Centre of Human Rights Education (ZMRB)
of the PHZ Lucerne

Report

Lucerne Academic Consultation on Strengthening the United Nations Treaty Body System

24-25 October 2011

Lucerne, Switzerland

Content:

Content

Introduction

In 2009, the United Nations High Commissioner for Human Rights, in her statements to the Human Rights Council and the General Assembly, called on States parties and stakeholders to initiate an open process of reflection on how to streamline and strengthen the human rights treaty body system. A number of consultations have been held in response to this call, including a consultation for treaty body members in Dublin in November 2009, for national human rights institutions (NHRIs) in Marrakesh in June 2010, for treaty bodies chairs in Poznan in September 2010, for non-governmental organizations (NGOs) in Seoul in April 2011 and in Pretoria in June 2011, as well as an informal technical consultation for States parties in Sion in May 2011. In addition, a high-level seminar was held in Bristol in September 2011 to examine the implementation and follow-up of treaty body concluding observations.

In the context of the treaty body strengthening process, the Centre of Human Rights Education of the University of Teacher Education in Lucerne, Switzerland, hosted an academic consultation in Lucerne on 24 and 25 October 2011. It was envisaged that academics, with scholarly and professional interest in the work of treaty bodies, might contribute reflections and recommendations from different perspectives and that this could enrich the process and complement outcomes of previous consultations.

The present report summarises the discussions and provides a number of recommendations. It is organised in five sections, with each section providing suggestions for improving the existing system but also putting forward ideas based on a vision for the treaty body system in ten years. The report addresses (1) the purpose of the human rights body system; (2) the reporting procedure; (3) jurisprudence and case law; (4) Follow-up to monitoring and implementation; and (5) treaty body membership.

As a general observation, the participants found that an important lesson from the consultation exercise would be to encourage further and continuing research and debate into the operation of treaty bodies, and they recommended that a network of **academic research focus groups** be established to facilitate critical research and debate on the functioning, work and implementation of the outputs of the treaty bodies.

1. Purpose of the human rights treaty body system

The meeting noted that the existing treaty body system had been seen as a ground-breaking development at the time of its establishment, and had not been intended to be a static regime but a dynamic one responding to changing needs and circumstances. This reflection should serve as an encouragement to propose creative new ideas. Forty years on, the work of the treaty bodies has developed in many ways, and the working methods and procedures of the committees have been improved and refined through practice. Although this has resulted in divergent and sometimes inconsistent procedures, it shows the ability of the system to develop and adapt itself in response to new circumstances and challenges. Participants also considered it important to recall that the work of the treaty bodies had contributed positively to the enjoyment of human rights in many countries and that efforts to improve the system should

bear in mind the reasons for those successes. Other significant advances over the years, such as a commitment to the inclusion of gender issues and women's human rights perspectives, and disability perspectives, across all the treaty bodies also needed to be maintained.

The participants stressed the importance of viewing the human rights treaty bodies as part of a coherent system of human rights protection. States had adopted a series of individual treaties addressing specific issues and establishing separate supervisory bodies, thus recognizing that each body would make a distinctive contribution. Nevertheless, it was essential that these bodies work in a coordinated manner with each other and, so far as possible, with the broader human rights system. The current process of reflection on how to strengthen the human rights treaty body system should therefore engage wtih broader issues such as the place and function of the treaty body system in a broader human rights arena, which in turn forms part of an even wider globalising world order.

The meeting also noted that there were various stakeholders in the treaty body system: States parties (individually and collectively); citizens and others who were the beneficiaries of the rights guaranteed under the treaties; national human rights institutions; national and international civil society groups who engaged with the treaty body system; and the United Nations organization (in its role as the secretariat for the committees). Although these stakeholders shared many expectations of how the system would best operate, there might be divergences in other respects. For example, civil society groups might find it useful to making progress domestically to have frequent reports to a variety of treaty bodies, while this might be seen by a State party as imposing an undue burden on it. Likewise, large numbers of reports might lead to difficulties for committees in considering reports in a timely fashion or for the secretariat in servicing the committees. Other social actors might find the current system irrelevant for their local struggles for social justice. Here the question would be how the system can be made relevant for a greater number of social actors who increasingly frame their struggles for social justice in human rights language, but who do not necessarily rely upon the treaty body system to advance their cause. In short, while there may be many ways in which the system might be made more "efficient" (eg by reducing the number of reports or limiting the scope of opportunities for civil society engagement), such steps might not be appropriate if other goals (such as enhancing opportunities for civil society engagement in reporting procedures) are viewed as important to the system. Deciding which of the proposed changes should be pursued must involve measuring them against the overall purposes of the system and asking whether they would be likely to promote those purposes.

The meeting noted that it was thus necessary to clarify the purposes of the treaty body system in order to measure progress, to develop strategies for improving the system, and to evaluate proposals for change. Participants noted that the system may serve different purposes for different actors. If the main purpose of the system was to hold States parties accountable for failure to fulfill obligations, then the system should be designed to clearly identify violations of treaty norms. However, the participants agreed that the purpose of the treaty body system had originally been seen and should continue to be seen as a broader one, namely the promotion and protection of human rights. In this respect it is vital that the work of this international system should influence and contribute to developments at the national and local level, and that therefore an increased focus on the usefulness of the system's outputs at the domestic level was needed.

Following the discussion, the participants agreed that the two overall goals of the treaty body system are (a) to support the organs of the State in the fulfilment of their responsibilities to promote and protect human rights at the national level, and (b) where States parties failed to do so, to hold them accountable for that failure.

2. The reporting procedure

The participants considered that the reporting procedures continued to be central to the achievement of the purposes of the treaties, and that the practice of holding constructive dialogues with the representatives of States parties was important and should be maintained. Moreover, these monitoring procedures were the ones envisioned by the treaties. A possible vision for the future would be for the system to be reactive, in that the practice of regular reporting would be terminated and the focus would only be on specific requests for reports, visits and capacity-building. However, the participants agreed to focus the discussion on strengthening and improving existing procedures.

The importance of harmonisation

As the treaty bodies have developed in significantly different ways, a range of recent efforts have focused on **harmonising** their working methods. It was noted that while some progress has been made, further efforts are still needed. To this end, the participants recommended that a consistent terminology be applied so far as possible across all treaty bodies. The participants also agreed with the decision of the Annual Meeting of Chairpersons,[1] in line with the Poznan Statement,[2] to strengthen the role of treaty body chairpersons in coordinating and harmonising the work of treaty bodies. At the same time, harmonisation should not lead to convergence around the least common denominator, but allow for flexibility and for innovative developments to be piloted by individual committees, possibly after consultation with the Chairpersons, as procedural innovations by one committee have often been later adopted by other committees.

List of Issues Prior to Reporting

The participants supported the use of the **LOIPR (**List of Issues Prior to Reporting) **procedure** and recommended that a study be conducted on the effectiveness of this procedure, which could be used as a basis for consideration of its use by all treaty bodies. The participants recommended that the LOIPR be made more specific and the process strengthened. They also noted that the LOIPR procedure would change the way in which the system and its partners work, and civil society may begin to lobby for inclusion of issues at a very early stage.

[1] Report of the Chairpersons of the human rights treaty bodies on their twenty-third meeting, A/66/175, para. 21.

[2] Paras. 16 and 17.

Differentiation between States

The participants discussed whether treaty bodies could be more efficient and effective in the reporting process through **differentiating** their reviews of States parties, so that more time was devoted to the reports of States parties in which there appeared to be serious or systematic difficulties or a larger number of problem areas in implementation of treaty obligations. The meeting noted that it would be important to have objective criteria for such differentiation, while also noting that a committee would have to exercise its expert judgment. Among the possible criteria suggested were the existence in a State party of an "A" status NHRI that is active in monitoring human rights in the State, or the existence of monitoring by an existing regional human rights mechanism (for example, the European Committee against Torture). So far as existing initiatives went, the participants agreed that the LOIPR procedure appeared to provide a good tool for **adapting** the reporting procedure to address the specific nature of the conditions and difficulties in each State party.

Working in chambers

The participants also discussed the possibility of working in smaller sub-committees or **chambers** as at least two committees have done, in order to deal with more reports at each session. This was seen as an option which could also be considered at present by the treaty bodies which do not currently operate in chambers. If the chambers were to be composed of 3 or 5 members with specific language groups in mind, the costs of translation might be reduced, though other conference servicing costs might increase. The outcome of the deliberations of the chambers could be circulated and approved electronically by the entire Committee. This system would need logistical support, but would save costs. An alternative proposal was to form a preparatory group of key experts that would have primary responsibility for drafting the outcome, though it was noted that the current system of country rapporteurs and/or country task forces in the respective committees already serve some of these functions. It was further suggested that that the system could be even further fine-tuned to have only one member reviewing a report and submitting draft concluding observations for review and adoption by the committee as a whole. Upon adoption, the committee could then decide on the specific themes for the next report.

Publicity and the use of information and communication technology

The participants noted the challenge of the still limited **awareness** of the work of the human rights treaty bodies. Raising awareness amongst national actors of the treaty bodies' work was seen to be crucial for the success of the system. The participants recommended, inter alia, the increased use of modern technologies, including **webcasting and other technologies** to increase visibility and effectiveness of treaty body considerations of State party reports (as had been done very effectively with UPR sessions), as well as training and capacity-building at the national level. The participants acknowledged the considerable advances that had been made in developing the OHCHR website but noted the vital need to improve and update its contents and to improve accessibility and ease of use.

Concluding observations

The participants further discussed the **concluding observations** adopted by treaty bodies. They agreed that the concluding observations should be focused and country-specific and

found that where a LOIPR has been used, the concluding observations should normally focus on such issues. The participants also agreed that wherever possible concluding observations should be formulated so as to give concrete guidance about the steps needed to be taken to implement treaty obligations. They also discussed the use of diplomatic language and how the concluding observations often express lengthy "concerns" rather than clearly state that the committee considers that there is a violation of the norms; such language may undermine the utility of these concluding observations for use at the domestic level. In this respect, the participants agreed on the need for committees to specify if a particular treaty norm has been violated.

Relationship with other parts of the UN human rights system

The interaction and complementarity of **special procedures mandate holders** and treaty bodies was discussed. The meeting recommended that all new treaty body members be systematically briefed on the treaty body's engagement with special procedures as part of their induction into the treaty body's history, mandate and working methods. The meeting also recommended that special procedures and treaty bodies continue to engage with each other to ensure complementarity. The participants further recommended that special procedure mandate-holders could be engaged in follow-up to treaty body recommendations.

Bringing the treaty bodies to the regions and to individual States parties

The participants discussed the value of **visits** by treaty body members to regions and individual States parties. They agreed that this could bring great benefits, both in terms of meeting more stakeholders and improving the visibility and awareness of the treaty body system. Visits were seen as complementary to the reporting procedures. The point was made, however, that that visits managed by the States parties also risked limiting the availability of critical information in relation to a given State party. The participants welcomed and endorsed the decision by the Annual Meeting of Chairpersons to meet in various regions every second year, including in Addis Ababa in 2012.

The participants explored the idea of holding occasional treaty body sessions in regions and States parties and thereby combining constructive dialogues with capacity-building activities and meetings with the State party officials, national and regional stakeholders. This could be particularly useful for States parties that have never reported. While the participants acknowledged that this idea would face a number of challenges in terms of funding, time efficiency and logistical arrangements, it was noted that the benefits of meeting them might be an investment in higher visibility of the treaty bodies, an investment in networking and an investment in regional and national capacity building.

Reporting by non-State actors

The meeting noted that the treaty body system is of its nature concerned with the implementation by States parties of obligations they have assumed under the principal human rights treaties. At the same time, there are various actors in a position to affect the enjoyment of human rights who are not formally subject to regular external independent scrutiny, within the treaty body system or elsewhere, in line with the rights guaranteed by the treaties. Examples include the United Nations missions responsible for territorial administration, the United Nations Organization itself and its specialised agencies, other international

organizations and corporations. The meeting was of the view that consideration be given to the establishment of procedures (or the use of existing procedures) so that the actions of these **non-State actors could be scrutinised in line with human rights standards,** where this does not already occur. Possible options might include the establishment of an independent expert body (perhaps comprised of present or past treaty body members), informal discussions with existing treaty bodies, the amendment of the human rights treaties to permit adherence by additional actors,[3] or the adoption of explicit human rights scrutiny within established organizational reporting and evaluation processes.

Towards an integrated reporting procedure

The participants agreed that the specificities of each treaty and the mandate established for each treaty body would require the treaty bodies as such to be maintained. However, to achieve effective harmonization and effective consideration of reports, the participants suggested that there might be ways in which the treaty bodies could work together more closely and flexibly to form an **integrated system**. The following might be one form that such a system could take.

Drawing inspiration from democratic processes, the participants proposed that experts could elect "standing members" amongst their peers to serve full-time and be remunerated. The remaining members would form an on-call pool of treaty body human rights experts, meeting in chambers of thematic expertise, out of which experts could be selected for specific country reviews. Particular thematic issues would be defined in the LOIPR, which was presumed to be widely used, and on the basis of the selected themes, the team of experts would be composed. The pool of experts could consider several reports for one country at once, with concluding observations being ultimately circulated and adopted by the full membership of each committee.

For example, the expertise of the members of the Committee on the Elimination of Discrimination against Women might be particularly useful in the review of a report under the International Covenant on Civil and Political Rights, Thus, a review body comprising some members of the Human Rights Committee and of CEDAW might engage in the dialogue with the State party, although the concluding observations would still be adopted by the Human Rights Committee. Or if a joint LOIPR had been prepared by a number of committees, then the review body might comprise a number of representatives from each of the committees that had been involved.

Such a structure and the increasing workload may require a new **management structure** in the treaty bodies. It was seen as crucial to have a firm leadership of committed and competent members, such as the chairpersons, to manage the effective functioning of the integrated structure as executives, and in particular a function of Director or first Chairperson. The "Director" of the treaty bodies could be elected from within the standing members or from the entire pool of experts. Strengthened management would be essential to effective

[3] It was noted in this respect that due to the specific provision relating to accession to the Convention on the Rights of Persons with Disabilities by regional integration organizations (Article 44(1), the European Union had been able to become a party to that treaty and consequently agreed to regularly submit a report to the CRPD.

harmonisation. Follow-up to recommendations could be conducted by a specialised inter-committee group within the integrated structure.

Other ideas put forward by the participants included the committees conducting desk reviews and the elected standing members conducting the dialogue with the State party. A further proposal was the submission of a joint report under several or all treaties. The participants found inspiration for these proposals in the practices of regional human rights mechanisms, the international criminal tribunals for former Yugoslavia and Rwanda, as well as the International Labour Organization.

3. Jurisprudence and case law of the treaty bodies

General comments and recommendations

The participants strongly recommended that the practice of adopting **general comments** be maintained and strengthened as they are a highly valuable part of the work of the treaty bodies. The participants recommended that the treaty bodies continue to explore the possibility of issuing joint general comments, developed by several treaty bodies on thematic issues of common concern. The participants discussed means to ensure a consistent form, style and length of the general comments, as well as ways of increasing transparency in how topics for general comments are selected. They considered that it was important for general comments to address pressing human rights issues, often revealed through the reporting process, individual communications as well as in the reports of special procedures mandate holders and other UN procedures or agencies.

Treaty body individual communications procedures

The participants noted that the time spent on communications varied greatly between committees. It was highlighted that the consideration of communications is an area where legal expertise would be highly relevant, and that the limited legal expertise in some committees could be a concern. While recognizing that there had been increasing attention to follow-up procedures and documenting the impact of decisions or views in individual cases, the participants noted that no comprehensive study had been conducted on the impact of decisions or views adopted by the committees under those procedures.

The participants discussed the trend of establishing additional **individual complaints procedures for existing treaties or** under new treaties, but also noted with concern that some existing complaints mechanisms were not utilised. Communications were identified as a way in which the treaty bodies could raise their visibility and guide national mechanisms, including by guiding courts in assessing matters of substance. Participants discussed whether there was some way in which committees could focus their efforts on dealing with cases that might be of general jurisprudential importance rather than involving a more routine application of the law to specific facts. However, they noted that the committees did not have a discretion to decline to deal with communications on the ground that they did not raise issues of general importance but were rather obliged to deal with all cases which satisfied admissibility criteria. The participants accepted that the outcome of individual communications could lead to positive legislative changes on the national level as well as having an impact on the decisions of national courts.

Participants highlighted the need to continue to improve the quality and consistency of decisions and views on individual communications, in particular strengthening their legal reasoning. The participants recommended that inconsistencies in application must be addressed and procedural consistency be ensured, especially as regards satisfaction of admissibility conditions. The participants also recommended an increase in the transparency of these procedures, including by encouraging the publication of submissions by parties as a matter of course. The participants noted the importance of separate concurring and dissenting opinions to the understanding of decisions and to the development of the law, and encouraged the continued use of these options. They suggested that the Office reinstate the earlier practice of sending out press releases which summarise the views of committees in decided cases rather than including just a list of case names and links.

The participants envisioned that in ten years' time, the treaty bodies' consideration of individual communications might be more closely **linked to judiciaries at the national level**. One suggestion made was that of a national court applying to a treaty body for advice in a matter of substance which could then guide the court (under a procedure analogous to article 267 of the Treaty on the Functioning of the European Union under which national courts may refer a question to the European Court of Justice for a preliminary ruling). This could take the form of an "interpretative comment" on the particular issue, addressing the substance of a particular aspect of a right rather than the situation of the victim. The participants noted that such a process could make the opinions of the treaty bodies more relevant and applicable, but might also lead to delays in national judicial processes. It also gave rise to sensitive issues, as such a request might be seen as a request to pre-judge a case which might later come before the treaty body in question as an individual complaint, and would in any case probably require amendment of a number of treaties.

It was noted that the High Commissioner for Human Rights on occasion presents *amicus curiae* briefs to national courts, and some participants considered that greater use of this avenue might serve to give greater prominence to treaty body output before national courts.
The meeting also noted that in some cases the absence of a legislative framework at the national level might impede the implementation of the recommendations of the treaty body as regards provision of remedies, and that it was important for States parties to ensure that their legislation permitted the giving to effect to remedies recommended by the treaty bodies under individual complaints procedures.

4. Monitoring and implementation: Follow up

It was noted that committees have **varying practices** for following up on their recommendations, some assigning one or two members to focus on follow-up to selected recommendations in the concluding observations. The meeting agreed that implementation of recommendations is vital and that measures to monitor such implementation should be strengthened. The participants recommended the development of an integrated treaty body follow-up mechanism, which would heighten visibility of this most important of phases and could potentially be more effective in encouraging implementation.

Relationship with other parts of the UN human rights system and with other systems of human rights protection

The participants also noted that the **Universal Periodic Review** (UPR) could facilitate follow-up on treaty body recommendations. These were summarised in the UN compilation of information and submitted as a background document to the review. The participants agreed that the UPR should reinforce the work of treaty bodies and encourage implementation of treaty body recommendations. In this process, the UPR could provide a political level of support to treaty bodies, while at the same time recognizing the independence and expertise of the treaty body system.

The participants recommended that the role of the **United Nations** agencies, offices and programmes in following up on treaty body recommendations, particularly at the national level through the UN Country Teams (UNCTs), be strengthened. The participants also recommended renewed efforts to ensure a rights-based approach in all UN agencies, offices and programmes and that such organizations should engage in treaty body reviews and follow-up, including by providing training, holding meetings with governments, and engaging in dialogue with national actors before and after reporting. The participants discussed the opportunities in engaging in cooperation with other organizations such as the Commonwealth in providing support to national actors in treaty body engagement. The participants noted that efforts are needed to show the value of human rights in the development agenda.

The participants discussed tools to facilitate monitoring of implementation of treaty body recommendations, and recommended that a specific website on follow-up could be set up. The participants recommended that a study compiling **best practices** with regard to follow-up and implementation of treaty body recommendations be undertaken.

The participants discussed measures to improve the **culture of human rights** at the national level with respect to treaty body follow-up. They noted the importance of training and human rights education for national stakeholders, including the judiciary to implement treaty body recommendations effectively. The participants noted that the Ministry of Foreign Affairs was often the lead ministry in treaty body engagement, rather than the ministry in charge of the thematic issues, which affected follow-up. The participants recommended increased training for national actors, in particular the judiciary and civil service, on treaty body mechanisms, including follow-up.

The participants also recommended that the International Coordinating Committee of NHRIs might further explore ways of increasing the role of NHRIS in the implementation and follow up of concluding observations and views, generally and as part of the regular accreditation reviews of individual NHRIs. They also noted the important role that Parliaments could play in the implementation and monitoring of treaty obligations, concluding observations and decisions of the treaty bodies. They noted that the Inter-Parliamentary Union had collaborated with the OHCHR, DAW and DESA in the production of manuals on the role of Parliamentarians in implementation of human rights treaties (including CEDAW and CRPD) and suggested that the OHCHR explore further ways of collaborating with the IPU in order to enhance the role of Parliaments in this process.

The role of **regional human rights mechanisms** in following up on recommendations was also discussed and the participants recommended that the international and regional systems should engage in a dialogue on the modalities for such cooperation.

Relationships with national actors

The participants agreed that **national actors**, in particular NHRIs, civil society organisations and parliamentary committees, serve an important purpose in monitoring implementation of recommendations. The physical presence of treaty body members was seen as useful for follow-up, and the participants recommended that treaty body members should increasingly conduct follow-up country visits. The participants also recommended that national frameworks be established to implement and follow-up on treaty body recommendations, including the roles of inter-ministerial bodies, civil society and NHRIs.

However, it was also noted that the quality, range and mandate of national actors vary greatly from State party to State party. If the treaty body system is to be most effective, it would be important to analyse in particular how national actors can benefit from and follow-up on the recommendations, considering the **plurality and diversity of national contexts.**

NHRIs were seen as important to the human rights system although they often vary in terms of mandate, capacity, independence and effectiveness. The participants noted that such institutions were subject to different procedures in different treaty bodies, sometimes forming part of the State party delegation and sometimes providing information in closed meetings. The participants recommended that a more consistent practice for treaty bodies' interaction with NHRIs be developed, including clarifying the roles of NHRIs as independent from the State party, and that further efforts be undertaken to strengthen the capacity of NHRIs to engage with treaty bodies.

The participants also discussed the role of **civil society** and noted that one of the important dimensions of the treaty body system was its engagement with civil society, including NGOs. Civil society and other national actors are often an important source of information about human rights conditions and also play a significant role in supporting and monitoring the implementation of treaty body recommendations. In this regard, the participants reiterated that States parties have the primary responsibility for implementing such recommendations.

5. Selection procedures for and composition of the treaty bodies

Nomination and election of members

The participants discussed ways of strengthening the processes of **nominating and electing** treaty body experts to ensure that they possessed the expertise, independence and other qualities that were necessary for the effective functioning of the treaty bodies as independent expert bodies. They noted that under the treaties it was States parties which had the right to nominate and elect experts. However, the process was generally opaque, there was relatively little opportunity for real scrutiny of the qualifications of nominees, and the political nature of the voting system meant that at times decisions to vote for particular individuals were influenced by considerations extraneous to the treaty.

The meeting considered that steps could be taken to improve the nomination procedure at both the national and international level. The participants further recommended that States parties consider creating open and transparent national election processes and sharing information with national actors on the process overall. At the national level, there were examples of States in which the government had called for expressions of interest from persons who wished to be considered for nomination, and this might be one way of making the process more transparent. Or a government might establish a formal consultative process involving NHRIs, civil society groups and others to consider possible nominations and make recommendations to government. In this regard the requirements for an open and public selection process for candidates for election to the European Court of Human Rights was referred to.

The meeting noted that there was a range of existing formal and informal procedures at the international level for reviewing the qualifications of nominees to international bodies. The nominations of the special procedure mandate holders of the Human Rights Council follows a procedure in which the qualifications of a public list of candidates who have submitted standardised information is considered by a Consultative Group comprising governmental representatives of regional groups. This Group reports to the Chair of the Council, who then appoints a person to the relevant mandate taking into account the assessment by the Consultative Group.

Another example is the procedure for election of judges to the European Court of Human Rights.[4] This involves the submission of standardised information by each nominee to the Council of Europe to facilitate comparisons between candidates; States must normally also submit candidates of both sexes, and States are required when selecting and nominated candidates to "issue public and open calls for candidatures" and describe the manner in which their candidates have been selected.[5] The nominees are interviewed by the Subcommittee on the Election of Judges to the European Court of Human Rights of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly, which makes recommendations which are considered by the Parliamentary Assembly which elects the judges of the Court.

Another recent, and slightly different example is the initiative by the non-governmental Coalition for the International Criminal Court which in 2010 established an Independent Panel on International Criminal Court Judicial Elections, whose membership comprises eminent lawyers with extensive international criminal law and human rights experience and/or national judicial experience.[6] The purpose of this body is to raise awareness of States parties and others of the required qualifications for a judge of the Court and to encourage States parties to nominate highly qualified candidates. The mandate of the panel is to independently assess whether each nominee satisfies the qualifications set out in the Rome Statute, an

[4] Committee on Legal Affairs and Human Rights, Subcomittee on the Election of Judges to the European Court of Human Rights, *Procedure for electing judges to the European Court of Human Rights, Information document prepared by the secretariat*, AS/Jur (2010) 12 rev'd, 11 October 2010.

[5] Id, para 9.

[6] See Independent Panel on International Criminal Court Judicial Elections, *Report on International Criminal Court Nominations 2011* (26 October 2011)

assessment it includes in a published report. In its first report the Panel urged the Assembly of States parties to establish its own independent expert panel on nominations.[7]

The participants recommended that an advisory process be set up at the international level, to guide nominations, elections and appointments to the treaty bodies. This might include the establishment of one or more advisory committees to review proposed or actual nominees and to provide advice to States parties before elections. While one advisory committee for all treaty body nominations might be preferable, this might not be readily achievable. Given that each treaty body is elected by the respective meeting of States parties, it may be necessary for each meeting of States parties to establish its own advisory committee (though these might have overlapping membership to ensure consistency in approach). The committee could be composed of five members; its composition should be mixed and representative and might include a former treaty body chairperson, an international judge, a NHRI representative, a civil society representative, and a representative of States parties.

Other recommendations included the development of a standardised curriculum vitae and clear lists of requirements for nominees for election to the human rights treaty bodies, the need to attain a better gender balance in the membership of the committees and also to ensure access for persons with disabilities to membership in all committees. It was noted that measures to strengthen nomination and election processes should also take into account replacement of members who resign before their term has ended, ensuring that replacements nominated by States parties were subject to a similar scrutiny as regards their independence and expertise.

Independence, expertise and availability of (potential) treaty body members

The participants discussed possibilities for ensuring the highest levels of **independence and expertise** amongst treaty body members. In this respect, the participants recommended that members should serve a maximum of two terms, as was stipulated in the most recent human rights treaties. They also considered that persons currently serving as diplomats or government officials should not be eligible for nomination as this would inevitably lead to a perception of conflict of interest; equally, members who took up such positions while serving as a member of a treaty body should step down from the committee upon assuming such a position. The participants also recommended that new treaty body members should continue to receive a thorough orientation or induction before commencing their duties. Measures to improve the competence and expertise of the members included strengthening of language skills. In this respect, the suggestion was made that it might be appropriate to state it was highly desirable that a nominee be able to work in two of the official languages of the United Nations.[8] Furthermore, the participants strongly supported the recommendation of the Annual Meeting of Chairpersons,[9] as included in the Poznan Statement,[10] that the treaty bodies

[7] Id at page 20.

[8] The rules governing elections to the European Court of Human Rights require the candidate to have an active knowledge of one of the official languages of the Council of Europe and a passive knowledge of the other, or to be prepared to undertake intensive language instruction.

[9] Report of the Chairpersons of the human rights treaty bodies on their twenty-third meeting, A/66/175, paras. 19 and 20.

prepare a common document providing guidance on eligibility and independence of treaty body members.

ANNEX 1

Lucerne Academic Consultation on Strengthening the Treaty Body System *October 24/25, 2011*

Centre of Human Rights Education of the University of Teacher Education Lucerne

Venue: Hotel Schweizerhof Lucerne

Day 1

9:00 Opening and introduction to consultation

Introductory comments by Peter Kirchschlaeger
Introductory comments by Carla Edelenbos, OHCHR

9:20 Over forty years later: can the treaty body system be re-invented?

Introduction by the facilitator (5')

Discussions can cover inter alia the following points:

- Can the monitoring function of treaty bodies be performed differently?
- Where are the main challenges and weaknesses?
- What are the possibilities for change?

11:15 Coffee/tea break

11:30 Over forty years later: can the treaty body system be re-invented? (continued)

Introduction by the facilitator (5')

Discussions can cover inter alia the following points:

- What are the alternatives to standard reporting procedures, including preparations, "constructive dialogues" and treaty body recommendations ("concluding observations")?

[10] Paras. 19 and 20

12:30 Lunch

14:00 Over forty years later: can the treaty body system be re-invented? (continued)

- What are the alternatives to standard reporting procedures, including preparations, "constructive dialogues" and treaty body recommendations ("concluding observations")? (continued)

15:30 Coffee/tea break

16:00 Treaty body individual communications procedures

Introduction by the facilitator (5')

Discussions can cover inter alia the following points:

- Ideas for improvement to the existing treaty body individual communications procedures

18:00 End of programme Day 1

19:30 Dinner

Day 2

8:30 Monitoring and implementation: where does the role of treaty bodies end and how do treaty bodies fit within the larger human rights structure?

Introduction by the facilitator (Peter Kirchschlaeger) (5')

Discussions can cover inter alia the following points:

- How to improve States' implementation of treaty bodies recommendations (on reports) and decisions (on individual complaints)?
- How to improve the impact of treaty bodies' work on the protection of rights holders?
- Treaty body follow-up procedures (CERD, HRCmttee, CEDAW and CAT): added-values?
- Cooperation with relevant stakeholders at the national and international level

10:00 Coffee/tea break

10:30 Conclusions: highlights of the consultation and possible follow-up

Moderation: Peter Kirchschlaeger

12:00 Lunch

ANNEX 2

Lucerne Academic Consultation on Strengthening the Treaty Body System

List of participants*

Title	Name	First Name	Organization
Mr.	ADDO	Michael K.	University of Exeter, United Kingdom and University of Legon, Ghana
Mr.	BYRNES	Andrew	University of New South Wales, Australia
Ms.	EGAN	Suzanne	University College Dublin, Ireland
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***A total of fifteen academics from all regions were invited to participate in the Lucerne Consultation.**