

ACHR Features

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Strengthening the UN Treaty Bodies

The Third Inter-Committee Meeting of the Treaty Bodies (Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Racial Discrimination, Committee on the Elimination of all Forms of Discrimination against Women, Committee against Torture, Committee on the Rights of the Child and Committee on Migrant Workers) will be held in Geneva on 21 and 22 June 2004, followed by the Sixteenth Meeting of Chairpersons of Human Rights Treaty Bodies on 23 to 25 June 2004. The meetings will discuss their work and consider ways to enhance the effectiveness of the treaty body system.

The effective functioning of the human rights mechanisms is crucial for protection and promotion of human rights all over the world. In his 2002 report, *Strengthening the United Nations: An agenda for further change*, the UN Secretary-General suggested considering two measures to alleviate the shortcomings of the current system. First, the committees should craft a more coordinated approach to their activities and standardize their varied reporting requirements. Second, each State should be allowed to produce a single report summarizing its adherence to the full range of international human rights treaties to which it is a party. The United Nations High Commissioner for Human Rights was requested to submit new streamlined reporting procedures and recommendations by September 2003.

The Secretary General was undoubtedly influenced by submission of a “core document” to him since 1991 by States that are parties to one or more of the international human rights treaties. The objective of the core document, containing basic, largely unchanging, information about the State party concerned, was to facilitate the implementation of reporting obligations by State parties by reducing repetition and overlap in the information submitted to several treaty bodies. However, submission of a core document on which Secretary General never raises any question with State parties is different from consideration of a periodic report by independent experts who serve under the authority of the treaty bodies.

Not surprisingly, a brainstorming meeting on reform of the human rights treaty bodies organized jointly by the Office of the High Commissioner for Human Rights and the Government of Liechtenstein in Malbun, Liechtenstein, from 4 to 7 May 2003 rejected

second proposal of the Secretary General i.e. “the notion of a single report summarizing a State party’s implementation of the full range of human rights treaty provisions to which it is a party”. Apart from practical difficulties in examining a single report with requirements of different treaty bodies that will decrease effectiveness of examining the periodic reports, such a single report would also require amendments of the existing human rights treaties.

The forthcoming Third Inter-Committee Meeting of the treaty bodies assumes significance considering that it will consider “Draft Guidelines on an expanded core document and treaty-specific targeted reports and harmonized guidelines on reporting under the international human rights treaties” and the “Report on the Implementation of Recommendations of the Fifteenth Meeting of Chairpersons and of the Second Inter-Committee Meeting”.

Asian Centre for Human Rights makes the following recommendations for consideration of the Third Inter-Committee Meeting for increasing their effectiveness.

i. Capacity Building: General Comment on the role of UN Specialised Agencies

The second Inter-Committee Meeting agreed that capacity-building was important for effective national reporting”. While capacity building in the form of training is welcome, UNICEF has reduced it to funding the writing of the periodic reports of the State parties under the Convention on the Rights of the Child. UNICEF provides such financial assistance to most governments across the world. While in exceptional circumstances, UNICEF or other UN specialized agencies need to provide financial assistance to poor countries which do not have adequate expertise or financial resources, it has become a rule for UNICEF. Providing financial assistance to the government of India, a nuclear power, to write its 500 pages periodic report is making an unethical choice. Not surprisingly, while non-reporting is a chronic problem for most treaty bodies, the CRC Committee is flooded with periodic reports – written with funding from UNICEF.

Asian Centre for Human Rights in its alternate report, *The Status of Children in India*, as well as in its oral submission on 9 October 2003 during the pre-sessional hearing of the CRC Committee raised the ethical issue of financing such voluminous reports of the governments, which fail to highlight the true situation of children. The Chairman of the CRC Committee, Jacob Egbert Doek, in his oral reply to the ACHR effectively stated that the submission of any periodic report is better than “no report” and therefore, UNICEF should continue with the process of financing the writing of the periodic reports.

Other treaty bodies, which are not so fortunate to have such funding of the Specialised agencies, have developed effective mechanisms to deal with “non-reporting”. It is essential the Treaty Bodies adopt a Joint General Comment on the role of Specialised Agencies. The Specialised Agencies should be requested to provide funding for capacity building and providing information on the implementation of the Conventions in areas falling within the scope of their respective mandates.

The recommendation of the 2nd Inter-Committee meeting on Non-reporting that “*The Committee shall also inform the State party of the availability of technical assistance with respect to reporting from OHCHR and the Division for the Advancement of Women (DAW)*” is of relevance.

Indeed, technical assistance on preparation of periodic reports should be routed through the Secretariats of the treaty bodies i.e. OHCHR or DAW. Specialized agencies such as UNICEF often end up with supporting the efforts of the governments to be economical with the truth.

ii. Standardisation of procedures for Non- reporting

The recommendations contained in the report, *Strengthening the United Nations: An agenda for further change*, of the Secretary General stemmed from non-reporting. The Secretary General rightly states that “Non-reporting has reached chronic proportions ... States ... either do not report at all, or report long after the due date” (E/CN.4/1997/74, paras.112-113).

The Treat Bodies must adopt a common standard for examination of the implementation of a treaty in the absence of a periodic report. In addition to the recommendations made at the 2nd Inter-Committee Meeting the Third Inter-Committee Meeting should consider adoption of the following recommendations: (a) notifying the State party about its periodic report and availability of technical assistance with respect to the preparation of the periodic report one year prior to its due date; (b) a reminder to the State party one year after its due and (c) automatic scheduling of the examination of implementation of a treaty in the absence of periodic report two years after its due date unless the State party informs about the submission of periodic report within one year.

iii. Joint General Comments on congruent provisions: The rights of indigenous peoples

The recommendation of the Inter-Committee meeting that “*treaty bodies strengthen their efforts to exchange information and opinions on general comments/recommendations in order to sensure jurisprudential consistency among treaty bodies with respect to substantive issues*” is welcome.

In drafting pf Joint General Comment, the treaty bodies should give priorities to thematic issues which are not covered by any treaty or declaration, yet has assumed importance in the United Nations system. The rights of indigenous peoples is a case in point.

The Draft Declaration on the Rights of Indigenous Peoples, which would have provided overarching legal framework for many national, mutli-national and United Nations agencies, is in tatters and the Working Group of the Draft Declaration under the Commission on Human Rights has failed to adopt a single article in the last eight sessions.

At the same time, the Economic and Social Council has established the Permanent Forum on Indigenous Issues as its subsidiary organ. The Commission on Human Rights and its Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples and the Sub Commission on Human Rights and its Working Group on Indigenous Populations address indigenous issues. The ILO has adopted Convention No 169 Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries. The UNDP has adopted its “*UNDP and Indigenous Peoples: A Policy of Engagement*”. The World Bank is presently revising its 1991 *Operational Directive 4.20: Indigenous Peoples*, while Asian Development Bank has adopted its “*Policy on Indigenous Peoples*”.

The Human Rights Committee adopted General Comment No. 23 on the right of minorities to enjoy, profess and practise their own culture under Article 27 in 1994. The CERD Committee adopted its General Comment XXIII on Rights of Indigenous Peoples in 1997. The CRC Committee adopted recommendations on General Discussion Day on “The rights of indigenous children” in September 2003. Indigenous peoples rights are also included in many General Comments of the Committee on Economic, Social and Cultural Rights such as on the right to adequate housing, forced evictions and the right to adequate housing, right to education, right to adequate standards of health etc.

A Joint General Comment on Indigenous Peoples Rights by the treaty bodies will immensely assist the UN specialized agencies, multilateral institutions such as the World Bank, Asian Development Bank and enhance the rights of indigenous peoples in the UN system.

iv. List of issues and role of NGOs

All the treaty bodies with the exception of the newly constituted Committee on Migrant Workers prepare lists of issues and questions which are addressed to States parties prior to the consideration of their reports. Various treaty bodies have different procedures for preparation of the list of issues. While under CAT and CERD, country rapporteurs could decide whether to draw up a list of issues and questions with respect to the States parties’ reports, CEDAW, CESCRC and CRC convene pre-sessional working groups, which, inter alia, prepare lists of issues of questions with respect to the reports of States parties. In the case of Human Rights Committee, the list of issues and questions is prepared by “Country Report Task Forces”, consisting of the country rapporteur and three to five other members of the Committee.

As there is considerable time gap between the preparation of a periodic report by the State party and consideration of the periodic report by the concerned Treaty Body, all treaty bodies must prepare list of issues through pre-sessional hearing to update the information. The UN Specialised agencies, National Human Rights Institutions and NGOs should be formally invited to make their submission in the pre-sessional hearing for effective examination of the periodic reports.