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CHAPTER II

Overview of the present working methods of the Committee

18. This chapter of the Committee's report aims at providing a concise and up-to-date overview and explanation of the ways in which the Committee carries out its various functions, including information about recent developments in its working methods. It is designed to make the Committee's current practice more transparent and readily accessible so as to assist States parties and others interested in the implementation of the Covenant.

19. Since its first session, in 1987, the Committee has made a concerted effort to devise appropriate working methods that adequately reflect the nature of the tasks with which it has been entrusted. In the course of its 41 sessions it has sought to modify and develop these methods in the light of its experience. These methods will continue to evolve.

A. General reporting guidelines

20. The Committee attaches major importance to the need to structure the reporting process and the dialogue with each State party's representatives in such a way as to ensure that the issues of principal concern to it are dealt with in a methodical and informative manner. For this purpose, the Committee has adopted reporting guidelines on treaty-specific documents to be submitted by States parties under articles 16 and 17 of the Covenant,¹ with a view to assisting States in the reporting process and improving the effectiveness of the monitoring system as a whole.

B. Examination of States parties' reports

1. Work of the pre-sessional working group

21. A pre-sessional working group meets for five days prior to each of the Committee's sessions. It is composed of five members of the Committee nominated by the Chairperson, taking account of the desirability of a balanced geographical distribution and other relevant factors.

22. The principal purpose of the working group is to identify in advance the questions that will constitute the principal focus of the dialogue with the representatives of the

¹ E/C.12/2008/2, annex. See also annex VIII to the present report.

reporting States. The aim is to improve the efficiency of the system and to ease the task of States' representatives by facilitating more focused preparations for the discussion.²

23. It is generally accepted that the complex nature and diverse range of many of the issues raised in connection with the implementation of the Covenant constitute a strong argument in favour of providing States parties with the possibility of preparing in advance to answer some of the principal questions arising out of their reports. Such an arrangement also enhances the likelihood that the State party will be able to provide precise and detailed information.

24. With regard to its own working methods, the working group, in the interests of efficiency, allocates to each of its members initial responsibility for undertaking a detailed review of a specific number of reports and for putting before the working group a preliminary list of issues. The decision as to how the reports should be allocated for this purpose is based in part on the areas of expertise of the member concerned. Each draft by a country rapporteur is then revised and supplemented on the basis of observations by the other working group members and the final version of the list is adopted by the working group as a whole. This procedure applies equally to both initial and periodic reports.

25. In preparation for the pre-sessional working group, the Committee has asked the secretariat to place at the disposal of its members a country analysis as well as all pertinent documents containing information relevant to each of the reports to be examined. For this purpose, the Committee invites all concerned individuals, bodies and non-governmental organizations to submit relevant and appropriate documentation to the secretariat. It has also asked the secretariat to ensure that certain types of information are regularly placed in the country files.

26. The lists of issues drawn up by the working group are given directly to a representative of the State concerned, along with a copy of the Committee's most recent report and with a note stating the following:

The list is not intended to be exhaustive and it should not be interpreted as limiting or in any other way prejudging the type and range of questions which members of the Committee might wish to ask. However, the Committee believes that the constructive dialogue which it wishes to have with the representatives of the State party is greatly facilitated by making the list available in advance of the Committee's session. In order to improve the dialogue that the Committee seeks, it strongly urges each State party to provide in writing its replies to the list of issues and to do so sufficiently in advance of the session at which its report will be considered to enable the replies to be translated and made available to all members of the Committee.

² *Official Records of the Economic and Social Council, 1998, Supplement No. 4 (E/1988/14-E/C.12/1988/4), chap. IV, para. 361.*

27. In addition to the task of formulating the lists of issues, the pre-sessional working group is also entrusted with a variety of other tasks designed to facilitate the work of the Committee as a whole. These have included: discussing the most appropriate allocation of time for the consideration of each State report; considering the issue of how best to respond to supplementary reports containing additional information; examining draft general comments; considering how best to structure the day of general discussion; and other relevant matters.

2. Consideration of the reports

28. In accordance with the established practice of each of the United Nations human rights treaty monitoring bodies, representatives of the reporting States should be present at the meetings of the Committee when their reports are examined in order to ensure a constructive dialogue with the Committee. The following procedure is generally observed: the representative of the State party is invited to introduce the report by making brief introductory comments and introducing any written replies to the list of issues drawn up by the pre-sessional working group. The Committee then considers the report by clusters of articles (usually articles 1-5, 6-9, 10-12 and 13-15), taking particular account of the replies furnished in response to the list of issues. The Chairperson will normally invite questions or comments from Committee members in relation to each issue and then invite the State party representatives to reply immediately to questions that do not require further reflection or research. Any remaining questions are taken up at a subsequent meeting or, if necessary, may be the subject of additional information provided to the Committee in writing. Members of the Committee are free to pursue specific issues in the light of the replies thus provided, although the Committee has urged them not to (a) raise issues outside the scope of the Covenant; (b) repeat questions already posed or answered; (c) add unduly to an already long list on a particular issue; or (d) speak for more than five minutes in any one intervention. Representatives of relevant specialized agencies and other international bodies may also be invited to contribute at any stage of the dialogue.

29. The final phase of the Committee's examination of the report consists of the drafting and adoption of its concluding observations. For this purpose, the Committee usually sets aside a brief period in closed session immediately after the conclusion of the dialogue to enable its members to express their preliminary views. The country rapporteur then prepares, with the assistance of the secretariat, a draft set of concluding observations for consideration by the Committee. The agreed structure of the concluding observations is as follows: introduction, positive aspects, factors and difficulties impeding the implementation of the Covenant, principal subjects of concern and suggestions and recommendations. At a later stage, the Committee then discusses the draft, again in private session, with a view to adopting it by consensus.

30. The concluding observations, once formally adopted, are generally made public on the final day of the session. They are forwarded as soon as possible to the State party concerned and included in the Committee's report. If it so wishes, the State party may

address any of the Committee's concluding observations in the context of any additional information that it provides to the Committee.

31. In general, the Committee normally devotes three meetings (of three hours each) to its public examination of States parties' reports. In addition, it generally devotes between two and three hours towards the end of the session, in private, to its discussion of each set of concluding observations.

3. Comments by States parties on concluding observations

32. Once the Committee has adopted its concluding observations on the report of a State party, and if the latter submits any comments thereon to the Committee, these are made public, as submitted, as Committee documents and mentioned in the annual report. Comments from States parties are published for information purposes only.

33. During the reporting period, the Committee received comments from India (E/C.12/IND/CO/5/Add.1) on the concluding observations that the Committee adopted at its fortieth session in relation to the second to fifth periodic reports submitted by India (E/C.12/IND/CO/5; see paragraphs 218-306 below).

4. Postponement of the consideration of reports

34. Last-minute requests by States to postpone the consideration of a report that has been scheduled for examination at a particular session are extremely disruptive for all concerned and have in the past caused major problems for the Committee. Accordingly, the Committee's long-standing policy is not to grant such requests and to proceed with its consideration of all scheduled reports, even in the absence of a representative of the State party concerned.

C. Follow-up procedure in relation to the consideration of reports

35. At its twenty-first session,³ the Committee decided that:

(a) In all concluding observations, the Committee would request the State party to inform the Committee, in its next periodic report, about steps taken to implement the recommendations in the concluding observations;

(b) Where appropriate, the Committee may, in its concluding observations, make a specific request to a State party to provide more information or statistical data at a time prior to the date that the next periodic report is due to be submitted;

³ On 1 December 1999 (53rd meeting).

(c) Where appropriate, the Committee may, in its concluding observations, ask the State party to respond to any pressing specific issue identified in the concluding observations prior to the date that the next report is due to be submitted;

(d) Any information provided in accordance with (b) and (c) above would be considered by the next meeting of the Committee's pre-sessional working group;

(e) In general, the working group could recommend that the Committee take one of the following measures:

(i) That the Committee take note of such information;

(ii) That the Committee adopt specific additional concluding observations in response to that information;

(iii) That the matter be pursued through a request for further information; or

(iv) That the Chairperson of the Committee be authorized to inform the State party, in advance of the next session, that the Committee would take up the issue at its next session and that, for that purpose, the participation of a representative of the State party in the work of the Committee would be welcome;

(f) If the information requested in accordance with (b) and (c) above is not provided by the specified date, or is patently unsatisfactory, the Chairperson, in consultation with the members of the Bureau, could be authorized to follow up the matter with the State party.

36. In situations in which the Committee considers that it is unable to obtain the information it requires on the basis of the above-mentioned procedures, it may decide to adopt a different approach. In particular, the Committee may request that the State party concerned accept a visit from one or two members of the Committee. The purposes of such an on-site visit would be: (a) to collect the information necessary for the Committee to continue its constructive dialogue with the State party and to enable it to carry out its functions in relation to the Covenant; and (b) to provide a more comprehensive basis upon which the Committee might exercise its functions in relation to articles 22 and 23 of the Covenant concerning technical assistance and advisory services. The Committee would state specifically the issue(s) with respect to which its representative(s) would seek to gather information from all available sources. The representative(s) would also have the task of considering whether the programme of advisory services administered by the Office of the United Nations High Commissioner for Human Rights could be of assistance in connection with the specific issue at hand.

37. At the conclusion of the visit, the representative(s) would report to the Committee. In the light of the report presented by its representative(s), the Committee would then formulate its own conclusions. Those conclusions would relate to the full

range of functions carried out by the Committee, including those relating to technical assistance and advisory services, to be provided by the Office of the High Commissioner.

38. This procedure has already been applied in relation to two States parties and the Committee considers the experience to have been a very positive one in both instances. In a case where the State party concerned does not accept the proposed mission, the Committee will consider making whatever recommendations might be appropriate to the Economic and Social Council.

D. Procedure in response to non-submitted and considerably overdue reports

39. The Committee believes that a situation of persistent non-reporting by States parties undermines one of the foundations of the Covenant.

40. Accordingly, the Committee resolved at its sixth session to begin in due course to consider the situation concerning the implementation of the Covenant in respect of each State party whose reports are very significantly overdue. At its seventh session it resolved to begin scheduling consideration of such reports at its future sessions and to notify the States parties concerned. At its thirty-sixth session, the Committee adopted the following procedure:

- (a) To review three lists of States parties whose reports are overdue:
 - (i) States parties with reports that were due within the past 8 years;
 - (ii) States parties with reports that were due from 8 to 12 years ago;
 - (iii) States parties with reports that were due more than 12 years ago;
- (b) To send reminders to States parties as follows:
 - (i) The first letter will be sent to all States parties about the dates on which their reports are due; those with overdue reports will be reminded of and requested to submit those reports as soon as possible;
 - (ii) A second letter will be sent to States parties with the most outstanding and overdue reports that do not respond to the reminder, informing them that the Committee plans to consider the overdue report(s) at a specific session in the future, and requesting that those reports be submitted in sufficient time to allow a constructive dialogue to take place;
 - (iii) A third letter will be sent if no response is received to the second letter, confirming that the Committee will proceed to review the implementation of the Covenant in the State party at the session communicated in the earlier letter in light of all available information;

(c) In situations where the State party concerned indicates that a report will be provided to the Committee and upon a request from the State party, the Chairperson may decide to defer its consideration of the implementation of the Covenant in the State party for one session.

E. Consolidation of reports

41. At its 55th meeting, held on 22 November 2006 (thirty-seventh session), the Committee reviewed the situation of overdue reports, including recent submissions of several long overdue reports, and decided as follows:

(a) The Committee will accept from States parties that have never submitted a report under the Covenant, a one-time submission of up to three reports consolidated in a single document, in order to bring them up to date with their reporting obligations;

(b) A consolidated report should contain a general overview of important developments in relation to the implementation of the Covenant over the entire period covered by the reports submitted and present detailed information on the present situation.

F. Action by the Committee with regard to information on economic, social and cultural rights received from sources other than the States parties

1. Information provided in connection with the consideration by the Committee of a State party report

42. The Committee also takes into account the information provided to it by sources other than the State party in connection with its consideration of a State party's report. That information, being an integral part of the Committee's constructive dialogue with a State party, is made available by the secretariat to the State party concerned in advance of the Committee's consideration of the report of that State party.

2. Information received following consideration by the Committee of a State party report and adoption of concluding observations

43. On various occasions in the past, the Committee has received information, mainly from non-governmental organizations, after consideration of the State party's report and adoption of concluding observations thereon. In fact this was follow-up information on the Committee's conclusions and recommendations. Not being in a position to consider and act upon such information without reopening its dialogue with a State party (except in cases specifically addressed in concluding observations), the Committee will consider and act upon the information received from sources other than a State party only in cases where such information has been specifically requested in its concluding observations.

44. The Committee considers that, following its consideration of the State party report and adoption of concluding observations, the primary responsibility for their implementation lies with the national Government, which is bound to report on measures taken in this respect to the Committee in its next periodic report. Therefore, the Committee recommends that information referred to in the preceding paragraph be submitted by authors directly to national competent authorities with a view to assisting them in implementing the Committee's concluding observations.

3. Information provided with respect to non-reporting States parties

45. The Committee has also been receiving information from international and national non-governmental organizations on the status of the implementation of economic, social and cultural rights by:

- (a) States parties that have not submitted any report at all since ratification of the International Covenant on Economic, Social and Cultural Rights and its entry into force;
- (b) States parties with long overdue periodic reports.

46. In both cases the States parties' failure to comply with their obligations under the Covenant, and in particular with their reporting obligations, had made it impossible for the Committee to monitor effectively the implementation by those States of the economic, social and cultural rights set forth in the Covenant in accordance with the mandate conferred on the Committee by the Economic and Social Council.

47. At its thirtieth session in 2003, the Committee, in a spirit of open and constructive dialogue with States parties, decided that in both cases referred to above, it may take the following action on a case-by-case basis:

- (a) The Committee may informally bring to the attention of the State party concerned the information received and urge the State party to submit its overdue report without further delay;
- (b) The Committee may formally - through a letter from the Chairperson - bring to the attention of the State party concerned the information received and urge the State party to submit its overdue report without further delay. The Committee may formally request the State party to provide it with information addressing issues raised in the submissions of non-governmental organizations and to submit its overdue report without further delay. That letter will also be made available to the non-governmental organizations concerned upon request.

G. Day of general discussion

48. At each session, the Committee devotes one day, usually the Monday of the third week, to a general discussion of a particular right or of a particular aspect of the

Covenant. The purpose is threefold: such a general discussion assists the Committee in developing in greater depth its understanding of the relevant issues; it enables the Committee to encourage inputs into its work from all interested parties; and helps the Committee to lay the basis for a future general comment. The issues that have been the focus of discussions held to date by the Committee may be found in annex V to the present report.

H. Other consultations

49. The Committee has sought to coordinate its work with that of other bodies to the greatest extent possible and to draw as widely as it can on available expertise in the fields of its competence. The Committee has also sought to draw on the expertise of the relevant specialized agencies and United Nations bodies, both in its work as a whole and, more particularly, in the context of its general discussions. It has also consistently invited individuals such as special rapporteurs of the Human Rights Council and the former Commission on Human Rights and Sub-Commission on the Promotion and Protection of Human Rights, chairpersons of Council and Commission working groups and others to address it and engage in discussions.

50. In addition, the Committee has invited a variety of experts who have a particular interest in, and knowledge of, some of the issues under review to contribute to its discussions. These contributions have added to its understanding of some aspects of the questions arising under the Covenant.

I. Participation of non-governmental organizations in the work of the Committee

51. In order to ensure that the Committee is as well informed as possible, it provides opportunities for non-governmental organizations to submit relevant information to it.⁴ They may do so in writing at any time prior to the consideration of a given State party's report. The Committee's pre-session working group is also open to the submission of information in person or in writing from any non-governmental organization, provided that it relates to matters on the agenda of the working group. In addition, the Committee sets aside part of the first afternoon at each of its sessions to enable representatives of non-governmental organizations to provide oral information. Such information should: (a) focus specifically on the provisions of the International Covenant on Economic, Social and Cultural Rights; (b) be of direct relevance to matters under consideration by the Committee; (c) be credible; (d) not be abusive. The relevant meeting is open and provided with interpretation and press services, but is not covered by summary records.

⁴ *Official Records of the Economic and Social Council, 2001, Supplement No. 2* (E/2001/22-E/C.12/2000/21), annex V: "Non-governmental organization participation in the activities of the Committee on Economic, Social and Cultural Rights".

52. The Committee has requested the secretariat to ensure that written information formally submitted to it by non-governmental organizations in relation to the consideration of a specific State party report is made available as soon as possible to the representatives of the State party concerned. Prior to a session, this is normally done through posting on the website of the Office of the High Commissioner for Human Rights, and direct delivery to the representatives of the concerned State party during the dialogue. The Committee therefore assumes that if any of this information is referred to during the dialogue with the State party, the latter will already be aware of the information.

53. In an effort to secure the most effective and widest possible participation of non-governmental organizations in its activities, the Committee adopted, at its twenty-fourth session in 2000, a document that explains the modalities of their participation in the Committee's work and provides detailed guidelines for non-governmental organizations with a view to facilitating their cooperation with the Committee.⁵

J. General comments

54. In response to an invitation addressed to it by the Economic and Social Council, the Committee decided to begin, as from its third session, the preparation of general comments based on the various articles and provisions of the Covenant, in particular with a view to assisting the States parties in fulfilling their obligations under the Covenant. As of 21 November 2008, the Committee had adopted 19 general comments (see annex III to the present report).

55. By the end of its forty-first session (21 November 2008), the Committee and the governmental expert sessional working group, which existed prior to the creation of the Committee, had examined partial reports concerning rights covered by articles 6 to 9, 10 to 12 or 13 to 15 of the Covenant, and comprehensive reports covering all the substantive articles, submitted by 118 of the 155 States parties to the Covenant which had reports due by then.⁶ The total number of States parties to the Covenant reached 159 by the end of the forty-first session. They represented all regions of the world, with different political, legal, socio-economic and cultural systems. The reports submitted to date have illustrated many of the problems that might arise in implementing the Covenant.

56. Through its general comments, the Committee endeavours to make the experience gained through the examination of States' reports available for the benefit of all States parties in order to assist and promote their further implementation of the Covenant; to

⁵ Ibid.

⁶ The 155 States parties do not include the Lao People's Democratic Republic, Bahrain, Pakistan and Papua New Guinea, which having ratified the Covenant in 2007 or 2008, were not obliged to submit their reports prior to 21 November 2008.

draw the attention of the States parties to insufficiencies disclosed by a large number of reports; to suggest improvements in the reporting procedures; and to stimulate the activities of the States parties, international organizations and the specialized agencies concerned in achieving progressively and effectively the full realization of the rights recognized in the Covenant. Whenever necessary, the Committee may, in the light of the experience of States parties and of the conclusions drawn therefrom, revise and update its general comments.

57. At its twenty-first session, the Committee adopted the outline for drafting general comments on specific rights enshrined in the Covenant.⁷ The Committee agreed that the subject matter of a particular general comment would influence the overall structure of that comment and observed that the outline was not intended to be strictly adhered to. However, the outline provided useful signposts, a checklist of issues to be considered in the process of drafting a general comment. In this respect, the outline would assist in ensuring consistency in the content, format and ambit of general comments to be adopted by the Committee. The Committee emphasized the importance of ensuring that general comments are reader-friendly, of reasonable length and readily understandable to a broad range of readers, primarily States parties to the Covenant. The outline will assist in ensuring consistency and clarity in the structure of the general comments, thus promoting their accessibility, and strengthening the authoritative interpretation of the Covenant provided by the Committee through its general comments.

K. Statements adopted by the Committee

58. With a view to assisting States parties to the Covenant, the Committee adopts statements to clarify and confirm its position with respect to major international developments and issues bearing upon the implementation of the Covenant. As of 21 November 2008, the Committee had adopted 17 statements (see annex IV to the present report).

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CHAPTER VI

Additional decisions adopted and matters discussed by the Committee at its fortieth and forty-first sessions

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E. Revision of reporting guidelines

558. In light of the adoption of harmonized guidelines for the preparation of common core documents (HRI/GEN/2/Rev.5) by the chairpersons of the human rights treaty-

⁷ *Official Records of the Economic and Social Council, Supplement No. 2 (E/2000/22-E/C.12/1999/11 and Corr.1), annex IX.*

monitoring bodies and the inter-committee meeting in June 2006⁸ and the Committee's experience in considering State party reports since the last revision of its reporting guidelines at the Committee's fifth session (26 November-14 December 1990), the Committee decided to review its reporting guidelines at its thirty-seventh session (6-24 November 2006). A member, Ms. Maria Virginia Bras Gomes, was appointed as rapporteur for this task. At its 7th and 8th meetings, held on 2 May 2008 (fortieth session) and at its 49th meeting, held on 18 November 2008 (forty-first session), the Committee, under agenda item 7 (b), reviewed and adopted reporting guidelines on treaty-specific documents to be submitted by States parties under articles 16 and 17 of the Covenant (E/C.12/2008/2). The new guidelines replace the Committee's revised reporting guidelines (E/C.12/1991/1) and take into account the harmonized guidelines for common core documents, as well as the Committee's evolving practice in relation to the application of the Covenant, as reflected in its concluding observations and general comments. The new guidelines on treaty-specific documents can be found in annex VIII to the present report.

F. Working methods of the Committee

559. At its 45th meeting, on 14 November 2008 (forty-first session), the Committee discussed its working methods, in particular possible ways and means to address its increasing workload. While noting with appreciation that the high workload of the Committee was, inter alia, a result of the improved reporting rate by States parties, the Committee expressed concern at the persisting backlog of reports awaiting consideration (an average of approximately 25 reports). In light of the fact that the Committee only meets twice a year, it felt severely constrained in its efforts to reduce the backlog and thus to consider the periodic reports of States parties in a timely manner and without undue delay. Accordingly, after having been advised of the related financial implications, the Committee decided to request the Economic and Social Council in 2009 to approve one additional session per year during the period 2010-2011.

560. Also at its 45th meeting, the Committee decided with immediate effect to change the structure of its concluding observations. In line with the practice of other treaty bodies, the Committee agreed to have its "recommendations" followed directly by related "issues of concern".

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⁸ A/61/385, annex VII, para. 25.