eligibility and independence of experts will be set

up by the Annual meeting of Chairpersons. A broad consultation on this issue with all the stakeholders should take place prior to the adoption of such guidelines.

Beyond questions of eligibility and necessary qualifications there is need to improve the process of selection and screening of candidates. A formal hearing or screening process is common practice at the regional level and thoughts should be given to establish some form of review process also for treaty bodies. We thus recommend that an open, transparent process, including input from civil society, should be developed for the selection of candidates.

V. Follow-up: strengthening the implementation of recommendations and views

There is an urgent need for improving the follow-up process and ensuring that recommendations and decisions are fully and effectively implemented. Addressing this challenge is of importance for the credibility and integrity of the human rights mechanisms.

In its work with the UNTB, the OMCT has implemented numerous activities to strengthen the follow-up process - field follow-up missions, workshop with national NGOs, follow-up notes submitted to the UNTB, strategies to ensure the effective and full implementation of recommendations and decisions in specific countries and cases.

The lack of implementation that we witness in our daily work with our partner organisations is a very serious challenge that requires an improvement of the follow-up process at various levels. It is particularly marked in a number of countries, in which there is no evidence of any progress despite successive treaty reports.

Taking account of the considerable amount of work that follow-up requires it is vital that it is not vested on a single follow-up Rapporteur on recommendations or individual decisions. For example, both the CAT and the HRC have only two Rapporteurs on follow-up, one for the Concluding observations and one for the Views. Amongst others, it makes it difficult for UNTB to follow up effectively and assess the level of implementation of the recommendations as some of those issues raise complex questions. In addition, more time should be allocated to discussions on follow-up issues during the session of the UNTB.

The OMCT considers that there is also need for the allocation of additional human resources within the OHCHR secretariat to support the treaty body follow-up work. In addition, the OHCHR and its field programs and offices should intensify their efforts in addressing the lack of implementation of treaty recommendations and of individual decisions. With regard to the information provided on the follow-up process, we welcome the efforts already made to enhance the transparency and the visibility of the follow-up process to concluding observations. The creation of a separate and detailed webpage dedicated to the follow-up process for the CAT, the HRC and the CESCR is a significant asset to that respect and this is an option that should be considered by other UNTB. Also, we think that additional efforts should be made to improve the information provided on the follow-up to decisions/views. We recommend the creation of a separate webpage on the follow-up to individual complaints which would enable to post public information including general information on the case, violations found, remedy recommended, further action taken and required, as it is presented in the interim and annual reports of the UNTB.

Consideration should also be given to improve the quality of the recommendations to ensure that they are more concise and targeted. In that respect, we observe – political will provided -

the significant impact of detailed and practical recommendations which integrate proposals of implementation measures. We also recommend including in the concluding observations and views requests for a plan of action on the implementation of the recommendations, for example to be submitted within six months. This should be seen as encouraging the State parties, in partnership with civil society, to engage in the follow-up process and comply with their obligations.

States parties should be asked to ensure that UN human rights treaties, the treaty body recommendations and individual decisions can be more easily received in domestic law, including through:

- incorporating treaties into domestic law with appropriate status and making it directly applicable;
- ensuring systematic screening of legislation for compliance with human rights law;
- enabling legislation that allows decisions of UN treaty bodies to be received in domestic law or cases to be reopened where necessary.

This question should be systematically integrated into the dialogue with States parties. In that respect, a best practice study could provide guidance on how states can improve follow-up and implementation of recommendations and decisions. As previously mentioned, States parties could for example hold hearings in parliament on the implementation of the recommendations or set up joint (government, NHRI and civil society) commissions on the implementation. It is in particular important to focus on the implementation of effective remedies to implement the views of UN treaty bodies in individual cases which in many cases require legal reforms to avoid the recurrence of similar violations. Increased emphasis on the effective implementation of views and decisions also reduces the amount of similar cases and the risk of overload of the treaty bodies complaint system.

If the follow-up process is an integral part of UNTB mandate, we consider that NGOs should be encouraged to collaborate with this process.

Field follow-up missions conducted by the UN or NGOs are an additional way to make the recommendations and decisions known at the national level by all relevant stakeholders (through, for example, follow-up workshops). They serve to identify implementation gaps, allow submissions of follow-up notes to the UNTB. Overall, they help to generate political will for implementation. Our past experience shows that follow-up missions allow national NGOs to consider recommendations as an important advocacy tools in their daily work.

We will continue our efforts with respect to follow-up missions but we also would like UNTB to reserve their right and to increase their ability to conduct themselves field visits, especially in cases of persistent non-implementation. We also recommend that joint actions (letters, meetings, missions) and increased coordination between the various UNTB should be developed with respect to States that have experienced particular difficulties with the implementation of the recommendations and decisions.

Improving the follow-up process finally raises institutional questions. In this regard, we warmly welcome the creation of the ICM working group on follow-up and hope that it can develop into an effective tool for a more systematic and coherent implementation of decisions/views and concluding observations. It should become a real opportunity for the various UNTB to share good practices and join their efforts to ensure the effective

implementation of recommendations and decisions. We consider that building on the most recent practice of consecrated time to consultation with non-governmental organisations should be a standard practice of any such meetings in the future.

Generally speaking, we think that further interactions between UNTB with regard to the follow-up process should be developed. Committees should be able to learn from their best-practices to improve the whole system. The OMCT believes that the creation of some form of a specific treaty body follow-up coordination is highly necessary.

VI. Linkages with the UN Human Rights Council and the UPR process

Finally, attention should be paid to the role of UPR process in ensuring the implementation of treaty body recommendations. While the UPR process has in some cases contributed to the implementation of recommendations, it has in some instances allowed a ‘chose’ and ‘pick’ of recommendations and thus led to a distortion of priorities.

A cursory study of the extent of reflection of treaty reporting recommendations within the UPR process suggests an over-representation of those treaty bodies perceived to be less offensive to States and a neglect of recommendations that address questions of accountability for serious human rights violations and the right to a remedy and reparation for such violations.

Selectiveness in the recommendations being taken up risks undermining the integrity of the UNTB system. There is need to initiate a reflection on how to avoid a negative impact of the UPR process on the UNTB work on follow-up and to ensure that the recommendations adopted by the independent treaty bodies are systematically included in the final report on all the reviewed countries, as additional way to obtain their implementation. In this regard particular attention should also be given to those States Parties that have consistently failed to report to UN treaty bodies.
