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Report

Regional Consultation for Asia

**South Asian University, New Delhi,
India**

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INTRODUCTION

A two-day regional consultation was organized in New Delhi by the South Asian University in collaboration with the Commonwealth Human Rights Initiative (CHRI) and the Geneva Academy. Experts from the following Asian countries participated at the consultation: Bangladesh, India, Iran, Japan, Malaysia and Sri Lanka. Experts from Germany, Norway, and Switzerland also participated in the Consultation

The expert group consisted of invited members of academia, former and current members of treaty bodies and other UN human rights mechanisms, representatives from national human rights' commissions, human rights' lawyers and leaders of civil society organisations that have actively used the UN treaty body system. The consultation stressed the critical importance of Treaty Bodies in promoting and preserving fundamental human rights, including building state accountability to the protection of human rights at the domestic level. The consultation participants agreed that the treaty body system needs to be strengthened with a particular focus on ensuring the independence of members, including ensuring gender equality and requisite expertise, as well as the effective use of the rules of procedure already in place. Participants also stressed the continued need to provide treaty bodies with adequate resources to enable them to advance human rights, especially at national level.

A major recommendation from the consultation was the urgent need to document 'good practices' that have emerged from the work of the treaty bodies. Participants at the consultation felt that such a database could include: (1) studies that document the impact of treaty bodies' concluding observations, general comments, communications and early warning mechanisms, on national legal and policy changes; (2) uses at the national level of the general comments and recommendations from treaty bodies and (3) changes on the ground due to the work of treaty bodies. It was felt that such a data base can facilitate the treaty body strengthening process currently underway at the UN by highlighting the useful parts of the UN treaty body system as well as areas where the work can be improved. It was felt that a focus on what is already working in the treaty body system must be documented. Only after recognising the effectiveness may one address the gaps in the system.

The following suggestions and recommendations emerged from the two-day regional consultation:

STRUCTURAL CHANGES

The discussion of experts was initiated with the aim of addressing certain fundamental issues about structural reforms under the treaties. Fundamental structural issues were discussed. Merger of two or more Treaty Bodies was deemed not possible owing to the fact that this would require amendments to the respective treaties. Unification of all the bodies into one single body was discussed and rejected by all participants. If the idea is pursued at the international level, however, some participants stressed that unification can only be possible if all treaty bodies agreed to this independently. The merger of the Committee on Economic, Social and Cultural Rights and the Human Rights Committee was also discussed and rejected by participants.

Participants were not in favour of the reduction in the number of members in each treaty body. Participants expressed the need for more 'legal expertise' in the treaty bodies without, however, sacrificing the multi-disciplinary nature of the composition of members. It was possible to increase the number of members with a legal background although the question of desirability of the same, was discussed later in the meeting. Establishment of a joint chamber for communication was a possibility subject to certain modifications.

HARMONIZATION OF STATE REPORTING AND DIALOGUE

The experts acknowledged the fact that the problem of underreporting is chronic and has affected the system to the extent that treaty bodies have actively allowed late reporting and even combined reporting. More than 600 reports are currently pending.

The problem of delayed reporting was attributed to the unwillingness of governments to timely reporting. Participants expressed their view that government departments often lack commitment to their treaty body obligations, including knowledge about the reporting process and lack inter-ministerial coordination's mechanisms necessary to report accurately. The need for elevating the status of treaty bodies in order to ensure compliance was also stressed. Another observation was that often the content of State party reports was determined by political exigencies rather than the real human rights situation in the country. It was also suggested that there must be sustained human rights education about the reporting process towards government officials since it is often the case that a new official is engaged for each new report, negatively affecting institutional memory. A major recommendation was the development of a unified procedure for state reporting through the establishment of a national body which could coordinate the reporting and compliance procedures of all treaty bodies, such as what the OHCHR has defined as National Mechanism for Reporting and Follow-up (NMRF). Participants also pointed out the important provision in the CPRWD which requires a national focal point for implementation and a national monitoring body, as an important legal norm to be followed by states. The suggestion was made that this provision could be extended to all treaty bodies.

Participants also recommended the need to explore the possibility of interim treaty body review mechanisms to assess level of implementation of respective concluding observations. If such

reviews were to take place the results could also contribute to the UPR process for the respective countries.

INDIVIDUAL COMPLAINTS

The importance of individual complaints was also discussed in depth during the experts' discussion. It was pointed out that the complaints procedure has been incorporated in many treaty bodies because it gives national, regional and international visibility to issues of concern. Experts pointed out that the outcome of the complaints procedure can assist in creating or reinforcing norms and standards at the national level. The outcomes also assist civil society to advocate for law and policy reform. Some participants noted, however, that the procedure of filing, processing and concluding the complaint is both long and tedious. The recommendation was to strengthen the complaints procedure and explore ways and means to reduce the time taken to complete the cycle.

REPORTING AND DIALOGUE

One of the suggestions made at the consultation was the need of synthesizing reviews by treaty bodies. An example was given of Country X and its schedule of reviews by three different treaty bodies, all to take place in 2018. If these treaty bodies were to meet in the same month concurrently and reviews were organised on consecutive days, the delegation from Country X would not have to travel to Geneva three times. It will also enable the recommendations from the three treaty bodies to be harmonized better. The creation of a 'master calendar' along these lines was suggested.

Another suggestion was also to try and have treaty body reviews midway between the state's UPR cycle, so as to ensure better coordination between the processes as well as to facilitate improved follow-up on recommendations made by treaty bodies and the UPR. Another suggestion made was to attempt harmonisation of the follow-up procedures of various treaty bodies, as they have different timelines and requirements. Such steps may also assist in more regular compliance by states of their reporting obligations.

Participants were of the view that the suggestions made above need to be pursued with a view to rationalise time and resources allocated to treaty body work at the international and national levels.

GENERAL COMMENTS AND GENERAL RECOMMENDATIONS

Another common suggestion made by all experts was that more weight and attention should be directed to General Comments and General Recommendations. These interpretations of treaty provisions are important because they make suggestions to address gaps in laws, policies and resource allocation thus assisting in strengthening implementation of treaty obligations at the

national level. It was observed that neither the national judiciary nor the governments are aware of these instruments and they are often ignored by them. The experts also suggested that better coordination between treaty bodies, including the possibility of joint General Comments, needs to be explored

APPOINTMENT PROCEDURE

Another point of convergence amongst the experts was that drastic reforms are needed regarding the election system of the treaty bodies. Participants expressed serious reservations with the current practice of governments in appointing government officials to become treaty body members. Participants also recommended focusing on better geographical representation, expertise, and gender balance among treaty body members. The recommendation was that the appointment system must be made more transparent. Inspiration should be taken from the election process of the Special Rapporteurs of the United Nations. Experts observed that while the appointment of Special Rapporteurs has become a lot more transparent and so have other UN appointments, the election to treaty bodies is still comparatively opaque. It was suggested that these mechanisms of appointment must be changed when it comes to treaty bodies. It would be worthwhile exploring whether the principles and procedure of the appointment of Special Rapporteurs can be useful for the reform of the appointment procedure for the treaty bodies. In addition to the Special Rapporteur appointment system, another suggestion made was to study the work of the Advisory Committee on nomination of Judges of the International Criminal Court. The experts also recommended that all elections for treaty body members should be held in Geneva and a term limit should be set for the members.

CAPACITY BUILDING

Capacity building of treaty body members - It was pointed out that treaty bodies members must themselves be familiarised with the UN Human Rights System, including the history and role of treaty bodies. Experience shows that even though appointed members are experts in the respective fields, they are often not aware of the technicalities and procedural requirements of the treaty body system. Participants of the regional consultation also recommended that there is a need for Concluding Observations to be more targeted and specific. This issue is, of course, linked to the capacity/expertise of treaty body members as well as to improved compliance/implementation by states.

Capacity building of States - The experts also suggested that relevant UN bodies including OHCHR and UNDP should undertake capacity building programmes for government officials periodically so that they are familiarised with the reporting requirements of the treaty bodies. Participants pointed out, however, that UNDP must demonstrate independence, impartiality and integrity in the process. In addition, experts felt that governments out-sourcing their reports to consultants may not be the best solution, as the expertise to carry out research, ensure inter-ministerial coordination and draft reports must be developed within government structures.

Participants also recommended the need for capacity building directed at staff from Geneva-based permanent missions. Experience shows that currently there is a large knowledge gap in both permanent missions and government ministries on the functioning of the treaty body system. This was deemed particularly important given the absence of a regional human rights body in Asia.

Capacity building of UN Field offices – Experts recommended the need to increase expertise/capacity of UN country/field offices. Staff members often do not have the capacity to train government officials on the detailed workings of treaty body mechanisms whilst being able to link this work with developments and needs at the national level. Participants also recommended that UN country teams be able to offer technical support to State officials on un-ratified treaties. Experts also felt that the capacity of officials at the UN Secretariat in New York would also need to be increased.

COORDINATING WITH THE REGIONAL, NATIONAL AND OTHER CIVIL SOCIETY ORGANISATIONS

In order to ensure effective follow-up and timely reporting, a common suggestions put forth by the experts was that the treaty body system must engage regional and domestic non-governmental organisations, civil society organisations and national human rights institutions. These actors work independently of the government and their perspective is important to expose the gaps in the workings of different governmental functions. The experts felt that it is important to explore ways to further legitimise and strengthen the role of civil society participation in the treaty body review process. Participants recommended that NGO submissions, be given 'official weight' in the review process.

The issue of reprisals against NGO's engaging with treaty bodies was discussed and the suggestion was made for the treaty bodies and relevant secretariat to study possible responses to such situations, keeping in mind developments within the rest of the UN human rights system.

PREPARATION AND DISSEMINATION OF STATE REPORTS

It was suggested that along with ensuring that reports are submitted on time, their actual contents must also be given importance. It is often the case that states lay out a list of laws available in their country to deal with a specific problem, but failing to give an analysis of the implementation process, including obstacles in implementation of previous concluding observations.

Experts also felt that States must put more effort into dissemination of their reports, including through consultation and dialogue with the public and civil society. The importance of translation of official documentation into national languages was highlighted, contrary to the current practice of only uploading reports in official UN languages.

USE OF TECHNOLOGY

While it was accepted that treaty bodies use webcasts and other mechanisms during their state review hearings, participants observed that the webcast was not useful everywhere in the world, especially due to the simultaneous translation not being available for the webcast as well as challenges in terms of internet accessibility. It was thus recommended that more effort be dedicated to translation of reports and to render these more accessible to people with disabilities.

STREAMLINING TREATY BODIES WITH SUSTAINABLE DEVELOPMENT GOALS

Experts expressed the position that much more rigorous efforts are needed from the entire treaty body system to ensure streamlining of the SDGs into the review process. It is very important for the treaty body members to become well-versed with the SDGs, including an understanding of how the goals overlap and relate to treaty obligations.

THE ROLE OF ACADEMIA INCLUDING THROUGH HUMAN RIGHTS EDUCATION

The experts recognised the need for a general improvement at the national level of human rights education. The treaty body system is established to enforce fundamental human rights and thrives upon their effective implementation. Furthering the same, it is important that human rights' education be given primary importance in both school and professional courses. If sensitized from the beginning, there is a higher probability of creating more responsive leaders who understand the indispensable requirement of promoting and upholding human rights and working in coordination with the national, regional and global institutions. It was stated that it is essential to have a compulsory human rights course in undergraduate institutions, especially the law and social science schools. A more robust training of students in the field of human rights, reporting and other related fields is possible only through incorporating it in the curriculum. While experts noted the contribution of academics at an individual level, it was important to highlight the need for sustained contributions of academic institutions as well.

Experts also recommended that the academic community needs to be engaged much more actively with the treaty body system. Such engagement could include activity-based learning wherein academic bodies submit reports on relevant human rights issues to the treaty bodies and involve students in the process. Such initiatives, the participants felt, could also assist in enhancing the data base on which treaty body members rely in the review process.

THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS (NHRIS)

There was considerable discussion at the regional consultation on the critical role that NHRIs can play in the entire reporting cycle of the treaty bodies. One of the recommendations was to institutionalise and harmonize NHRI engagement with the treaty bodies. Participants gave the example of the CERD Committee institutionalizing engagement with NHRIs. The recommendation was that other treaty bodies can consider adopting the example of CERD.

Participants also mentioned the important role that NHRIs can play in monitoring implementation of the concluding observations and exploring the development of indicators and benchmarks for this purpose. The experts suggested the possibility of introducing a common international treaty body-specific monitoring tool for NHRIs.