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**Comments and suggestions concerning the draft harmonized
guidelines on reporting under the international human rights treaties**

Addendum

The present document contains the a revised version of the preliminary views of the Committee on the Elimination of Discrimination against Women regarding the draft harmonized guidelines on reporting under the international human rights treaties (HRI/MC/2004/3).

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Preliminary views of the Committee on the Elimination of Discrimination against Women

A. Introduction

1. An overview of the current reform efforts initiated by the Secretary-General regarding reporting under the seven core human rights treaties and of the development of the draft guidelines is contained in the Report of the secretariat. (HRI/MC/2004/3, paras. 1-3).
2. The Inter-Committee Meeting (ICM), at its second session, in June 2003, requested the Secretariat to prepare draft harmonized guidelines on reporting to all treaty bodies and guidelines on an expanded core document and targeted reports in time for the third Inter-Committee Meeting (June 2004) (see A/58/350). The Committee, at its twenty-ninth session (July 2003), established a small intersessional working group consisting of three members, Ms. Victoria Popescu, Ms. Heisoo Shin, and Ms. Hanna Beate Schöpp-Schilling, to consider, via electronic communication, those elements and issues which, in the Committee's views, should be usefully included in an expanded core document (see A/58/38, Part II, para. 451).
3. At its thirtieth session in January 2004 the Committee held an exchange of views with a representative of the Office of the High Commissioner for Human Rights, including on work under way in follow-up to the recommendations of the second Inter-Committee Meeting concerning an expanded core document and targeted reports. Members of the Committee reacted with critical concern to a number of proposals presented. In particular, however, members reacted critically to the intended inclusion of the so-called congruent provisions into the proposed common core document (CCD).
4. The Report of the secretariat (HRI/MC/2004/3, dated 9 June 2004) formed part of the documentation for the third Inter-Committee Meeting (ICM) (21-23 June 2004). It was distributed to members of the working group and the Committee at its thirty-first session in July 2004, i.e. after it had been given to the Chairperson and those Committee members who attended the Chairpersons' Meeting and the Inter-Committee Meeting in Geneva (21-25 June 2004). The advance unedited report of the ICM was also distributed at the thirty-first session.
5. The Chairperson and members briefed the Committee at its thirty-first session about the recommendations of the third ICM (see A/59/254, in particular Annex, paras. 19-25, and Points of Agreement III-V). Following its preliminary exchange of views and suggestions of members, the Committee agreed that its working group would prepare proposals for consideration and further discussion at its thirty-second session (January 2005). Members were invited to submit their further comments and suggestions in writing to the members of the group. In view of the importance of the issue, members agreed that sufficient time would need to be set aside in January to allow for an in-depth discussion (see A/59/38, Part II, para. 446).
6. The third ICM requested OHCHR, in consultation with the DAW, to continue to work on the draft proposed guidelines, incorporating comments and suggestions made by each Committee during the course of the year, as well as those received from NGOs, national human rights institutions (NHRIs) and States parties, with a view to producing revised guidelines for consideration, if possible at the fourth ICM, in 2005 (see A/59/254).

7. Mr. Kamel Filali, Committee on the Rights of the Child and member of the third ICM, is the rapporteur designated by the ICM on this matter.

8. The paper hereby submitted is the Committee's input for the revision of the guidelines, as requested by the ICM.

B. Brief description of the Report of the secretariat

9. The Report of the secretariat under discussion (HRI/MC/2004/3) consists of: 1. a general introduction to the issue; 2. the proposed common guidelines on reporting to the international human rights treaty monitoring bodies (Annex); 3. five appendices.

10. The general thrust of the proposal contained in the Report of the secretariat is that reporting under the seven United Nations human rights treaties should be done in a framework of harmonized guidelines. States parties' reports to all treaty bodies should comprise two complementary documents: an expanded core document, to be known as the "common core document" (CCD), and the targeted report for each treaty, to be known as the "treaty-specific document" (TSD). This new CCD, which is to be updated on a regular basis, is an expanded version of the current core document, which some States parties submit on a voluntary basis. Ideally, a State party should be able to submit these reports to the various treaty bodies preferably within a time frame of 18 months. Treaty bodies should aim at discussing them within the shortest possible time.

11. According to the Report, the CCD should contain two different categories of information. First, "detailed background information" on human rights implementation and second, "substantive" information regarding the so-called "congruent provisions" of the seven United Nations human rights treaties (para. 11).

12. These congruent provisions are characterized as ranging from "absolute congruence where provisions of the treaties have the same scope or objective (and often identical wording) to a broader congruence where provisions are not identical but are related and could therefore be addressed within a thematic framework in the common core document" (para. 18).

13. The following provisions are characterized as congruent: "non-discrimination and equality, including equality before the law and equal protection of the law"; "special measures for achieving equality or other similar measures" (para. 19). In addition, so-called "areas of congruence" are listed in a chart (following para. 20). A second chart (following para. 35) lists the categories of information in the common core document for all seven treaties, as outlined in the draft guidelines.

C. Remarks and proposals on the Report of the secretariat

General remarks and proposals

14. The reporting procedure has proven to be of great significance for the implementation of human rights in general, and for the human rights of women in particular. The impact depends, inter alia, upon the serious manner in which treaty bodies, including the Committee on the Elimination of Discrimination against Women, have taken up their monitoring tasks and to the positive way in which most States parties have cooperated with treaty bodies.

15. The Committee agrees that the current backlog of reports as experienced by the Committee (and several other human rights treaty bodies) is very unsatisfactory. It may certainly be a disincentive for States parties to fulfil their reporting obligations. Both the backlog of reports and the lack of reporting by States parties lead to a lack of scrutiny of the implementation of human rights norms in the respective States parties and thus, may be harmful to the women in these territories. It is of great importance that the reporting system be made more effective, both for States and treaty bodies, but ultimately for the equal enjoyment of human rights by women and men in all regions of the world.

16. The Committee, therefore, generally agrees that the proposal of an expanded core document, called CCD, as an integral part of States parties' reporting obligations to all seven human rights treaty bodies and combined with a TSD under each human rights treaty on the basis of treaty-specific guidelines, will be advisable for a number of reasons.

17. Such a reporting procedure may ease the burden on the respective States parties. It may encourage reporting and thus scrutiny of States parties' implementation of the Convention on the Elimination of All Forms of Discrimination against Women to the benefit of the women living in their territories. It may also contribute to mainstreaming a gender perspective into the implementation of all human rights treaties as well as into the reporting thereon, as has been called for by the World Conference on Human Rights in 1993. It may, thus, lead to a more consistent "holistic approach to human rights protection and monitoring" within the framework of all human rights treaty bodies, of which the human rights of women are an integral part.

18. The Committee further argues that the proposed CCD may be of particular relevance for the implementation of the Convention and the work of the Committee on the Elimination of Discrimination against Women, since the currently existing core documents do not contain much information which is relevant for the implementation of the human rights of women. Mere factual information under various articles of the Convention, which currently is being requested in the reporting and discussion procedures of the Committee could easily be included in the new CCD and thus allow the Committee to spend more time on critical issues relating to the Convention.

19. However, the Committee expresses concerns about a number of issues that have made it advisable for the Committee not to make a final decision about the proposals on a CCD and TSD at this point. It submits these concerns to the ICM. After the discussion at the ICM, the Committee plans to return to the matter at its thirty-third and thirty-fourth sessions with a view to taking a final decision in 2006, including on new guidelines for the TSD.

Specific remarks and proposals: legal basis, institutional arrangements and financial considerations

20. It seems from the Report of the secretariat both in its introductory part and the part containing the proposed common guidelines on reporting that adherence to the new reporting procedure and format will be obligatory. Even if both procedure and format are to be formally mandated through harmonized guidelines, it is not clear whether all States parties can actually comply with them. Some States parties may be reluctant to accept the new format of reports within which the CCD is the first part, thereby defeating the purpose of the reform by making the reporting system even more complex.

21. Reporting in this new format may entail — as it is suggested in the introductory part of the Report and in the proposed common guidelines — that States parties create specific national administrative structures. These institutions will be responsible for coordinating both the formulation and updating of the CCD in regular intervals and of the seven TSDs in a reporting cycle of a time frame of 18 months.

22. While such an institution, coupled with such procedures, may positively enhance and strengthen both the implementation of all seven human rights treaties in the territory of the State party concerned and the reporting thereon, it will also demand political will, administrative knowledge, as well as additional financial and personnel resources to do so. These are factors which, from the experience of the Committee, may be hard to come by in a number of instances.

23. The Committee points out that there is no guarantee that, in fact, all States parties, for whatever reason, will be able to fulfil these requirements. The demand for technical assistance will increase. Therefore, the Committee also submits its view that resources of the DAW and/or the OHCHR, though being envisioned, may not be sufficient to cover all the technical and financial assistance that would be needed by the States parties.

24. The same arguments may apply for the utilization of information technology for data collection and processing when formulating the various reports. Not all States parties will be able to provide funds from their own resources to utilize the potential of information technology.

25. The question may also be raised whether the time-frame of 18 months does, in fact, encompass the different periodicity requirements for reporting under the seven human rights treaties, or, whether it constitutes more of an ideal framework, which – during the transition period – may cause the lapse of a number of reports under various treaties and thus a lack of scrutiny.

Specific remarks and proposals: congruent rights (implementation of substantive human rights provisions common to all or several treaties)

26. The “chart of congruence in the substantive provisions of the seven core international human rights treaties” given in the introductory part of the Report of the secretariat (following para. 20), is grounded in a rather schematic interpretation of the norms and provisions of the seven human rights treaties. It is important to bear in mind relevant differences and nuances. The specific nature of women’s discrimination on the basis of sex and gender as compared to discrimination of men and women on other grounds seems to be neglected. In the opinion of the Committee, the “consistent” approach to human rights protection and reporting (para. 8) should not amount to the smallest common denominator in interpreting human rights in general and the human rights of women in particular. It has to be recalled that the formulation and adoption of the Convention on the Elimination of All Forms of Discrimination against Women was deemed necessary by the international community in 1979, because formal and substantive discrimination against women continued to exist despite the fact that other existing human rights instruments prohibited it. At the same time, as legal research has shown and developments have proven, specific forms of discrimination against women were not even recognized as human rights violations.

27. Also, the characterization of women as one of several “demographic groups” throughout the proposed common guidelines is misleading, counterproductive and neglects several facts. Firstly, women very often are the largest demographic group. Secondly, women are members of all the other demographic groups, thus, they may experience multiple discrimination: because they are women and because they are members of a particular group (or groups). Lastly, the specific nature of discrimination against women is not captured when such categories are being used. Discrimination against women in the recognition and enjoyment of their human rights may exist in all such categories. The impact of discrimination on women may be compounded and may be of a specific nature not experienced by the male members of these same groups/categories.

28. The Committee, therefore, submits its view, that — if it is to accept common guidelines on reporting — the text of such guidelines must take cognizance of these concepts and not fall back behind the currently achieved theoretical and practical interpretation and implementation of women’s human rights.

29. The Committee draws attention to several examples both from the introductory part of the Report of the secretariat and the proposed common guidelines to support its view. Thus, the difference of protective vs. corrective measures within the framework of “special measures” (paras. 69 and 70, Annex), including their characteristics of being of a “temporary” or of a not “temporary” nature, completely disappears (articles 4 (1) and 4 (2) of the Convention). In addition, article 14 of the Convention, which is included under this section, does not necessarily belong here. Article 14 was included in the Convention to highlight the fact that the majority of the world’s women live in rural areas, and that, therefore, their situation needs special attention — (because of numbers and of multiple discrimination) — and positive action by the State which may or may not encompass temporary special measures in accordance with article 4 (1).

30. Under some sections concerning congruent rights, relevant articles of the Convention are not even listed, as for example concerning the “rights to liberty and security of the person”. This right may be violated, from a woman’s point of view, when she experiences restricted access to reproductive health care services as required under articles 12 and 16.1.e. Another example concerns the “right to own property, to inherit and obtain financial credits”: such rights may be violated under article 16.1.h of the Convention.

31. Since general recommendations/general comments of the seven treaty bodies are not taken into account in relation to congruent rights, interpretations of specific articles of the Convention as explicitly or implicitly referring to women-specific violations of human rights are not recognized (violence against women as a form of discrimination is also a threat to the “rights of liberty and security of person”).

32. Of even more fundamental importance is the proposal that more or less all articles of the Convention should be covered in the CCD. The Committee is of the view that this proposal raises important questions as to what information should be covered in the TSD on the Convention. This question must be addressed together with the guidelines for the CCD, especially since it is also proposed that “obstacles and problems” encountered by States parties in implementing human rights treaties should also be covered in the CCD.

33. It is the opinion of the Committee, firstly, that the issue of “congruent articles” must be reviewed in the light of the specificities of all forms of discrimination against

women, and the Committee aims to make concrete proposals on this subject after the ICM. Secondly, the Committee is of the opinion that any inclusion of information on articles of the Convention in the CCD should not preclude a more in-depth discussion of these articles in the TSD. In fact, the Committee is of the view that more factual information regarding the implementation of articles can well be given in the CCD. However, both the interpretative and evaluative information on the implementation of these same articles, including information on obstacles and problems counteracting their implementation, must be part of the TSD.

34. At the same time, the strategy of gender mainstreaming as defined by intergovernmental mandates is mentioned nowhere. There is a difference between statistical data disaggregated by sex and the strategy of gender mainstreaming. The Committee is of the view that this difference should be reflected in the proposed common guidelines.

Specific remarks and proposals: content of the TSD, time line

35. The Report of the secretariat does not contain proposed guidelines for TSDs. The introductory part in the Report of the secretariat points out that the information to be provided in the TSDs should enable “each treaty body to pursue in greater depth any issues of particular concern to its mandate, although these may also have been covered in the common core document” (para. 21). Three categories of information are listed for inclusion: information not contained in the CCD, but requested in the guidelines of the specific treaty body; information designed to supplement the CCD; information requested by the treaty body in its concluding comments on the State party’s previous report (paras. 83 a-c, Annex). The Committee is of the opinion that the absence of proposals concerning the contents of the TSD (in other words, the need for the Committee to review its own reporting guidelines in general and in the context of the notion of “congruent provisions,”) makes it difficult to reach a conclusive position on the proposed common guidelines on reporting, at this stage.

36. The Committee is of the view that the specific TSD under the Convention should not cover what is “left over” from the CCD, or merely “pursue in greater depth any issues of particular concern to its mandate, although these may have also been covered in the common core document” (para. 21).

37. Therefore, the Committee disagrees with the proposal in para. 22, suggesting that agreement be reached, first, on “the content of the CCD” and that thereafter, “specific guidelines on the content of the TSD relating to each treaty” be prepared. These two closely related processes need to be achieved concurrently. The Committee will continue to work on new guidelines for the TSD in light of the proposals made for the CCD as well as in light of its most recent decisions regarding the format of its concluding comments and the format of future periodic reports.

Specific remarks and proposals: proposed common guidelines

38. The Annex to the Report of the Secretariat consists of the proposed common guidelines. The first section, “I. Guidance on the Recommended Approach to the Reporting Process” (paras. 7-18, Annex), expands on the summary given in the introductory part of the Report. Thus, the general points submitted by the Committee on the introductory part also apply to this section.

39. Section II of the proposed common guidelines, “II. Guidance on the Recommended Form of All Reports” (paras. 19-25, Annex) concurs more or less with the guidelines on reporting of the Committee, except the length of the reports. While the proposed common guidelines suggest a length of 60-80 pages for the CCD and not more than 60 pages for the initial TSDs and not more than 40 pages for periodic TSDs, the guidelines of the Committee suggest 100 pages for the initial reports and 70 pages for the periodic reports. The Committee is willing to accept this part in principle.

Specific remarks and proposals on Chapter III. Guidance on the content of reports

40. The Committee submits the following non-exhaustive comments for review and decision on Chapter III. Guidance on the content of reports, sections A to G (paras. 40-55, Annex). The general observations expressed above apply as well. The Committee makes these suggestions with the understanding that they do not constitute a general acceptance of the proposed common guidelines as long as the general concerns have not been solved. These should be addressed before any less fundamental amendments are discussed and proposed by the Committee. The Committee also submits the recommendation to the Committee that the strategy of gender mainstreaming must be included as a cross-cutting process towards the goal of gender equality.

41. Regarding section 1, General factual and statistical information about the reporting State (paras. 36-39, Annex), the Committee submits its view, that data disaggregated by sex must be included (not “may”). In addition, the Committee points out again that the term “demographic groups” tends to undermine the understanding of the specific nature of discrimination against women and that the text must be reformulated in order to address this concern. In addition, the proposed common guidelines must explicitly clarify that the requirement for data and information disaggregated by sex must also be complied with under section 1, subsection A.

42. Regarding section 2. General framework for the protection and promotion of human rights, subsections C to G, the Committee agrees with most of the proposals. It proposes to strengthen subsection C, para. 46 (b) (iv) by adding “in particular, with regard to reservations entered to the CEDAW Convention”, to request some information about the content of the objections by other States parties to the reservations of the reporting State, and the impact of the objections on the relations with the respective State party (para. 46 (d)).

43. The Committee also submits that information should be requested in para. 46 (a) concerning the ratification of Optional Protocols to the human rights treaties and that under (b) information should be requested whether a State party opted out of the inquiry procedure under the Optional Protocol to CEDAW.

44. It further submits its concern, in regard to para. 47 (b), para. 2, that a reporting State party should only “refer” to rather than repeat information contained in reports to other bodies. The question remains whether all members of all treaty bodies are currently technologically equipped in such a way as to be able to access such information via the Internet.

45. The Committee is of the opinion that information should be requested:

- on the number of cases of human rights violations submitted annually to the various authorities including the number of cases based on discrimination on the grounds of sex and gender (para. 48 (a));

- whether the Constitution does in fact contain a definition of discrimination according to CEDAW, covering discrimination of intent and effect (para. 48 (c));
- on the reasons for not incorporating all or certain human rights treaties into the national legal system, as applicable, and on the political will and time frame for doing so in the near future (para. 48 (d));
- on the mandate of national machineries, and whether it includes a mandate to address human rights violations on the basis of sex and gender; and the mandate, composition, staffing, financial resources and political and administrative links of the national machinery for women (para. 48 (f));
- combine para. 48 (f) with para. 49 (b);
- whether the jurisdiction or views on inquiries undertaken by human rights treaty bodies, or cases or communications submitted to human rights treaty bodies, including the views of the Committee on the Elimination of Discrimination against Women under its Optional Protocol, are considered to be binding by the State party and whether, in what form and with what form and with what results they have been implemented. (para. 48 (g)).

46. Para. 49, first line, should read: "... to promote respect for all human rights ...". Add a reference to "municipal gender equality offices" in para. 49 (a). Include a reference to sex and gender in the mandate of NHRIs, if para. 49 (b) remains as a separate paragraph. Amend para. 49 (c) to include the translation and dissemination of general recommendations/general comments. Include in para. 49 (g) a reference to the legal and financial basis of non-governmental organizations. Include a specific gender reference within the human rights reference in para. 49 (h and i).

47. The notion of gender mainstreaming must be added and the "group" concept must be reformulated in subsection "F".

48. The Committee cannot agree at this point to the proposals concerning the "congruent provisions" as contained in section 3. Implementation of substantive human rights provisions common to all or several treaties" (56-61), including subsections H. Non-discrimination and equality, I. Effective Remedies, J. Procedural Guarantees, and K. Participation in public life. Again, as mentioned above, the Committee will first wait to see that its general observations, as outlined above, are reflected in the next draft of the proposed common guidelines. Secondly, the Committee will discuss, after the ICM, what it wishes to see included in its TSD. Only then will the Committee be able to take a position on the inclusion of "congruent provisions" in a CCD.

49. The Report of the secretariat proposes that pilot studies be conducted. The Committee is of the view that it is of utmost importance for the Committee to see the results of such pilot studies (implemented in smaller and larger countries, and with countries with a federal structure), before making a final recommendation on the proposed new reporting system.