



Note No. 11/2012

The Australian Permanent Mission to the United Nations in Geneva presents its compliments to the High Commissioner for Human Rights, and has the honour to refer to her letters of 14 November 2011, 19 December 2011, 6 January 2012 and 26 January 2012, inviting states to make submissions on the High Commissioner's treaty body strengthening process.

The Australian Government has the honour to enclose Australia's suggestions aimed at strengthening the treaty body system and the treaty body reporting process.

The Australian Permanent Mission avails itself of the opportunity to renew to the High Commissioner for Human Rights the assurances of its highest consideration.



Geneva

3 February 2012



Australian Government Suggestions to Strengthen the Human Rights Treaty Body System

February 2012

Introduction

Australia recognises that the process of strengthening the treaty body system is an important one and commends the United Nations High Commissioner for Human Rights for her leadership on this significant issue. Australia particularly thanks the High Commissioner for the opportunity to constructively engage in this process. Australia also acknowledges the efforts of the Committees and their members to work together and harmonise their practices.

Australia has a long tradition of supporting human rights around the world and has been closely involved in the development of the international human rights system. As the human rights treaty bodies play a key role within this system, Australia welcomes the opportunity to put forward suggestions on how to strengthen these bodies and the reporting process. The primary purpose of any reform must be to enhance human rights protections at the domestic level through improved State party compliance with human rights treaty obligations. However, if the system is not efficient, it makes it difficult for States parties—especially developing States—to engage with the system and comply with its procedures. States parties' resources may be directed solely towards complying with procedures, rather than focussing on the priority area of human rights compliance.

The resources challenge

Ensuring adequate resources and funding for the treaty body system is critical for the effective operation of the treaty body system in promoting and protecting human rights. In light of the serious resource constraints across the United Nations system, it is also imperative to ensure all resources available to the treaty body system are used in the most efficient and effective way possible. Within the context of the treaty body strengthening process, careful consideration will need to be given to this issue. In particular, priority should be given to those ideas and proposals to strengthen the treaty body system that result in resource savings or are cost-neutral. Proposals that would require significant additional resources should be considered a low priority at this time.

All stakeholders need to be realistic about what can be achieved within current levels of resources. Australia therefore puts forward the following six cost-effective, practical suggestions aimed at strengthening the treaty body system and making reporting and appearances more effective for all parties involved. It should be noted these are only a selection of ideas that Australia supports and Australia is open to exploring other suggestions.

Reporting and appearances calendar

The development by the Office of the High Commissioner of Human Rights (OHCHR) of a master calendar for all of the Committees would provide valuable assistance to States parties in engaging effectively with the treaty body system. The master calendar should be coordinated across all Committees and include the due dates for States parties reports and appearance dates. Greater coordination within the treaty body system in relation to scheduling appearances could also assist States parties by ensuring, where possible, appearances before different treaty bodies and the Human Rights Council do not overlap.

Such a master plan, especially if it is also linked to Universal Periodic Review (UPR) deadlines, would ensure States parties do not duplicate reporting and briefing processes. The current, uncoordinated process can make domestic planning and engagement difficult. Reducing the reporting burden and making the reporting systems simpler, more efficient and focused would help to free up more time for States parties to focus attention on follow-up and implementation.

Greater notice of reporting deadlines and scheduled appearances would also facilitate better reporting, particularly in States parties with Federal systems (such as Australia) where domestic engagement in the reporting cycle is more complex. Advanced notice would ensure States parties have adequate time to coordinate inter-ministerial responses and briefings and therefore improve the quality of reporting.

Australia notes that similar proposals have been recorded in the OHCHR's 'Non-exhaustive list of emerging proposals' and supports the further exploration of these ideas.

Page limits and common templates for reports

The introduction across all Committees of consistent page limits for reports would reduce the documentary and translation burden on Committees and help focus the issues under consideration by encouraging States parties to target the information they provide. However, it should be noted that page limits for treaty reporting can impact on the ability of States parties to include detailed information, in a systematic and organised manner, in treaty reports on the implementation of all previous Committee recommendations. If page limits are set, and States parties are asked to provide information on a very large number of issues, this diminishes the depth of information that can be provided.

Consideration would need to be given to how realistic reporting guidelines are in the context of page limits, with particular regard to what issues should be covered by States parties' reports. For example, Committee members may need to adjust expectations as to the types of issues that could be covered and extent of detail that could be provided in reports. It would be helpful in this context if Committees provided clear, realistic and consistent guidance on the desired or necessary balance between breadth and depth of information to be provided in a report.

Australia notes that the current harmonised guidelines permit the separate provision of additional information (legislative, judicial, administrative and other texts) referred to in the report, provided the documents are available in a working language of the Committee. Australia supports the continued availability of this option, which may assist States parties to provide

detailed and rigorous reports while complying with page limits, provided it does not create an additional resource burden through translation costs.

The development by Committees of a common template for States parties to use when reporting on previous recommendations would also make it easier for States parties to prepare their reports, and lead to greater harmonisation and consistency.

Time limits and format of questions during appearances

The preferred outcome of any treaty body appearance is that both the State party and the Committee feel there has been sufficient time and scope to discuss issues in detail and present their perspectives fully. If appearances become too formulaic and time-pressured, there is a risk this outcome is not achieved.

Shorter appearances that make the most efficient use of time available may be possible if the Chairs at each session kept both members of the Committee and State party delegations to strict time limits. Rather than detract from the quality of the appearance, time limits would improve the focus and quality of questions and answers.

Targeted, clearly-expressed questions that are focused on relevant treaty obligations (that is, by expressly referencing the relevant article of the treaty) would also help ensure the Committee receives relevant and appropriate information from States parties. Cooperation and coordination between Committee members to ensure there is no duplication in questions would also save on time. Australia strongly supports the proposal for the Committee to prepare a specific list of questions that is provided to the State party delegation at least 24 hours before the appearance. This would result in less time taken up by asking questions, make it easier for States parties to clearly identify exactly what is being asked, and enable States parties to provide more detailed and in depth answers. It would also help to avoid duplication and ensure that the questions are more focussed.

Australia notes that some proposals have been made during the consultation process to reduce the length of the appearance before treaty bodies from six hours to three hours. Australia considers these proposals are worthy of further exploration, given the significant resource savings that would be involved. The provision of questions at least 24 hours in advance, avoiding the need to spend time asking questions during the appearance, and the observance of strict time limits, would help ensure there remained sufficient time and scope to discuss all pertinent issues during a three hour appearance.

Assisting implementation by improving concluding observations

The ability of States parties to implement treaty body recommendations is frequently related to the precision, relevance and accuracy of their content. It is essential that concluding observations and recommendations reflect the issues discussed at the appearance and are clearly linked to the implementation of specific provisions of the treaties. Where a special procedure mandate holder has made a recommendation on an issue of concern to a treaty body, it would also assist States parties with implementation if the treaty body recommendation was consistent with the special procedure mandate holder's recommendation. Additionally, Australia notes that

some Committees provide States parties with the opportunity to review concluding observations before their release to identify any factual errors. A consistent policy on this across all Committees would be valuable.

Committees could further assist States parties with implementation by refocusing and simplifying concluding observations to incorporate a more practical approach. For example, Committees could more clearly identify priority areas for follow-up or set out short-, medium- and long-term goals. By ensuring recommendations focus on achieving a limited number of high priority outcomes, implementation at the domestic level has a greater probability of being achieved. The sharing of best practice examples by the Committees may also help States parties with ideas on how to best implement recommendations. Recognition of the different domestic legal and political contexts of individual States parties in formulating concluding observations would also assist the implementation process, as these different contexts can affect how recommendations are discussed and implemented at the domestic level.

A consistent policy across all the Committees on the general approach to reviewing follow-up action by States parties would also be useful. At present, different Committees take different approaches to follow-up.

Improving the use of information technology

Easy accessibility and accuracy of information is essential to the visibility and effective operation of the treaty body system. The current OHCHR website is a valuable tool in this regard and contains a wealth of useful information for States parties, non-government organisations (NGOs) and members of the public. However, it can also be difficult to navigate and is at times out-of-date. Improved accessibility and organisation of the OHCHR website would increase visibility and understanding of Committees' body of work, assist States parties that are new to the reporting processes, and encourage greater NGO and general public participation in treaty reporting processes.

Improvements to online resources so that treaty body outputs are accurately reported, up-to-date and easier to search would be valuable, particularly the OHCHR country-specific webpages. In addition, all OHCHR content should be accessible to persons with disabilities, for example, by providing html versions of all documents. This would be a key opportunity for the United Nations to be a world leader on this important issue.

As a secondary priority, broadcasting all public meetings of the Committees through media such as web casting would be a significant step in enhancing the visibility of dialogues and the Committees' work. However, consideration would need to be given to the costs of providing this, given current resourcing limitations. OHCHR could also explore the use of social media, which would be a low-cost method of facilitating the widespread dissemination of information about the treaty body system and its work.

Enhancing the independence and expertise of Committee members

The nomination of independent and highly qualified candidates for Committee membership is important for the integrity of the treaty body system. The adoption of a standard resume

template would assist this by clarifying the kind of expertise and experience that candidates should have. It would also serve to highlight the different levels of experience that each competing candidate has and improve the ability of States parties to evaluate the various candidates. Australia is also supportive of the recommendation that Committee members serve a maximum of two terms and agrees that persons currently serving as government officials or diplomats should not be eligible for nomination.

Additional issues for further consideration

In addition to the above suggestions, Australia believes the treaty body system would benefit from further discussion and consideration of the following issues.

List of Issues Prior to Reporting (LOIPR)

The introduction of LOIPR appears to be a positive move towards streamlining and focusing the reporting process and Australia has accepted the LOIPR for both the CAT and the ICCPR. However, Australia notes that only two Committees have adopted the LOIPR system so far, creating further inconsistencies. The need for greater consistency across the Committees in the approach to LOIPR will need to be revisited, once this procedure has been tested.

For States parties electing to use the LOIPR, it is important Committees ensure the questions they identify are answerable by States parties within permitted page limits. To assist with this, the LOIPR could specify clearly that the reporting is sought on the implementation of previous recommendations, with moderated expectations about the type and scope of the content that can be included in the reports. This would assist States parties greatly by clarifying the relationship between previous concluding observations and the LOIPR.

Consideration should also be given to the long-term viability and effectiveness of LOIPR, as this is not yet clear. There is a concern that if most States parties used the LOIPR, the volume of reports received may reduce the capacity of Committees to meet their stated goal of ensuring States parties appear before them within one year of submitting a report.

Common Core Document

A consistent, clear policy on the use of the Common Core Document by Committees would greatly assist States parties. Standardising the use of a Common Core Document, with treaty-specific LOIPR from respective Committees, could be a good way to make the entire treaty body system more effective and efficient in the future.

Video-teleconferencing

It is important to have government experts on State party delegations to ensure high quality dialogue at appearances. However, attending appearances can be a great strain on the limited resources of smaller States parties. Video-teleconferencing may provide a cost-effective option to enable more high-level government experts to participate in appearances.

In the absence of video-teleconferencing facilities in the State party concerned, consideration could be given to the use of such facilities in the OHCHR regional offices (where available).

While travel would still be required, it is likely to be significantly cheaper and faster than travel to Geneva or New York for those States parties.

Individual communications

Australia supports strengthening the individual communications processes and recommends the Committees focus on practical steps that would make individual communications more efficient and sustainable, and contribute to reducing lengthy delays faced by complainants. One proposal that could be usefully considered is Committees deciding on admissibility submissions provided by State parties before merits arguments are required and considered. This would narrow the scope of many communications and reduce time and resources spent on unnecessarily responding to, translating and reviewing the merits of arguments that are ultimately found inadmissible by a Committee.

Improvements could also be made through clearer scheduling of timeframes for consideration by Committees and setting appropriate limits on the number of times complainants and States parties can make additional submissions and arguments. Australia is also supportive of the exploration of best practices adopted by Committees and their secretariats in relation to communications work, including in the preparation of Committee views.

'Non-exhaustive list of emerging proposals'

Australia also supports further consideration of a number of ideas included in the current list of emerging proposals. In particular, the proposal to establish task forces for the examination of States parties reports within Committees is an interesting idea that warrants further exploration. However, Australia does not support suggested reform proposals that have significant resourcing implications, such as holding treaty body sessions at a regional level, regional follow-up workshops and treaty body follow-up visits. While acknowledging the potential value of these mechanisms, in the context of current financial constraints, Australia considers the establishment of new responsibilities or mechanisms is not feasible at this time.

Conclusion

A strong human rights treaty body system is important for the effective protection and promotion of human rights across the globe. In recognition of the importance of this, Australia has put forward these practical suggestions for reform. Most of the suggestions in this document relate to the work of the Committees or the OHCHR. However, Australia acknowledges that the responsibility for strengthening this system rests not only with the treaty bodies and the OHCHR, but also States parties, National Human Rights Institutions and civil society. Australia looks forward to ongoing, constructive engagement between these parties to further strengthen the treaty body system to best protect and promote human rights.