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Second inter-Committee meeting  
of the human rights treaty bodies  
Geneva, 18-20 June 2003

**METHODS OF WORK RELATING TO THE STATE REPORTING PROCESS**

**Background document prepared by the secretariat**

1. The second inter-Committee meeting of the human rights treaty bodies will be held from 18 to 20 June 2003.
2. The present document, which was prepared by the secretariat, constitutes a background document for the inter-Committee meeting on methods of work relating to the State reporting process.

**Background note on the Secretary-General's proposals for  
reform of the treaty body system**

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### **A. Purpose**

1. This note provides background information for consultations on the issue of reforming the system of reporting to the United Nations human rights treaty bodies, discussed in the report of the Secretary-General on strengthening of the United Nations: an agenda for further change (Secretary-General's report).<sup>1</sup> The Secretary-General has requested the High Commissioner for Human Rights to present recommendations on streamlined reporting procedures to him by September 2003.<sup>2</sup> The present document includes:

- (a) The history of proposals for reform relevant to the issues raised by the Secretary-General;
- (b) An overview of changes introduced by the treaty bodies themselves in these areas; and
- (c) Options for implementing the Secretary-General's proposals, including through building on reforms implemented to date.

### **B. The Secretary-General's proposals**

2. In his report, the Secretary-General recalls that the United Nations provides a unique institutional framework to develop and promote human rights norms and practices, and to advance legal, monitoring and operational instruments to uphold the universality of human rights. He identifies today's challenge as being to build on the progress already achieved through, inter alia, the modernization of the human rights treaty system. Noting that the existing treaty mechanisms and procedures constitute a large, intricate and increasingly complex network, the Secretary-General highlights the strain of the burden of reporting obligations on the resources of States and the Secretariat. The Secretary-General concludes that one effect of these reporting demands is a "chronic" failure to report by States parties, either on a timely basis or at all.<sup>3</sup>

3. The Secretary-General has called on the human rights treaty bodies to consider two measures which might help alleviate the shortcomings of the present system. These are:

- (a) To craft a more coordinated approach to their activities and standardize their varied reporting requirements; and
- (b) To consider allowing each State to produce a single report summarizing its implementation of the full range of the provisions of the human rights treaties to which it is a party.

4. The High Commissioner for Human Rights has been requested to undertake consultations on new streamlined reporting procedures and to submit his recommendations to the Secretary-General by September 2003. In this context, the views of the treaty bodies, States parties, non-governmental organizations and other partners within the United Nations system are being sought.

5. The Secretary-General's proposals relate to the six United Nations human rights treaty bodies currently in operation: the Committee on Economic, Social and Cultural Rights (CESCR); the Human Rights Committee (HRC); the Committee on the Elimination of Racial Discrimination (CERD); the Committee on the Elimination of Discrimination against Women (CEDAW); the Committee against Torture (CAT); and the Committee on the Rights of the Child (CRC). A seventh treaty body (the Migrant Workers Committee (MWC)), created by the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (the Migrant Workers' Convention), will begin its work in 2004, pursuant to that Convention's entry into force on 1 July 2003.<sup>4</sup>

6. The Secretary-General sets his proposals on reporting to human rights treaty bodies within the broader context of reforms to the human rights programme of the United Nations. These broader reforms emphasize "[t]he emplacement or enhancement of a national protection system in each country, reflecting international human rights norms, [as] a principal objective of the Organization".<sup>5</sup> The proposals of the Secretary-General with regard to the treaty body process are therefore linked inextricably to improving human rights protection at the domestic level.<sup>6</sup>

7. Shortly after the Secretary-General's report was released, the Office of Internal Oversight Services (OIOS) of the Secretariat presented its "Management review of the Office of the United Nations High Commissioner for Human Rights".<sup>7</sup> This review made a number of recommendations aimed at increasing the efficiency and effectiveness of OHCHR, including that "[t]he High Commissioner should consistently pursue consultations with the treaty bodies on the modalities for consolidating reporting under various treaty obligations into a single national report with a view to achieving a steady progress towards this goal".<sup>8</sup>

### **C. Initial reactions to the Secretary-General's suggestions**

8. During the fifty-seventh session of the General Assembly, Member States welcomed the proposals of the Secretary-General relating to treaty bodies and stressed the importance of canvassing the views of States on these matters. In its resolution "Strengthening of the United Nations: an agenda for further change",<sup>9</sup> the General Assembly encouraged a review of reporting procedures "with a view to developing a more coordinated approach and to streamlining the reporting requirements under [the] treaties". It requested the High Commissioner to "support this exercise, including through submission of recommendations, as appropriate" (para. 8). The resolution also drew attention to respect for "the mandates of various treaty bodies" and recalled the determination of Member States to make the United Nations a more effective instrument for pursuing all the priorities set out in the United Nations Millennium Declaration.

9. In a letter of 1 November 2002 to the chairpersons of each treaty body, the High Commissioner invited the respective committees to consider the Secretary-General's proposals as a matter of priority and to submit any views they might have to the High Commissioner by the end of May 2003. The following initial reactions have been received:

(a) In a letter dated 8 November 2002 the Chairperson of the Human Rights Committee indicated that the initial reaction of members of the Committee on the idea of the

single report had not been favourable, but that the Secretary-General's proposals required fuller and deeper consideration. During the seventy-sixth session, the Committee convened its second informal meeting with States parties to the Covenant, during which several members of the Committee indicated their initial views on the Secretary-General's proposals. Also at that session, the Committee set up a small working group to consider possible options and solutions. On the basis of a report by the working group submitted to its seventy-seventh session, the Committee agreed that it was opposed to the concept of a consolidated or single report and that it would not impose limitations on the length of reports required under article 40 of the Covenant but rather call on States parties to prepare reports in strict compliance with the Committee's reporting guidelines. The Committee also agreed that after the submission of an initial and one periodic report, the current system should be changed as follows: eight months in advance of consideration, a list of issues would be adopted and submitted to the State party concerned; the list would be based on concerns identified in the previous concluding observations, such follow-up as there might have been on the concluding observations and information compiled from a variety of sources (e.g. NGOs, special rapporteurs of the Commission on Human Rights, regional human rights mechanisms, reports of the State party concerned to the Counter-Terrorism Committee, etc.), and also include an open question inviting the State party to provide any other relevant information relating to its obligations under the Covenant. The replies of the State party to these questions would amount to the State party's next periodic report and inform the Committee's subsequent public discussion with the delegation of the State party concerned.

(b) The Chairperson of the Committee on Economic, Social and Cultural Rights conveyed the preliminary views of the Committee in a letter to the High Commissioner of 29 November 2002. These indicated that some members were concerned that by summarizing implementation of the full range of legal obligations in the various human rights treaties, States parties might be able to avoid in-depth reporting on the implementation of those obligations. Concerns were also raised that a single report would reduce the current prominence States parties give to economic, social and cultural rights. The Chairperson suggested that the High Commissioner convene a workshop to discuss the Secretary-General's proposals, as well as a second inter-Committee meeting which would focus on issues raised by the proposals.

(c) In December 2002 the Chairperson of the Committee on the Rights of the Child circulated an informal discussion paper entitled "Human rights treaties: one consolidated report", which he presented to the Committee at its thirty-second session in January 2003. In his paper, the Chairperson questioned whether the single report proposed by the Secretary-General would, in practice, improve reporting rates by States parties. He also raised concerns that a single report might lack the necessary treaty specificity, present difficulties to NGOs and United Nations bodies that traditionally provide input into the reporting process, and pose practical difficulties for the treaty bodies and the Secretariat. He emphasized that the success of the proposals would depend on the introduction of consolidated guidelines, and that a model for reporting would be needed. The Chairperson made specific recommendations for acting on the Secretary-General's report, including a study of the feasibility and effectiveness of the measures suggested in the report by a task force representing a range of stakeholders. The Chairperson

nonetheless expressed support for a system in which parts of a report covering congruent obligations could be submitted to different committees. The Committee also held a consultation with States parties to the Convention on the Rights of the Child on 29 January 2003, during which several States offered their views on the Secretary-General's proposals.

(d) The Chairperson of the Committee on the Elimination of Discrimination against Women responded to the High Commissioner's request on 3 March 2003 highlighting a number of "points to consider" which had been agreed by the Committee at its twenty-eighth session in January 2003. Noting that an objective of the review of the human rights treaty system, including the revision of methods of work of the treaty bodies, must be the strengthening of the human rights system at the national level, the Committee supported increased coordination and closer cooperation among the treaty bodies, particularly through the meetings of chairpersons and the inter-Committee meeting. At the same time, the Committee expressed concern that a single report might jeopardize the "object and purpose of the Convention on the Elimination of All Forms of Discrimination against Women". It also indicated that the aim of consolidating reporting under various treaties did not necessarily mean that a single report in respect of the human rights treaties would be the best advisable option "in the foreseeable future".

(e) The Chairperson of the Committee on the Elimination of Racial Discrimination responded on behalf of the Committee to the High Commissioner's request by a letter dated 27 March 2003. He underlined the Committee's commitment to increasing coordination with other treaty bodies, and suggested that the Secretariat prepare a study of reporting guidelines. In respect of the single report proposal, the Committee raised a number of concerns, including: the modalities of updating the single report; whether such a report could add to the burden confronting States parties; and whether a single report might result in marginalizing reporting on the implementation of specific rights or issues such as racial discrimination. The Committee proposed that one option might be a single report which would provide a brief overview of a State's obligations under all treaties to which it was a party, followed by separate annexes providing information on recent developments in law or practice corresponding to implementation of each treaty to which the State was party. The single report would be updated regularly, and annexes sent to each treaty body according to the periodicity in the respective treaties.

## **D. The situation which the Secretary-General's report addresses**

### **1. Acceptance of human rights treaties**

10. The system of human rights treaty bodies was created to ensure monitoring of the implementation by States parties of the obligations under the various human rights treaties. Universal ratification of the core human rights treaties has been encouraged by the United Nations, with the Vienna Declaration and Programme of Action strongly recommending that a concerted effort be made to encourage ratification with the aim of universal acceptance.<sup>10</sup> As at 1 April 2003, each State had ratified at least one of the seven core human rights treaties, and 157 States, or 81 per cent, had ratified four or more. Current ratifications of the seven

principal human rights conventions and covenants open for ratification<sup>11</sup> stand at 975. Universal ratification of these instruments would result in 1,358 ratifications. Each of these treaties contains reporting requirements for States parties, and some provide optional complaint and inquiry procedures. In addition, the five optional protocols to these instruments currently in force, which provide for further reporting, complaint and inquiry procedures,<sup>12</sup> add to the workload of the treaty bodies and broaden the issues to be addressed by States parties.

11. In the 10 years since the World Conference on Human Rights in Vienna in 1993 there have been 232 additional ratifications of the six core human rights treaties which were in force at that time, constituting an increase of 32 per cent. Twenty-one States have also become party to the Migrant Workers' Convention. There has also been an increase in the submission of individual complaints to treaty bodies. Thus, while 50 cases directed at treaty bodies with individual complaints procedures (HRC, CERD and CAT) were registered in 1993, 143 cases were registered in 2002. It should be noted that this represents a small percentage of the number of complaints addressed to the treaty bodies which are screened by the Secretariat, but not registered. In 2001, treaty bodies reviewed the reports of 82 States parties. Of these the reports of 20 States parties were considered by more than one treaty body, with one report being considered by four committees. The reports of those States parties amounted to 7,000 pages of documentation. Treaty bodies issued decisions on 59 individual communications. In total, during 2001 more than 600 separate documents relating to the sessions of the human rights treaty bodies were processed by the Secretariat, amounting to more than 16,000 pages.

## **2. Non-reporting**

12. More than 90 per cent of States parties to human rights treaties have had reports considered by at least one treaty body. The OHCHR treaty body database indicates that the initial reports of 113 of the 232 States parties which ratified after the World Conference on Human Rights have yet to be submitted. Hence, only 51 per cent of the post-Vienna ratifications have so far resulted in additional reports for the treaty bodies. The full implications of the increase in ratifications since 1993 have thus not yet been felt by the treaty bodies. Moreover, States parties will begin to submit reports required by the Migrant Workers' Convention in 2004, and the Committee on the Rights of the Child will soon begin receiving and considering reports required under its two Optional Protocols, which entered into force in 2002.

13. Universal ratification, combined with strict adherence to reporting obligations by States parties, will result in a considerable increase in the workload of the treaty bodies. The problem of a backlog of reports awaiting review by treaty bodies has been addressed by a number of commentators. However, strategies, including deployment of increased Secretariat resources from extrabudgetary funding, the convening by two treaty bodies (CESCR and CEDAW) of exceptional sessions devoted to consideration of reports awaiting review, and working methods innovations introduced by treaty bodies themselves, have resulted in a significant reduction in this backlog across all the treaty bodies. Nevertheless, the challenges will remain formidable. The Convention on the Rights of the Child has achieved near universal ratification. Were all 191 States parties to this Convention to report in accordance with the Convention, the Committee would be required to review a report of each State party once every five years. Increased



resources and working methods innovations have allowed the Committee, which currently meets nine weeks per year in three sessions, to review the reports of 27 States parties annually, or 135 reports over a period of five years. Accordingly, were this Committee's current meeting time to remain unchanged, the reports of 56 States parties could not be reviewed during the five-year cycle.

14. The range of reporting requirements has also had a significant effect on States parties. Over the past 10 years, States have produced reports for a human rights treaty body on average every 1.1 years and have met with a treaty body on average every 1.2 years to review a report.<sup>13</sup> As of January 2003, treaty bodies had scheduled the reports of 100 States parties for review over the next two years. During that time, 33 States will be required to present a report to more than one treaty body. At least three of those States will be required to present a report to four treaty bodies during that two-year period.

15. The strain that reporting requirements put on the financial and human resources of developing States is often cited. It should be noted, however, that of the 200 initial reports that are currently overdue, 46 are required from States parties that are classified by the World Bank as high- or upper-middle-income countries. Accordingly, it appears that the full range of countries face difficulties in preparing reports, as can be seen from the table below.

	No. of States parties that have not complied with their reporting obligations for more than 5 years	No. of reports that are more than 5 years overdue*	Percentage of those States parties that are from high- and upper-middle-income countries
CESCR	57	78	25%
CCPR	44	68	21%
CERD	54	216	24%
CEDAW	70	121	27%
CAT	34	51	18%
CRC	66	59	18%

Source: OHCHR treaty bodies database (March 2003).

\* N.B. The second column includes cases where the same State party has more than one overdue report for the same treaty body.

### **E. Outline of the principal developments**

16. The development of the working methods of treaty bodies has been a topic of discussion since the meeting of the first treaty body, CERD, in 1970. Since the second meeting of treaty body chairpersons in 1988 and the Secretary-General's appointment of the independent expert on the issue in 1989 sustained attention has been paid to these working methods by the treaty bodies themselves, States parties and other commentators, and proposals for working methods innovations have been made by a wide range of stakeholders. There has also been a steady implementation of reforms by each of the treaty bodies which has resulted in increasing harmonization and simplification of working methods among the six committees.

### **1. Individual treaty bodies**

17. Individual treaty bodies have discussed working methods innovations aimed at lowering the incidence of non-reporting. All treaty bodies have discussed their working methods during sessions, many such discussions having occurred in consideration of recommendations of the meeting of chairpersons and (more recently) the inter-Committee meeting. Most treaty bodies have developed their own working methods in order to respond to overdue reporting, while some have held specific discussions outside formal sessions which have considered issues including non-reporting and follow-up. For example, the Human Rights Committee constituted an informal working group on procedures that met outside its sessions in Geneva in 1996. Similarly, CEDAW met in Berlin and Lund, Sweden in 2000 and 2002 respectively to discuss working methods. More recently, treaty bodies have initiated the practice of convening informal meetings with States parties to discuss, inter alia, working methods. To date, HRC, CEDAW, CRC and CESCR have convened such meetings, while CAT will do so at its thirtieth session in May 2003.

### **2. The inter-Committee meeting**

18. The first inter-Committee meeting was held in 2002 pursuant to a recommendation of the thirteenth meeting of chairpersons of treaty bodies in 2001. Its aim was to put forward concrete proposals for harmonization and simplification of working methods of treaty bodies. A background document prepared by the Secretariat on methods of work relating to the State reporting process (HRI/ICM/2002/2) was provided to the meeting which was attended by the chairpersons of each of the treaty bodies, together with two other members of each committee. This allowed for the increase in the level of participation of each of the committees and allowed for more detailed discussion of recommendations on issues relating to working methods than had been possible in the annual chairpersons meeting, including because of time constraints. A second inter-Committee meeting is planned for 2003, with the aim of considering appropriate responses to the Secretary-General's report.

### **3. Meetings of chairpersons of treaty bodies**

19. An important source of proposals for reform of working methods has been the meetings of chairpersons of treaty bodies, 14 of which have been held since 1984. These meetings have provided a forum for discussion of recommendations from each of the treaty bodies and other commentators. Each significant proposal relating to the working methods of the human rights treaty bodies has been examined by the meeting of chairpersons at some time.

20. Since their earliest meetings, the chairpersons have identified "the failure of some States parties to submit reports" as a principal problem in the functioning of the treaty bodies.<sup>14</sup> They have considered "how the procedures and methods for considering reports could be improved with a view to assisting States parties in complying with their reporting obligations, as well as in coping with the increasing burdens stemming from reporting obligations under various international conventions". Similarly, the Chairpersons have agreed on the need to consider harmonizing practices between and among treaty bodies with regard to the examination of reports, including periodicity of reporting, "whenever possible".

21. In their discussions, the chairpersons have underlined the importance of:
- (a) Identifying the objective of reform as being to strengthen the capacity of the treaty bodies to perform their diverse functions aimed at promoting compliance by States parties with their human rights obligations;
  - (b) Taking into account “the features specific to each of the six treaty bodies”. In this regard, the chairpersons’ meetings have consistently rejected the proposals for consolidation of the committees into a single committee.
22. In making recommendations relating to non-reporting, the chairpersons have:
- (a) Cautioned against solutions resulting in excessively abbreviated or summary consideration of the situation in the respective countries;
  - (b) Urged States parties whose reports are overdue to request the technical assistance of OHCHR, and called for efforts to be made to develop a dialogue with representatives in New York and Geneva of the States parties concerned with a view to emphasizing the importance of reporting and to exploring possible means of assisting them (including via the High Commissioner);
  - (c) Supported highlighting the identity of States parties whose reports are overdue;
  - (d) Suggested that an effort be made to make the purpose of the reports and the nature of the supervisory process as transparent as possible to all concerned in the process, and especially to government officials, for example through seminars and workshops.
23. The early reports of the meetings of chairpersons indicate that the most pressing issues facing the effective functioning of treaty bodies at that stage were (a) backlogs in the number of reports awaiting review by the committees and (b) non-reporting. Recommendations of more recent meetings of chairpersons reveal that the emphasis on the backlog of reports awaiting review has shifted to an emphasis on delayed reporting or non-reporting by States parties.

#### **4. An independent expert**

24. In the late 1980s, in response to (inter alia) the early discussions in the meeting of chairpersons, the General Assembly and the Commission on Human Rights requested the Secretary-General to appoint an independent expert to prepare a study on possible long-term approaches to enhancing the effective operation of United Nations human rights Treaty bodies.<sup>15</sup> The independent expert, Philip Alston (a member and subsequently the chairperson of CESCR), prepared three reports on this issue.<sup>16</sup> Pursuant to resolutions 53/138 of the General Assembly and decision 1997/105 and resolution 1998/27 of the Commission on Human Rights, the views of States, United Nations agencies, the Secretary-General and other interested parties on the final report were twice solicited and submitted to the Commission in 1998 and 2000 respectively.<sup>17</sup> The independent expert’s reports dealt, inter alia, with the issue of non-reporting, and his

conclusion in this context that “non-reporting has reached chronic proportions ... States ... either do not report at all, or report long after the due date” was quoted in the Secretary-General’s report.<sup>18</sup> A number of recommendations of the independent expert built on proposals of the meeting of chairpersons, or were subsequently taken up by that meeting.

## **5. Other sources of proposals**

25. In June 2000 an independent academic study of the treaty bodies was presented to the High Commissioner by Anne Bayefsky, Professor of Law at York University, Toronto, Canada, who has been a long-standing observer of the treaty body system. The report, entitled “The UN Human Rights Treaty System: Universality at the Crossroads”, evaluated the human rights reporting system and made a number of recommendations, including with regard to non-reporting. Non-reporting by States parties, as well as other challenges facing treaty bodies and their working methods generally, have also been addressed in other academic writing and NGO comment.<sup>19</sup>

26. Several Governments, including those of Australia, Canada and New Zealand, have been active in this area. A series of three informal meetings and workshops on treaty body reform has been organized by the New Zealand and later Australian Governments (March 2001, June 2001 and June 2002). The first meeting explored ways of finding sustainable assistance and increased support to the treaty bodies, and the subsequent meetings focused on streamlining the process of reporting by States to treaty bodies. Although these meetings have not resulted in formal outcomes, an informal summary of key conclusions of each meeting contains a number of conclusions related to non-reporting.

### **F. Existing proposals and practices aimed at addressing non-reporting and reporting burden concerns**

27. Of the many proposals which have been made to address the challenge of non-reporting by States parties in accordance with their human rights treaty obligations, the Secretary-General has focused on two: a more coordinated approach, and the possibility of States parties’ submitting a single report covering implementation of the full range of their substantive obligations. This section outlines proposals that relate to these suggestions.

#### **1. A more coordinated approach**

28. Each of the treaty bodies began its work at different times and is tasked with the oversight of a treaty containing substantive provisions which may differ significantly from those in other human rights treaties. However, all have the task of monitoring implementation of the substantive obligations in their respective treaties through the consideration of reports of States parties which should be submitted in accordance with a specific periodicity. In addition, as all these treaties are grounded in the Universal Declaration of Human Rights, provisions in the various conventions may overlap. Significant scope exists for harmonization in the approach of the various committees to the consideration of the reports of States parties. A number of recommendations and initiatives have been directed towards enhancing cooperation and collaboration between and among the committees, as well as the harmonization of their working methods, and several of the committees have modified their working methods as a result. The

areas addressed below are those that are most relevant to the Secretary-General's proposals. There are a number of other areas relating to the work of the treaty bodies, including provision of technical assistance, preparation of general comments/recommendations and days of general discussion, where increased harmonization would be of benefit.

29. A concern frequently raised by States parties has been the lack of a consistent approach by all treaty bodies to the consideration of reports, with States parties suggesting that the varying practices and approaches of the six committees to reporting pose difficulties for them as they seek to meet their multiple reporting obligations. All proposals in this regard acknowledge that the different mandates of the committees require that there be some variation. However, the breadth of proposals for standardization suggests that there is scope for a more coordinated approach which will render the periodic reporting process more efficient and effective.

## **2. Harmonized reporting guidelines**

30. Each treaty body has adopted guidelines for the submission of reports and other material. These guidelines focus on the technical or formal aspects of the reports and their consideration, and include some guidance on the substantive elements to be included in reports. Further guidance with regard to substantive content is provided by the various general comments/recommendations adopted by the committees.

31. The development of harmonized reporting guidelines for reports required under existing human rights treaties has been discussed by the meeting of chairpersons from their first meetings. At their first meeting, in 1984, the chairpersons discussed the possibility of harmonizing the introductory section of the reporting guidelines of each treaty body to require the State party to provide basic information, including geographical and demographic characteristics, basic economic and social conditions, and constitutional structure. This recommendation formed the background to the "core document" which is required to include this basic and largely unchanging information about a State party and forms the first part of the State party's report under each treaty. Common guidelines for the core document have been adopted by all the treaty bodies. Although there have been repeated calls for increased harmonization, the guidelines of the various committees beyond the core document remain disparate, and do not facilitate the task of States parties with limited resources that nevertheless are eager to respect their reporting commitments.

32. Significant scope remains for harmonization of reporting guidelines. Areas which could be subject to common guidelines are: formatting and presentation (including length and formal presentation of the report), approaches taken to reporting, and methodology in preparing reports. Harmonized reporting guidelines covering these and other issues would ease and facilitate reporting by States parties to the various treaty bodies. For the treaty bodies, harmonized guidelines would enable each treaty body to take the information submitted to other treaty bodies into account.

### 3. Lists of questions/issues

33. HRC, CESCR and CRC formulate lists of issues or questions which are transmitted to a State party in advance of consideration of its report. The same practice is followed by CEDAW with respect to periodic reports. Commentators have recommended that all treaty bodies should formulate and adopt lists of issues to guide the consideration of States parties' reports. They have also suggested that these lists should be published and made available electronically, including via the Internet, prior to the consideration of the State party's report, and that written answers to the lists should be solicited from the States parties concerned at least two months in advance of the dialogue. The written replies to lists of issues should also be made available electronically. At the point of consideration of the report, treaty body members should confine their questioning to the broad areas of interest and concern identified in the list of issues, except in circumstances of unanticipated, new and pertinent information.

34. The inter-Committee meeting adopted a number of recommendations relating to the formulation of lists of issues which they suggested should be:

- (a) Formulated at pre-sessional and in-sessional working groups;
- (b) As concise and precise as possible;
- (c) Transmitted to States parties well in advance of the examination of their reports; and
- (d) Designed to ask for disaggregated and comparative data.

35. The inter-Committee meeting further recommended that all committees seek to convene pre-sessional and in-sessional working groups in order to formulate lists of issues and questions on the reports of States parties.

36. A number of States parties have suggested that lists of *issues of concern* to be provided to the State party concerned at the previous session, and lists of issues should be distributed several months in advance of the session (for example after a pre-sessional working group).

### 4. Scheduling of reports

37. States parties may be scheduled to present their reports to a number of treaty bodies within a short period of time. Suggestions have been made that the treaty bodies should coordinate consideration of reports to allow for the staggered consideration if the State party so wishes. This recommendation was repeated by the inter-Committee meeting.<sup>20</sup> A first step in implementing this recommendation would be for treaty bodies to decide on the States parties which will be considered at future sessions well in advance, thereby facilitating the annual distribution by the Secretariat to all committees of the schedule of States parties which will present their reports during that year. This would enable each committee to take into account the information provided by States parties in their reports and in their dialogue with other treaty

bodies and provide a context in which individual treaty bodies could decide not to give detailed consideration to an issue or theme which had recently been examined by another committee, or to focus consideration on issues or themes specific to their respective mandate which had not been addressed.

## **5. Concluding observations**

38. Although the concluding observations/comments of the committees follow a similar structure, recommendations have been made which seek to standardize the output States parties and other stakeholders can expect from treaty bodies. Standardized and action-orientated concluding observations could maximize the usefulness of these outputs for stakeholders at the national level, thus supporting the Secretary-General's call for the "emplacement or enhancement" of a national protection system. Thus, one of the recommendations of the Pilot Workshop for Dialogue on the Concluding Observations of the Human Rights Committee organized by the Office of the High Commissioner for Human Rights and the Government of Ecuador in Quito in August 2002, was that the Committee should formulate specific and concrete recommendations in its concluding observations so as to facilitate follow-up.<sup>21</sup> A number of the proposals for more effective reporting under human rights treaties envisage periodic reports which are based predominantly on previous concluding observations/comments. For concluding observations/comments to form the basis of further reports, they would need to be clear, specific and concrete, while at the same time respecting the right of States parties to determine how their legal obligations under the treaties should be implemented.

39. The inter-Committee meeting made a number of specific recommendations in this context, suggesting that treaty bodies:

(a) Should formulate concluding observations/comments which reflect as closely as possible the content of the dialogue with the State party concerned;

(b) Should include both their concerns and the pertinent recommendations in the same section of the concluding observations/comments;

(c) Formulate country-specific concluding observations/comments, incorporating implementable recommendations;

(d) Formulate concluding observations/comments which include concise and concrete recommendations, to allow for follow-up.

## **6. Consideration of implementation in the absence of a report**

40. Where States parties fail to comply with their reporting obligations in a timely manner, treaty bodies are unable to consider implementation of their respective treaties on the basis of a report. CERD, CESCR and HRC examine the situation in such States parties in the absence of a report. The other treaty bodies are also able to take this approach, and proposals have been made that similar procedures be adopted by all treaty bodies where States parties fail to report.

41. The first inter-Committee meeting also suggested that all treaty bodies establish a “policy” on the matter. Four recommendations were made in that regard by that meeting:

(a) That treaty bodies should seek to identify clearly the date of submission of a State party’s next periodic report in the concluding observations on the previous report of the State party;

(b) Where appropriate, this date may allow for consolidation of more than one reporting obligation;

(c) Treaty bodies should convene meetings and establish a dialogue with representatives of States parties on a country-by-country basis in order to explore reasons for failure to meet reporting obligations and encourage the submission of reports; and

(d) OHCHR should institute a harmonized system of reminders to States parties with respect to reporting obligations.

42. A further recommendation related to the situation where a report has been submitted, but representatives of the State party are not available to present the report. Although it is not envisaged in the treaties that States parties would present their reports and engage in dialogue with the relevant treaty body, this has become the practice of all treaty bodies. The inter-Committee meeting recommended that treaty bodies “should elaborate criteria to govern circumstances in which the reports of States parties may be examined in the absence of representatives of the State party concerned”. Several treaty bodies have acted on this recommendation and routinely examine reports in the absence of the State party.

### **G. A global approach to reporting**

43. The Secretary-General has suggested that challenges confronting States parties with respect to reporting and the incidence of non-reporting could be addressed were States parties able to submit a single report covering implementation of their obligations under all the treaties they have ratified. The idea of a “single report” has been previously conceived of in a number of ways. These have included a report containing a common basic section for all reports (core document), a focused or thematic report, and a modular approach. A number of other suggestions for reform, which could be implemented progressively, might ultimately result in the acceptance of a single report. These include:

(a) Harmonized reporting guidelines;

(b) The structuring of reports (and examination) on a thematic basis;

(c) The identification of overlapping obligations among treaties; and

(d) Increased cross-referencing among and between reports of the State party to each treaty body.



44. Suggestions have also been made that a single unit be established in government which would be responsible for overseeing the preparation of all reports required under human rights treaties. Such a unit could ensure that information-gathering was not duplicated and that information provided in reports was not repetitive or contradictory.

### **1. A single, global or comprehensive report**

45. The proposal to permit States that are parties to more than one of the treaties to prepare a “single” or “comprehensive” or “global” report has been made a number of times. At their fourth meeting, in 1992, the meeting of chairpersons recommended that “consideration should be given, at least in the longer term” to such a possibility, as such an approach could reduce the number of different reports requested of States parties, and serve to underline the indivisibility of human rights by ensuring a comprehensive analysis of the situation in a State party. However, the meeting expressed concern that the different periodicities of reporting required by the treaties or the relevant committees would hamper the implementation of the proposal. They were also of the view that there might be a risk that the specialist attention normally given to groups (for example, women and children) would be lost in a single comprehensive report. As a measure towards a single report, the chairpersons recommended that:

(a) Each Government be encouraged to consider establishing a unit that would prepare all of the reports submitted by that State to the treaty bodies; and

(b) That States parties be urged to refer, whenever appropriate, to information contained in reports submitted to other treaty bodies, rather than repeating the same information.<sup>22</sup>

46. In his 1993 report, the independent expert noted that there was no legal impediment to a State party’s unilaterally implementing the recommendation of the meeting of chairpersons with respect to a single report. He suggested that a single report would reduce the reporting burden on States parties, provide treaty bodies with a truly comprehensive picture of the human rights situation and facilitate the work of local communities and NGOs in providing input into the treaty body process. The need for significant guidance by the committee to the State party in the preparation of such a report was again underlined.

47. In addition to the concern that a single report could result in the absorption or marginalization of a number of treaty-specific issues, such as the rights of children, a number of concerns have also been expressed regarding the viability of such a report. These include that:

(a) The length of a single report, were it to cover adequately all substantive issues under all human rights treaties, would be unmanageable for treaty bodies and pose challenges to the Secretariat including with respect to processing and translation;

(b) The preparation of such a report could be complex, particularly for federal States;

(c) Reporting on new developments in the State party and new measures taken to implement obligations under any one treaty could be complex and resource intensive, especially where the consideration of the report by different treaty bodies did not occur in a short time frame.

48. Other concerns that have been raised in this context are that a single report might encourage committees to address issues that were outside the reach of their specific treaties, and that a more generalized, rather than specific focus in reporting could present fewer opportunities for NGO mobilization at the national level during the preparation of the report.

## **2. The core document**

49. As noted previously, pursuant to an early proposal of the meeting of chairpersons to consolidate and harmonize the initial part of reports covering factual material on the general physical, constitutional, legal and political characteristics of the State party, consolidated guidelines for the preparation of this information (termed the “core document”) were approved by all treaty bodies. These were transmitted to States parties by the Secretary-General in April 1991, “with a view to facilitating the implementation of reporting obligations by States parties”.<sup>23</sup>

50. The core document allows for basic, relatively unchanging information to be provided once and updated by States parties as required and shared in a standard form between all treaty bodies, thus alleviating both the need to regularly resubmit this information and to submit the same information to all six committees.

## **3. Focused reports**

51. The introduction of focused periodic reports has been recommended by the meeting of chairpersons on a number of occasions. Except in the case of initial reports, the chairpersons have suggested that “there might be significant advantages in seeking ways by which to focus the report of each State party on a limited range of issues, which might be identified by the committee in advance of the preparation of the report. Such an approach would reduce the need for very lengthy reports, minimize duplication of reports, help to eliminate long delays between the submission and the examination of reports, enable problem areas to be dealt with in depth and facilitate the follow-up of concluding observations, both for the State party and for the committee concerned”.<sup>24</sup> The main criteria in determining the appropriate focus of more limited reports “should include the recommendations contained in the previous concluding observations relating to the State in question, significant new measures of a legislative, judicial, administrative or policy nature adopted since the examination of the last report, and any issues identified by a pre-sessional working group as requiring a sustained focus”.<sup>25</sup>

52. The independent expert’s second report similarly includes a recommendation that treaty bodies replace comprehensive periodic reports with focused reports that deal with a limited range of issues identified in advance by the individual committee. He considers that this would not only facilitate reporting by States parties, but also enhance the specificity and timeliness of

information provided by States. This would, however, not prevent individual committee members from raising additional issues during the dialogue. This recommendation has received considerable support, in particular from States, many of which suggest that the focus should be on previous concluding observations, preferring this option to that of the single report.

53. The concept of focused periodic reports is supported by a number of ancillary recommendations put forward by the meeting of chairpersons, the independent expert and other commentators. These include that the reports be prepared and examined thematically, rather than article by article; that the focus of the periodic report be identified by the treaty body concerned well before the date of submission; and that the focus of the report could be identified in lists of issues or questions transmitted to the State party.

#### **4. Periodicity**

54. The periodicity of reporting under each of the treaties is an important factor in addressing both the reporting burden and non-reporting. Questions of periodicity have been discussed in the meeting of chairpersons against the background of different provisions in the various human rights treaties. The chairpersons have recommended that “each treaty body should continue to review the possibility of revising its requirements as to the periodicity of reporting, taking into account the burden on States and the need for an effective reporting procedure”.

55. Most treaty bodies have adopted flexible approaches to the periodicity requirements. This is evident in situations where, for example, a State party has failed to report for a number of years. In strict terms, each time a State party fails to submit a report within a reporting cycle the report is overdue. States parties can thus find themselves with three or four or more “overdue” reports under one or more human rights treaties. This may constitute a disincentive for a State party to report at the outset, or to report in a timely manner. The meetings of chairpersons have repeatedly affirmed that it is essential to avoid the adoption of rules or approaches that would result in States parties failing to comply with their reporting obligations. However, the chairpersons have also emphasized that it was appropriate for each treaty body to adopt a flexible approach which enabled it to take full account of the circumstances of each case in determining when the reports of States parties which are overdue should be submitted. Thus, at the time of consideration of a State party’s report, HRC fixes a shorter or longer time for the next report, taking into account the status of the State’s compliance with the International Covenant on Civil and Political Rights, including its reporting obligations.

56. The inter-Committee meeting has also recommended that treaty bodies allow States with a number of overdue reports to consolidate those reporting obligations in one document. At present three treaty bodies (CERD, CEDAW and CRC) accept the combination of multiple reporting obligations in a single document, or consider more than one report of the State party concerned together. Although the remaining three treaty bodies (HRC, CAT and CESCRC) do not, or rarely, accept such combination, their practice of fixing a date for the submission of the next report upon consideration of the earlier report de facto results in the adoption of this approach, as it results in a merger of reports. All treaty bodies have adopted the practice of considering more than one report from a State party at the same session if these are due and available for consideration.

57. The inter-Committee meeting also suggested that human rights treaty bodies adopt a flexible approach where an individual State party is obliged to report under several human rights treaties almost simultaneously, or in a short time frame. In such cases, it was recommended that treaty bodies agree among themselves to provide those States parties who so wish with the option of staggering the dates of the consideration of their reports by each treaty body.

## H. Options

58. The recommendations and proposals which have been made with respect to reporting under human rights treaty bodies described above, together with the progressive development by the treaty bodies of their working methods in this context, illustrate that approaches to reporting under human rights treaties are constantly developing and reforms in this area are frequently implemented. The Secretary-General's suggestions provide an important new impetus to this process.

59. In considering the Secretary-General's suggestions within the context of the experience and the reforms introduced to date, a number of approaches may be put forward. These include the following options, which are not presented in any order of priority and are not designed to be mutually exclusive.

1. **Harmonization of reporting guidelines.** Significant scope exists for further harmonization of the reporting guidelines of the various human rights treaty bodies.
2. **A single report.** States could be given the opportunity to produce a single report satisfying their reporting obligations under all treaties to which they are a party. The structure and content of the single report would need to be governed by common guidelines elaborated and adopted by all the committees.
3. **Expanded core document.** The core document addresses some of the challenges reporting poses for treaty bodies and States parties. However, the core document is currently an underutilized tool, as many States parties have yet to present their core document, and few keep the core document up to date. The treaty bodies could elaborate and adopt common guidelines which would govern an expanded core document, allowing for the preparation of a report on areas of communality and congruence among the various human rights treaties.
4. **Focused periodic reports.** After presenting their initial report under a treaty, States parties could be released from the requirement to present comprehensive reports on their domestic situation except in limited, defined circumstances. Periodic reports could focus on issues of concern identified by the relevant committee well in advance of the reporting deadline and communicated in writing to the State party, either at the end of the previous dialogue with the State party or after a pre-sessional working group convened to identify those issues of concern. The State party concerned would be required to provide written answers to the committee prior to the consideration of the implementation of the relevant treaty by the State party. Such written answers, as

suggested by the working group of the Human Rights Committee established to consider the Secretary-General's proposals, could be regarded as fulfilling the State party's obligation to submit a subsequent periodic report. The entry into force of the Migrant Workers' Convention could provide an opportunity to test this approach.

5. **Thematic or modular reporting.** States parties could be encouraged to construct their reports along thematic lines which take into account areas common to a number of treaties. Sections or modules containing information relating to these common areas (e.g. discrimination, administration of justice, family and privacy rights, health, social security, education) would then be used in reporting under a number of treaties. The structure and content of such a thematic report would be laid down in common reporting guidelines adopted by the all committees.

### Notes

<sup>1</sup> A/57/387 (9 September 2002), paras. 52-54.

<sup>2</sup> See action 3, *ibid.*

<sup>3</sup> *Ibid.*, para. 53.

<sup>4</sup> The twentieth instrument of ratification of this treaty was deposited with the Secretary-General on 14 March 2003. In accordance with its article 87 (1), the Convention will enter into force on 1 July 2003.

<sup>5</sup> A/57/387, para. 50.

<sup>6</sup> In a report by the Special Adviser to the High Commissioner entitled "Enhancing OHCHR effectiveness to strengthen human rights at country level", one core task of an expanded OHCHR field presence would be to "build national capacity to meet ... treaty body reporting obligations" (executive summary, para. E4).

<sup>7</sup> A/57/488 (21 October 2002).

<sup>8</sup> *Ibid.*, para. 63.

<sup>9</sup> Resolution 57/300 of 20 December 2002.

<sup>10</sup> Vienna Declaration and Programme of Action, Part II, paras. 4, 35, 39, 46, 54.

<sup>11</sup> In this context, ratification includes accession and succession to the following treaties: International Covenant on Civil and Political Rights, 1966; International Covenant on Economic, Social and Cultural Rights, 1966; International Convention on the Elimination of All Forms of Racial Discrimination, 1965; Convention on the Elimination of All Forms of Discrimination

against Women, 1979; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984; Convention on the Rights of the Child, 1989; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990.

<sup>12</sup> The Optional Protocol to the International Covenant on Civil and Political Rights, 1966; the Second Optional Protocol to the International Covenant on Civil and Political Rights, 1990; the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999; the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000; the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000.

<sup>13</sup> Heli Niemi and Martin Scheinen, Reform of the United Nations Human Rights Treaty Body System Seen from the Developing Country Perspective, Institute for Human Rights, Abo Akademi University, Finland (June 2002), p. 2.

<sup>14</sup> See for example A/39/484, para. 10 (1984) and A/44/98, para. 80 (1988).

<sup>15</sup> General Assembly resolution 44/115; E/CN.4/1989/43.

<sup>16</sup> The first (A/44/668) was submitted to the General Assembly in 1989. An interim report (A/CONF.157/PC/62/Add.11/Rev.1) was prepared for the World Conference on Human Rights in 1993. A final updated report (E/CN.4/1997/74) was transmitted to the fifty-third session of the Commission on Human Rights in 1997.

<sup>17</sup> E/CN.4/1998/85, E/CN.4/1998/85/Corr. 1, E/CN.4/1998/85/Add.1, E/CN.4/2000/98, E/CN.4/2000/98/Add.1.

<sup>18</sup> E/CN.4/1997/74, paras. 112-113; A/57/387, para. 53.

<sup>19</sup> These include: P. Alston & J. Crawford (eds.), *The Future of UN Human Rights Treaty Monitoring* (Cambridge: CUP, 2001); A. Bayefsky (ed.) *The UN Human Rights Treaty System in the 21st Century* (The Hague: Kluwer, 2002); L. Henkin & J. Hargrove (eds.) *Human Rights: An Agenda for the Next Century* (Washington DC. 1994); "The UN Human Rights Regime: Is It Effective?" *American Journal of International Law*, vol. 91 (1997); Fédération internationale des ligues des droits de l'homme, *Treaty Monitoring Bodies: Mechanisms to be supported* (2003); C. Heyns & F. Viljoen, *The Impact of the United Nations Human Rights Treaties on the Domestic level* (Boston: Kluwer Law International, 2002); Report of the Committee on International Human Rights Law and Practice, International Law Association, Helsinki Conference (1996); Niemi and Scheinin, *op. cit.*

<sup>20</sup> HRI/ICM/2002/3, para. 52.

<sup>21</sup> See the conclusions and suggestions of the Pilot Workshop for Dialogue on the Concluding Observations of the Human Rights Committee (Quito, 27, 28 and 29 August 2002) (HRI/TB/FU/1).

<sup>22</sup> See also the Vienna Declaration and Programme of Action, Part II, paragraph 87: “The World Conference recommends to the human rights treaty bodies, to the meetings of chairpersons of the treaty bodies and to the meetings of States parties that they continue to take steps aimed at coordinating the multiple reporting requirements and guidelines for preparing State reports under the respective human rights conventions and study the suggestion that the submission of one overall report on treaty obligations undertaken by each State would make these procedures more effective and increase their impact.”

<sup>23</sup> HRI/GEN/2/Rev.1.

<sup>24</sup> A/52/50, para. 35.

<sup>25</sup> A/53/125, para. 31.

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