

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

INTER COMMITTEE MEETING, 7TH SESSION (23 – 25 JUNE 2008) AND MEETING OF CHAIRPERSONS, 20TH SESSION (26 - 27 JUNE 2008)

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Annual Meeting of Chairpersons of the Treaty Bodies and the Inter-Committee Meeting

The seventh inter-committee meeting of the human rights treaty bodies was held from 23 to 25 June 2008. The inter-committee meeting acts as a forum for discussion and negotiation on the harmonisation of the treaty bodies. The seventh inter-committee meeting discussed several agenda items¹, considered several reports,² and engaged in a number of thematic dialogues³.

¹ Consideration of a State Party in the absence of a report; the UPR mechanism; form and structure of lists of Issues; cross-referencing of work between treaty bodies; standardisation of terminology; follow-up; identity/role of country rapporteurs; NGO and NHRI participation; general comments; reporting guidelines; harmonisation of the consideration of individual complaints; and consideration of reports.

The complex nature of harmonisation between the treaty bodies was evident throughout the meeting, as discussions appeared at times to be disjointed, with participants jumping from one subject matter to another. In order to assist the discussion, the secretariat had prepared a non-paper focusing on 3 possible areas of harmonisation: the form and structure of lists of issues; publication of the identity of country rapporteurs; and the consideration of a State in the absence of a State report. Some participants considered that this prioritisation addressed matters that were not of a high priority for the committees.

The following members of the treaty bodies were in attendance:

- Abdel Fattah Amor, Michael O’Flaherty and Rafael Rivas Posada (Chairperson) (Human Rights Committee (HR Committee));
- Dorcas Coker-Appiah, Mary Shanti Dairiam, Dubravka Simonovic (Chairperson) (Committee on the Elimination of Discrimination against Women (CEDAW));
- Regis De Gouttes, Anwar Kemal, Fatima-Binta Victoire Dah (Chairperson) (Committee on the Elimination of Racial Discrimination (CERD));
- Rocio Barahona Riera, Waleed Sadi, Phillipe Texier (Chairperson) (Committee on Economic, Social and Cultural Rights (CESCR));
- Lothar Friedrich Krappmann, Lucy Smith, Yanghee Lee (Chairperson) (Committee on the Rights of the Child (CRC));
- Jose S. Brillantes, Ahmed Hassan El-Borai, Abdelhamid El-Janri (Chairperson) (Committee on Migrant Workers (CMW));
- Felice Gaer, Fernando Marino, Claudio Grossman (Chairperson) (in abstentia) (Committee against Torture (CAT)); and
- Mario Coriolano, Silvia Casale (Chairperson) (Subcommittee on the Prevention of Torture).

I. Discussion on Harmonisation

A. List of Issues

There was a dialogue on the potential for harmonising the format of lists of issues between the treaty bodies. Mr O’Flaherty was among several members who did not think that the list of issues was an area that needed harmonisation. Ms Lee expressed concerns that the proposal resembled recent discussions about creating a single treaty body. Similarly, Ms Smith emphasised that there were necessarily distinct differences between treaty bodies in terms of their lists of issues. She recognised that some had a more focused theme than others, and therefore mandatory guidelines should not exist. Ms Gaer also resisted the idea of harmonising lists of issues, and stated that other issues should have priority - including fact finding, staffing and resource issues. She felt that the fact-finding aspect of the treaty bodies’ work prior to a review required more systematic analysis, including the necessity of country visits. Mr Sadi noted that the experiment carried out by CAT in replacing the submission of a report with a list of issues would be difficult to replicate in other treaty bodies, due to the nature of specific subject matters.

² For further information, see the provisional agenda and annotations of the 7th inter-committee meeting (HRI/ICM/2008/1); the report on implementation of recommendations of the 6th inter-committee meeting and the 20th meeting of chairpersons (HRI/MC/2008/2); the report on indicators for promoting and monitoring the implementation of human rights (HRI/MC/2008/3); the report on treaty body working methods (HRI/MC/2008/4); and the report on reservations (HRI/MC/2008/5). All available at: <http://www2.ohchr.org/english/bodies/icm-mc/documents.htm>

³ including with the United Nations Educational, Scientific and Cultural Organisation (UNESCO); with non-governmental organisations; on statistical information based on the submission of a report on indicators; with the Sub-Committee on the Prevention of Torture; on business and human rights; and on the UN Study on violence against children.

B. Disclosing the Identity of Country Rapporteurs

There was a generally ambivalent attitude among the participants on the disclosure of the identity of country rapporteurs. However, there were sharply differing views between some participants on whether disclosure was advantageous, as well as disagreements about whether harmonisation was necessary.

Those in support of disclosure, including Mr Texier, felt that making a rapporteur's identity public would facilitate contact between the rapporteur and States and other stakeholders, and that the need to protect the rapporteur against reprisal or undue pressure from the State was exaggerated. Ms Smith pointed out that rapporteurs did not shoulder the sole responsibility for their work; but rather, they worked with the full support of their committees behind them. Mr Marino stated that reprisals seemed unlikely, as rapporteurs were independent experts "without an axe to grind". Ms Simonovic noted that CEDAW had experienced no problems since its decision to reveal the identities of rapporteurs.

Members of CERD and the Human Rights Committee, in contrast, were firmly opposed to disclosure. Mr de Gouttes reported incidences of direct and indirect pressure on rapporteurs from certain States, and Mr Posada said that the custom of some committees whose rapporteurs coordinate concluding remarks put them at greater risk.

C. Consideration of a State in the Absence of a Report

There was a discussion on the consideration of a State in the absence of a State report, although no real agreement was reached. Participants generally agreed that measures needed to be taken in situations where States failed to report, but they could not reach a consensus on the appropriateness of any specific approach.

Ms Smith insisted that the practice of considering a State in the absence of a report should be a last resort, while Mr El Borai questioned the legal validity of the practice. In contrast Mr de Gouttes and Mr Kemal defended the practice as the 'lesser of two evils', explaining that in the experience of their committee (CERD), proceeding with the consideration of a State could encourage it to engage in dialogue.

D. Follow-Up

The ICM participants repeatedly returned to the issue of follow-up to treaty body recommendations, stressing the essential role of effective monitoring. Several participants stressed that the credibility of the system depended on adequate follow-up. Suggestions for the improvement of follow-up procedures included the creation of national institutions, the appointment of special rapporteurs for follow-up of concluding observations, and the establishment of an inter-sessional working group focusing on this issue.

The suggestion that each committee appoint a special rapporteur for follow-up was vigorously debated, and supported most forcefully by Mr O'Flaherty, drawing on the experiences of the Human Rights Committee. Other committee members, however, indicated that the usefulness of such a specific position was unclear.⁴ Ms Simonovic of CEDAW requested that those committees that have a rapporteur for follow-up bring these rapporteurs to next year's meeting, to allow other committees to learn about their working methods and evaluate best practices.

A proposal put forth by Ms Dairiam that an inter-committee task force be formed to monitor follow-up procedures garnered considerable support from the participants. Other committee members, however, considered such a task force to be unnecessary. Mr Sadi, for example, asserted that the most logical way to improve follow-up was to increase the frequency of State reports. A gap as long as five years, he argued, 'kills any opportunity for follow-up.'

⁴ For example, Ms Lee of CRC and Mr Textier of CESCR made comments to this effect.

Other participants suggested that committees develop joint general comments, and several participants highlighted the importance of working with NGOs and national human rights institutions on follow-up. Committee members stressed that next year's meeting should devote considerable time to follow-up in order to fully discuss the issues and suggestions raised at this meeting.

E. Reservations

Although a report was submitted to the ICM by the Secretariat on the issue of reservations, it received scant attention. During the opening of the session the Chair of the Human Rights Treaty Branch in OHCHR noted that discussions on this issue were underway within the International Law Commission (ILC), and that UN experts were discussing the issue of reservations to conventions.

II. Discussions on Presentations and Submitted Reports

A. NGOs

In the meetings leading up to the NGO presentation on 24 June, discussions frequently touched on the relationships between NGOs and the various treaty bodies, particularly in the context of improving the working methods of individual committees. Most participants asserted that their committees were making successful efforts to broaden the involvement of NGOs in their work.

NGOs⁵ submitted a joint statement to the ICM containing recommendations aimed at improving NGO contributions to the treaty bodies' work, with a view to enhancing the treaty bodies' overall effectiveness. The statement focused on three aspects of NGO participation: consideration of State reports; development of general comments; and election of treaty body members.

The NGOs presented four specific suggestions regarding the consideration of State reports. First, they proposed the development of a 'user-friendly master calendar' setting out the treaty bodies' future schedules for consideration of country reports. Second, they advocated the creation of a mechanism by which NGOs could ensure the information they provided to treaty bodies would be kept confidential. Third, they recommended that all treaty bodies provide for formally scheduled NGO briefings ahead of the consideration of States, and commended the practices of CAT, CEDAW, and CRC in this regard. Fourth, they supported the appointment of a rapporteur on follow-up for each treaty body.

Regarding the development of general comments, the NGOs suggested that the treaty bodies 'adopt a common, transparent procedure for consulting and drafting general comments.'

The NGOs noted that the method of selection of treaty body members is critical to the overall effectiveness of the system. They urged the ICM participants to adopt recommendations that encourage independence, competence, gender balance and geographical balance in selecting members, and stressed that a two-term limit would be favourable. They also emphasised the need for members with experience in women's rights.

In the discussion that followed, participants expressed hesitation about the NGO proposal regarding confidentiality. In this regard, many stressed that transparency and openness were essential to the credibility of the treaty bodies.

⁵ The list of signatories included Amnesty International, the Association for the Prevention of Torture, the International Service for Human Rights, International Women's Rights Action Watch, International Women's Rights Action Watch — Asia Pacific, NGO Group for the CRC, Save the Children, and the World Organization Against Torture.

The NGO suggestions on follow-up were not vigorously considered at this time, as the topic had received considerable attention in earlier discussions. One participant, however, commented that he had ‘seen very little information from NGOs on follow-up’ in the past, and expressed concern that opportunities for cooperation may have been missed.

Recommendations about the selection of committee members, while drawing some support, proved to be a delicate issue. Mr Textier, for example, who has been a member of CESCR for the last 21 years, pointed out that the longer an expert serves on a committee, the more of an expert he/she becomes.

B. UNESCO

UNESCO’s presentation focused on its cooperation with treaty bodies, and included a number of recommendations to strengthen synergies. It offered to provide all necessary information and support to the treaty bodies with a view to addressing the issue of disparities in education. UNESCO urged the treaty bodies to focus on this topic also in joint statements.

C. Sub-Committee on the Prevention of Torture

Ms Silvia Casale, the chairperson of the Sub-Committee on the Prevention of Torture (SPT), and Mr Mario Coriolano, an SPT member, gave a presentation on their sub-committee’s work on 24 June. Ms Casale explained that the SPT mandate differed **from that of other UN mechanisms** in the level of access it stipulated; members would have ‘unfettered access’ and be able to talk to detainees in the ‘strictest privacy.’⁶

Some participants sought further details about the sub-committee’s methods and the usefulness of its activities. Mr Sadi, for example, wondered if the sub-committee’s activities were not ‘duplicative,’ and took issue with its practices of notifying State parties that a visit would take place, and then abstaining from publication of its findings without States’ permission. He argued that coordinating visits with State parties allowed States to cover up proof of violations and throw ‘a red carpet’ in front of inspectors; and that making the publication of findings contingent on State consent rendered the sub-committee ‘a hostage of State parties.’ Ms Casale explained, however, that as a preventive body the sub-committee’s goal was not to catch State parties in violation, but to encourage them to change. She also maintained that sub-committee members had the necessary expertise to see beyond a situation as it was presented.

D. Indicators for Promoting and Monitoring the Implementation of Human Rights

In response to a request from the ICM in 2006 the Secretariat had compiled a report based on quantitative indicators that had been developed over the last two years. The resulting indicators chart was presented as a useful tool for use in reporting guidelines, as well as in the drafting of periodic reports, lists of issues and concluding observations.⁷ It may also serve as a central resource for the treaty bodies when addressing cross-cutting issues.

The dialogue on statistical information was preceded by a brief presentation of a report on this issue submitted to the ICM by Mr Martin Scheinin, the Special Rapporteur on the promotion and protection of human rights while countering terrorism. Mr Scheinin stressed the need to develop follow up activities, to improve collaboration between the treaty bodies, and to further develop indicators pertaining to specific thematic issues including the rights of the child and violence against women.

⁶ For more information on the activities and procedures of the Sub-Committee on the Prevention of Torture, see <http://www2.ohchr.org/english/bodies/cat/opcat/index.htm>

⁷ In the example of CERD, indicators include being a members of a minority or specific ethnic group. This, in some cases, can give rise to racial discrimination. Identifying such indicators and developing the relationship between them is of paramount importance to the work of the treaty bodies.

Mr Scheinin addressed concerns raised by the treaty bodies that statisticians and technocrats could replace experts, assuring participants that this compilation was designed to enhance the treaty body's contextual assessments of State situations. He also stressed the importance of information provided by NGOs to the treaty bodies, which was often accompanied by specific indicators. He said that NGOs could use the compilation when reporting violations to the treaty bodies. In this way an NGO could readily identify target areas in relation to which violations occurred, which in turn could allow committees to identify specific areas for questioning - either in the list of issues or during the dialogue with the State.

There was a great deal of interest in the report from committee members. In particular, several of them expressed concern about the fact that the right of non-discrimination was not expressly covered in the chart; instead, disaggregated data on factors like race, religion and gender was expected to facilitate the assessment of a State's performance with regard to non-discrimination. Mr de Gouttes, for example, expressed regret that the indicators and target groups CERD had developed over time had not been included in the compilation.⁸

E. UN Study on Violence against children

A presentation on the UN Study on Violence against Children⁹ addressed follow up issues since the initial presentation of the Study before the UN General Assembly in 2007.

One of the key areas for discussion was the role the treaty bodies could play in raising awareness of this issue within States. Although an obvious area of concern for the CRC, it was stressed that CESCR, CERD and CAT could also play a crucial role. It was noted that systematic attention had been paid by CESCR to addressing such issues as child labour, exploitation, trafficking and domestic violence. CERD members underlined that their Committee paid particular attention to racially motivated crimes against children, including separation from families, abduction, verbal and physical abuse. CEDAW, the Human Rights Committee and CAT reported that they consistently addressed issues concerning forced early marriage, murder of street children, the death penalty and torture.

It was suggested that a systematic approach by the treaty bodies could enhance the protection of children. Such an approach could include developing specific harmonised questions within lists of issues, and joint general comments or recommendations on children.

Participants agreed that the study was important and relevant to the work of all the committees. Mr O'Flaherty stressed the need for concrete recommendations to be put forward by the Secretariat. Mr de Gouttes highlighted the important role played by NHRIs and NGOs in dealing with this issue. Mr Krappmann assessed that the cross-referencing of treaty body concluding observations would be a beneficial practice.

F. Business and Human Rights

The ICM considered the report of Mr John Ruggie, Special Representative of the Secretary-General on Human Rights and Transnational Corporations and other Business Enterprises, which was also presented at the 8th Session of the Human Rights Council. The report contained a 'conceptual and policy framework to anchor the business and human rights debate,' which was based on three principles: the State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies. Of these three pillars, Mr Texier noted that the third lacked developed control mechanisms.

⁸ Indicators include: unemployment, housing, mortality, crime, alcoholism, prostitution, rate of imprisonment. Target groups include: non-nationals, indigenous, Roma peoples, castes, double discrimination, women and children.

⁹ For more information, see <http://www.violencestudy.org/r25>

Although there have been no general comments or recommendations that specifically detail a State's duty in relation to corporate activities, pressure on States by the treaty bodies to monitor corporate activities (both domestically and abroad) has been mounting. The participants generally agreed that a State had primary responsibility for protection against all violations of human rights, including by businesses. Mr Marino suggested the need to develop an international agreement for monitoring companies who violated these rights.

Mr O'Flaherty stressed that in order to be effective in this arena, treaty bodies needed to receive adequate information from NGOs and other stakeholders. He pointed out that two large industrialised States, France and the United Kingdom, were to be examined at the next meeting of the Human Rights Committee, but that the Committee had received no information concerning corporate abuses in those countries.

Other issues raised included the need for training in human rights within the business world, and how to address State responsibility for corporations operating outside their registered territory.

G. Individual Complaints

There was a discussion on the harmonisation of methodologies for considering individual complaints. Mr Amor cautioned against dialogue on this matter stating that this would be premature. Mr Marino, on the other hand, felt that the proposal was useful. Mr O'Flaherty agreed that the matter required attention and proposed that the secretariat prepare a non-paper on the subject. Mr de Gouttes noted that harmonisation in this area could be useful due to disparities in the case law of the various committees. He reminded participants that at the previous ICM, Mr Sicilianos had proposed a single body for consideration of individual complaints, as a means to coordinate the procedure.

Conclusions

It became evident throughout the meeting that there were few areas in which the committees felt that comprehensive harmonisation was necessary. The consensus of the participants was that each treaty body is specific to the convention or covenant for which it is responsible and, therefore, applies methods of work particular to it.

General references to the harmonisation process were made during the thematic discussions. Most notably Mr Posada stated that he had 'an absolute fear' of the word harmonisation, noting that it was a general purpose word which in reality served no purpose as its definition could vary; sometimes it could mean standardised or homogenised, which could represent something overly rigid and thus hinder treaty bodies' efforts to ensure States' compliance.

The outcome of the meeting produced two documents: the report of the seventh Inter-Committee Meeting of human rights treaty bodies, and the draft points of agreement of the seventh Inter-Committee meeting.¹⁰

There were 14 points of agreement reached during the dialogue.¹¹ It was agreed, *inter alia*, that two inter-committee meetings would be held annually, one of which would be dedicated to discussing harmonisation. This point reiterated a decision of the 6th ICM in 2007. It was also agreed that the adoption of revised reporting guidelines by all treaty bodies would be completed by the end of 2009.

¹⁰ See <http://www2.ohchr.org/english/bodies/icm-mc/documents.htm>

¹¹ These related to revised harmonised reporting guidelines; participation of non-governmental organisations and national human rights institutions; the Human Rights Council; ratification of the core international human rights treaties; statistical information relating to human rights; follow-up to concluding observations; consideration of a state party in the absence of a report; joint general comments; terminology and cross-referencing the work of other treaty bodies; form and structure of lists of issues; the UN violence study; and business and human rights.

Meeting of the Chairpersons

The 20th Meeting of Chairpersons, convened on 26 June 2008, brought together chairpersons and representatives from eight treaty bodies to discuss approaches to harmonising working methods.

Meeting with new Human Rights Council President

Ms Dah (CERD) opened the meeting by welcoming the new President of the Human Rights Council, Mr Martin Uhomoibhi. Former Human Rights Council President, Ambassador de Alba, was also present.

President Uhomoibhi began by stressing that he would be a ‘listening’ President. He spoke primarily about the important role of treaty bodies in relation to the Human Rights Council and the UPR. The President stressed that the treaty bodies represented the ‘cornerstone’ of the UPR process. He reassured the Chairpersons that their work was not being overshadowed by the UPR, and encouraged them to view the UPR as a complimentary mechanism, rather than as competition. President Uhomoibhi asserted that he would attempt to involve the treaty bodies more closely with the Human Rights Council and the UPR process. In doing so, he suggested the possibility of involving treaty bodies in the Council’s Bureau meetings.

All Chairpersons welcomed the proposal to include treaty bodies in Bureau meetings; however in addition to this proposal the Chairperson of the Committee on the Rights of the Child (CRC), Ms Lee, suggested that the treaty bodies be given observer status at Council sessions.¹² Ms Simonovic (CEDAW) further requested that treaty bodies be invited to Council thematic sessions that concern a particular treaty body. Chairpersons of numerous committees pointed to the lack of follow-up mechanisms within the Human Rights Council and questioned whether such a mechanism could be created.¹³ The Chairperson of CESCR, Mr Texier, acknowledged the adoption of the draft Optional Protocol to the Convention on Economic, Social and Cultural Rights and thanked all those involved in the process, particularly the Chairperson of the Working Group, for helping to overcome the obstacles to this instrument’s adoption. Ms Dah (CERD) expressed concern that the work of the treaty bodies was being ignored by the UPR. She concluded by stating that the ‘Council is issuing good behaviour certificates to States who do not deserve it.’

In response to criticisms made by Ms Dah (CERD) regarding the UPR, President Uhomoibhi highlighted that it was still a young mechanism and reiterated that the UPR process held great promise. He stressed the need for treaty bodies to work with the UPR and encouraged Chairpersons to approach the UPR process from a ‘broad minded perspective.’ Former Council President de Alba supported President Uhomoibhi’s statement and judged that it was too early to evaluate the UPR process. However, Ambassador de Alba was concerned with President Uhomoibhi’s suggestion to include the treaty bodies in the Human Rights Council Bureau meetings. He stated that because the Council was still weak in areas such as follow-up mechanisms, treaty bodies should hold off on institutionalising their involvement with the Council.

Informal consultations with States parties

Informal consultations with States parties were held on 26 June 2008. After a brief introduction by the chairpersons, seventeen¹⁴ out of the seventy-two attending States made comments, on topics including the Universal Periodic Review (UPR) mechanism and the harmonisation of treaty body working methods. Some States¹⁵ made supportive comments regarding the complementarity of the UPR process but stressed the importance of it not duplicating the work of the treaty bodies. Other states, including Finland and Denmark,

¹² Supported by Chairpersons of HRC, CEDAW and CMW.

¹³ Committee against Torture (CAT), Committee on Migrant Workers (CMW) and Committee on Economic, Social and Cultural Rights (CESCR).

¹⁴ Listed speakers included The UK, Belgium, India, Algeria, The Libyan Arab Jamahiriya, Finland, Canada, Denmark, Mexico, Czech Republic, Costa Rica, Russian Federation, South Africa, Morocco, Botswana, China, Egypt.

¹⁵ The UK, Algeria, Mexico, South Africa, Morocco.

acknowledged the synergies between the two processes but pointed out differences such as the State backed UPR being more politicised than the independent treaty bodies. States also commented on various elements of working methods including the list of issues, examination of reports, follow-up procedures, and cooperation with NGOs. Suggestions for the simplification of the list of issues included streamlining,¹⁶ earlier submission and translation,¹⁷ and a strict limit on length.¹⁸ China and Morocco acknowledged the difficulties faced by some States in drafting reports, and urged committees to review non-reporting states only as a last resort. Belgium also acknowledged the potential difficulties, but asserted that there was an occasional necessity for review under such circumstances. A few States¹⁹ expressed support for NGO involvement while stressing a need to verify NGO information.

Adoption of the report

The report of the chairpersons of the human rights treaty bodies was adopted on 27 June 2008.²⁰ Discussion prior to the adoption focused primarily on the report's reference to the inclusion of treaty bodies in Council Bureau meetings. Originally, the report 'welcomed the informal invitation from the President of the Human Rights Council to include treaty body representatives in the Bureau of the Human Rights Council,' however Ms Simonovic (CEDAW) requested that the statement be deleted because no reference had been made to incorporate treaty body representation in the Bureau; it had simply been suggested that treaty bodies be present at Bureau meetings. Mr Posada (HRC) and Mr Texier (CESCR) supported the assertion made by Ms Simonovic (CEDAW). The report was adopted under the basis that the statement in question would be redrafted to better reflect the recommendations made by President Uhomoibhi.

Last revised and updated: 16 January 2009.

¹⁶ Suggested by The UK and Finland

¹⁷ Suggested by The Russian Federation

¹⁸ Suggested by China

¹⁹ Costa Rica, China, India, Botswana

²⁰ Available at <http://www2.ohchr.org/english/bodies/icm-mc/documents.htm>

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ABOUT THE PUBLICATION

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COMMENTS AND FURTHER INFORMATION

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