

INTER-COMMITTEE MEETING

Focus on CAT's new optional reporting procedure



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The 11th Inter-Committee Meeting of the UN Human Rights Treaty Bodies (ICM) was held in Geneva from 28 to 30 June 2010.¹ The ICM brings together the treaty body Chairpersons and one member from each Committee and provides a forum for discussing issues relating to the harmonisation of working methods.² In her opening statement, the Deputy High Commissioner for Human Rights, Ms Kyung-wha Kang, drew attention to the way in which rapid growth of the treaty body system and the related structural challenges were beginning to ‘overwhelm’ the whole system, and the associated need to rationalise the ‘unwieldy’ reporting process.

AREAS OF DISCUSSION

List of issues prior to reporting

The key area of discussion was the new optional reporting procedure, known as ‘list of issues prior to reporting’, adopted by the Committee against Torture (CAT) and the Human Rights Committee (HRC).³ Under this procedure a State’s periodic report comprises the responses provided to a list of issues drawn up by the treaty body.⁴ This is distinct from the current process whereby a treaty body sends a list of issues to the State *after* the State has submitted its report. Committee members generally agreed that the new process would facilitate more focused State reports and more targeted concluding observations. However the discussions also highlighted the ongoing difficulties the ICM faces in promoting harmonisation of working methods, as many members commented that welcome as the new procedure was, it would not be appropriate in their particular case.

Ms Pimental from the Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern that the focus on the list of issues would undermine the attention given to deeper cross-cutting issues, which she felt to be of particular significance for CEDAW. Mr Romero, member of the Committee on Economic, Social and Cultural Rights (CESCR) felt that the list of issues may be more appropriate for those committees with more targeted mandates than CESCR’s, such as CAT. He worried that the procedure would force committees with broader mandates to selectively prioritise certain rights over others, thus violating the principle of universality. He added that ‘caution is the best approach in dealing with innovation’, a principle reiterated by Ms Gaer (CAT) who advised waiting until CAT has reviewed its first States under the new procedure before proceeding with the discussion. It was agreed that CAT and the HRC would report back to the 12th ICM in June 2011 on lessons learned with the new procedure.⁵ The ICM also agreed to encourage all treaty bodies to consider whether the new procedure would be relevant to their work.

Translation and page limits

The difficulties experienced by treaty bodies in having their documents translated on time, or indeed at all, was also a key point of discussion in the meeting. It was noted that the list of issues produced by Committees after a State report has been submitted is not mandated, and hence the UN does not set aside a budget for the translation of the written replies (Mr Iwasawa, HRC), with the result that those replies are often not translated.⁶ Mr Al Tarawneh, member of the Committee on the Rights

1 For a list of participants see: <http://bit.ly/c3cdZ0>.

2 For more information on the ICM see www.ishr.ch/inter-committee-meetings.

3 CAT adopted the list of issues prior to reporting in 2007 and implemented it on a trial basis in 2008. Of the eleven States parties whose periodic reports were due in 2009, nine opted to use the new procedure. Of these six have already submitted their reports, and four will be reviewed in November 2010 (Bosnia Herzegovina, Cambodia, Ecuador and Turkey).

4 For more information on the process see ‘Treaty bodies’ list of issues prior to reporting’, HRI/ICM/2010/3: <http://bit.ly/aeuq45>.

5 ‘Points of Agreement of the 11th Inter-Committee Meeting’, 1(e): <http://bit.ly/c3C8G8>.

6 At the 99th meeting of the HRC, the written replies of Colombia were not translated by the UN, and the State party provided its own translations.

of Persons with Disabilities (CRPD), also drew attention to the need for documents to be translated to meet the needs of disabled persons, such as braille for the blind.

Lengthy discussions about applying page limits to State reports drew attention to the ICM's lack of institutional memory. After exhaustive deliberations, spanning an entire afternoon, about whether page limits were appropriate, particularly for complex issues, Ms Gaer queried whether the ICM had not had this discussion five years ago. In fact at its 5th meeting the ICM had agreed harmonised guidelines for reporting, including a limit of 40-80 pages for State reports.⁷ In their points of agreement the ICM referenced this report, calling on States to comply with those guidelines.⁸ As a result of lack of time, the more difficult issue of how to ensure State compliance was barely discussed. However, while recognising the risk in delaying the reporting process even further, committee members recommended that State parties whose reports did not meet these guidelines should be asked to resubmit a shortened version.⁹

Other issues

The question of cross-referencing the decisions of other treaty bodies was another recurring discussion. At previous ICMs members had agreed to strive to cross-reference where appropriate. However not all committees do this, and some members expressed concern that this undermined the integrity of the treaty body system. This discussion also highlighted the ICM's lack of decision-making power, with points of agreement marking the start of further discussions within the individual treaty bodies.

The failure of the General Assembly¹⁰ to take note of CESCR's General Comment 20¹¹ was held to reflect negatively on the integrity of the treaty bodies. This concern was reflected in the ICM's points of agreement.¹²

DIALOGUE WITH STATE PARTIES

The dialogue with States was restricted as a result of Committee Chairs taking up far more than their allotted two minutes to introduce the work of their respective treaty body. Consequently States had just over one of the two scheduled hours to make their interventions. Some States expressed dismay that they were not given time to make a full statement (Algeria, South Africa). The lack of an agenda resulted in States raising a wide variety of issues.

The dialogue revealed widespread support for CAT's optional reporting procedure. Finland stated that it had submitted its report to CAT under the new procedure and the initial experience had been positive; facilitating national dialogue and enabling more focused work. However Pakistan expressed concern that it is premature to evaluate the effectiveness of the new optional reporting procedure and Switzerland requested more substantive reflection before other committees adopt the new procedure. There was support for joint general comments from the treaty bodies,¹³ coupled with a concern that such comments might cause confusion for States not signed up to all the conventions to which the comment applies (USA). The treaty bodies were also encouraged to engage more with the UPR (Chile) and to consult UPR recommendations when drawing up lists of issues (Japan) or concluding observations (Austria, Canada). This last point was countered by reservations from South Africa that closer association between the Human Rights Council and the treaty bodies would compromise the non-politicised nature of the treaty bodies, and from Pakistan that given the relative newness of the UPR it was premature to link the two processes.

NGO INVOLVEMENT

As agreed at the ICM in December 2008, NGOs were permitted to speak under each agenda item, except for the dialogue with States, although the final adoption of the points of agreement was changed into a closed meeting. Few NGOs took advantage of the opportunity to intervene, four speaking on the first day and two on the second day. In response to a suggestion from NGOs that a master calendar of treaty body deadlines should be made available to NGOs, Ms Lee noted that this was the third year that this issue had been raised. The ICM reiterated its earlier recommendations on this point.¹⁴

One positive point was the recognition by the ICM of the role played by civil society in the preparation of lists of issues prior to reporting.¹⁵ Other points of discussion included the desirability of moving away from the negative terminology of 'shadow reports' in preference for 'civil society' or 'parallel' reports when referring to NGO reports (Mr Grossman, CAT and Mr Al Tarawneh CRPD).¹⁶ Mr El-Borai, member of the Committee on Migrant Workers (CMW), raised the possibility of holding future ICM meetings in developing countries, as a means to increase awareness of the treaty bodies in these countries, and to facilitate national civil society involvement. This was not, however, included in the points of agreement. ■

7 Compilation of Reporting Guidelines including the guidelines on common core document and treaty specific reports, HRI/GEN.2/Rev.6, paragraph 19: <http://bit.ly/aBbACN>.

8 'Points of Agreement of the 11th Inter-Committee Meeting', 1(m): <http://bit.ly/c3C8G8>.

9 'Points of Agreement of the 11th Inter-Committee Meeting', 1(n): <http://bit.ly/c3C8G8>.

10 General Assembly resolution A/RES/64/152 adopted on 18 December 2009.

11 CESCR General Comment 20 on non-discrimination in economic social and cultural rights <http://bit.ly/9W45bq>.

12 'Points of Agreement of the 11th Inter-Committee Meeting', 1(k): <http://bit.ly/c3C8G8>.

13 Brazil, Egypt, Finland, Switzerland. The point was made in reference to the joint general comment being drafted by CRC and CEDAW.

14 'Points of Agreement of the 11th Inter-Committee Meeting', 1(k): <http://bit.ly/c3C8G8>.

15 'Points of Agreement of the 11th Inter-Committee Meeting', 1(f): <http://bit.ly/c3C8G8>.

16 'Points of Agreement of the 11th Inter-Committee Meeting', 1(r): <http://bit.ly/c3C8G8>.