

TREATY BODY MONITOR

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9TH INTERCOMMITTEE MEETING AND 21ST MEETING OF CHAIRPERSONS OF TREATY BODIES GENEVA, 29 JUNE - 3 JULY 2009

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The 9th Inter-Committee Meeting (ICM) of the human rights treaty bodies was held from 29 June to 1 July 2009.

A total of 11 recommendations¹ were made at the 7th and 8th ICM meetings in 2008, where the core human rights treaty bodies² debated the possibility of merging the ICM and the Meeting of Chairpersons in order to

¹ A/63/280, Report of the twentieth meeting of chairpersons of human rights treaty bodies (report of the seventh Inter-Committee Meeting annexed) www2.ohchr.org/english/bodies/icm-mc/documents08.htm

² HRC, CESCR, CERD, CEDAW, CAT, OPCAT, CRC, CMW, CRPD See website for further information on treaty bodies: www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx

increase their decision-making power in harmonising working methods. Among other recommendations were: to facilitate interaction between the treaty bodies and the special procedures; a full one-day meeting allocated for the informal consultations with State parties; and strengthening the institutional links between the UN Human Rights Council and the treaty body system. Following the recommendations of the 7th and 8th meetings, the 9th ICM meeting focused on standardisation of terminology, harmonisation of working methods, the need for increased effective co-operation with the Human Rights Council, particularly in relation to the universal periodic review (UPR) mechanism, the identity/role of the country rapporteur or task force, participation of civil society and NGOs, and the practice of cross referencing the work of other treaty bodies.

The 9th ICM concluded with the following recommendations: additional resources be allocated to follow-up activities; that OHCHR should explore alternative means of facilitating the broadest public access to the treaty bodies' examination of periodic reports; that the secretariat prepare a comparative study on the use of terminology across the treaty bodies with a view to standardising terminology to the furthest extent possible; and that the secretariat should continue to facilitate participation of NGOs in the work of treaty bodies.

The 21st Annual Meeting of Chairpersons (MC) took place from 2 to 3 July 2009. The new President of the Human Rights Council (the Council), H.E. Mr Alex Van Meeuwen, addressed the MC by reassuring them that the relationship between the treaty bodies and the UPR would be complementary. The Chairpersons also had a meeting with the UN Independent Expert on minority issues, Ms Gay McDougal.

Inter Committee Meeting

Identity and role of the country rapporteur/country task force

Several of the treaty bodies referred to the importance of transparency in their support for disclosing the name of country rapporteurs (meaning those who are responsible for taking the lead on the examination of individual States).³ This would ensure better co-ordination between the rapporteur, States parties and civil society, and result in a better presentation and effective analysis of the situation of the State under review. Various committee members⁴ were of the view that the identity of the rapporteur is revealed at the start of the dialogue between States parties and the treaty bodies and therefore there is no need to conceal the identity in the first place. The Centre for Civil and Political Rights favoured the principle of transparency in disclosing the identity of rapporteurs in order to simplify NGOs' and other stakeholders' understanding of these working methods when they seek to engage with the treaty body system.

The Human Rights Committee (HRC), on the other hand, still retains the identity of the rapporteur. Human Rights Committee member Ms Motoc said she would keep her opinion to herself but nevertheless expressed her support for the views of the Committee on Migrant Workers (CMW) and the Committee on the Elimination of Racial Discrimination (CERD) on declaring the identity of rapporteurs. She argued that revealing the name of the rapporteur creates more objectivity and impartiality and she hoped that the Human Rights Committee would change its rules. Chairperson of the Committee against Torture, Mr Grossman, expressed the view that the concealment of the rapporteur's identity limits the chance for States to criticise the rapporteur. The Chairperson of the 9th Inter Committee Meeting, Ms Naela Gabre, reiterated that all reports on the list of issues should be the responsibility of all the Committee members and not only the Committee's country rapporteur. She further pointed out that each treaty body has its own specificities and should not have the working methods of others imposed on them. It was therefore agreed that treaty bodies should have the right to maintain their own approach in this regard.

³ CMW, CESCR, CERD, CEDAW.

⁴ HRC member Ms Motoc, CEDAW Chairperson Ms Gabre, CESCR Chairperson Mr Romero.

Cross-referencing the work of other treaty bodies

It was recognised that cross-referencing of the work of respective treaty bodies is important in ‘mainstreaming human rights in one concept’⁵ and ‘unifying our jurisprudence.’⁶ Chairperson of the Committee of the Rights of the Childs (CRC), Ms Lee, pointed out that cross-referencing with the general comments and concluding observations of other treaty bodies can be used for additional information on the CRC concluding observations. Advocates for Human Rights stated that cross-referencing helps to keep track of other treaty bodies work and if a recommendation is repeated by the different bodies, there is a high chance it will be raised in the UPR of the State in question.

Standardisation of terminology

One of the goals of the 9th Inter-Committee Meeting was to standardise the terminology used by the different committees ‘so we can all know what we are talking about.’⁷ CRC Chairperson Ms Lee, without going into further details, expressed the view that the standardisation of language is possible only to a certain degree on account of the limitations imposed by the differing terminology contained within different international human rights instruments. CAT member Mr Menendez expressed the view that harmonisation of the rules of the treaty bodies system should be the first step to provide a field of terminology, although CERD member Mr. Avtonomov warned that committees could not expect States to standardise their language when submitting information to the various committees.

Participation of NGOs and NHRIs

CERD Chairperson Ms Dah drew attention to the importance of the participation of national human rights institutions’ (NHRIs) during CERD sessions and explained that they were very useful for following up on the implementation of concluding observations. She encouraged developing countries to set up more NHRIs, while HRC member Ms Motoc recommended having more committee contact with NHRIs and working more closely with them.

CERD Chairperson Ms Dah highlighted the lack of time for committee members to interact with NGOs and gave that as a reason why there was not much cooperation between CERD and NGOs. On the other hand, CEDAW Chairperson Ms Gabre noted that NGO work and co-operation with CEDAW was important and enriching because it gave committee members the opportunity ‘to see both sides of the issue’ and not only the State’s point of view. She appreciated in particular the comprehensive reports from International Women’s Rights Action Watch Asia-Pacific (IWRAP AP) and reiterated that ‘NGO work is vital for treaty bodies.’ Ms Gabre encouraged other NGOs to follow the example of IWRAP AP’s timely submission of reports. Ms Dah, on the other hand, criticised the fact that generally national NGOs were not ‘well-organised’, for example in preparing lunch events, even when supported by an international NGO.

Further, both Vice-Chairperson of the Sub-Committee on the Prevention of Torture Mr. Coriolano and CEDAW Chairperson Ms Gabre emphasized that it was important to be cautious with NGO information and NGO names should not be revealed during the State examination, as some could be exposed to potential reprisals.

Discussion on the NGO paper

There has been considerable discussion on whether the position paper submitted by NGOs⁸ and presented by the Centre for Civil and Political Rights should be discussed at all and if so to what extent. CAT Chairperson

⁵ CMW member Mr Kariyawasam.

⁶ CAT member Mr Menendez.

⁷ CRC Chairperson Ms Lee.

⁸ Soon to be available at www.ishr.ch

Mr Grossman, CAT member Ms Gaer and SPT member Mr Coriolano requested that the Chairperson take a decision to ensure that the paper was discussed as it included useful recommendations that needed to be considered. Ms Gabre eventually agreed to discuss the issue, with apparent reluctance, claiming that most of the questions were directed at the secretariat rather than the treaty bodies. Ms Connors from the OHCHR secretariat responded to the issues raised by NGOs, for instance the request for a **master calendar** with all upcoming events installed on the website as already in the process but ‘as a lot of information is involved it is difficult and will take a while.’⁹ Ms Connors also noted the issues raised on **notification of sessions, webcasting of sessions, summary records** and a **search function on the treaty body database** and stated that they are ‘underway.’

The treaty bodies then responded to NGO concern over **the review of State parties in the absence of State reports**. CRC Chairperson Ms Lee stated that her committee would not consider a State party without a State report although in the past they considered a State that sent a technical report but were unable to attend the session. CMW member Mr Kariyawasam and CESCR Chairperson Mr Romero acknowledged the lack of resources as the main reason behind late or non-submission of State reports. CMW member Mr Kariyawasam suggested that OHCHR offer assistance to States that lack the resources to provide State reports and attend review sessions, which will reduce the number of absent States. CESCR Chairperson Mr Romero on the other hand thought it would be a good idea to produce information on States that have not submitted their reports with the hope that this will encourage them to produce their own reports. CERD Chairperson Ms Dah maintained that her committee carried out State reviews in the absence of a State report only in extreme cases where there has been no communication from the State party. Exceptions are made in cases where a State is in armed conflict or civil war and therefore cannot submit a State report. She restated the procedures followed in an endeavour to get a response from the State party before its consideration without a State report.

CRC member Mr Kotrane opposed the idea of reviewing a State in the absence of the State report and the State delegation, claiming ‘when a defendant does not show up at some point in time, does the trial go ahead?’ The State party is required to respond to questions like ‘how did you prepare your report?’ and it is a chance for debate. Otherwise, he claimed, ‘the whole process is rendered useless.’¹⁰

Following the discussion of the joint NGO paper, Committee members touched on the confidentiality of NGO information. CERD member Mr Amir and CEDAW Chairperson Ms Gabre stated that their committee does not disclose NGO sources in cases of confidential information and referred to confidentiality as a question of professionalism. On the other hand, CAT member Ms Gaer pointed out that her committee is more transparent with NGO information and sends NGO material received to the government of the State under review. She referred to it as ‘equality of arms’ and argued that the government cannot be questioned on information based on materials they do not have. Even though the NGO names are not sent along with the list of issues, the sources are named during the dialogue. If NGOs ask for confidentiality it creates an imbalance and she welcomed suggestions from other treaty bodies on how to deal with this.

CESCR Chairperson Mr Romero acknowledged his respect for confidentiality for NGOs that are at risk of reprisals. He however added that transparency was an important factor and asserted that treaty bodies should take a dual approach in terms of information received from NGOs, putting in place criteria followed when accepting NGO information.

OHCHR expert on statistical information and indicators

Mr Nicolas Fasel from OHCHR informed the ICM of the latest developments regarding the human rights indicators and the use of statistical information. He explained that various workshops on the use of statistical

⁹ This point was also raised individually by IWRAW AP.

¹⁰ CRC member Mr Kotrane.

information for monitoring have been conducted at country level as well as in expert meetings. So far there are twelve tables for indicators these include two new tables, which have been recently developed on violence against women and on discrimination. Mr Fasel proposed that the list of indicators can be used as a tool for identifying relevant indicators at the national level. He stressed that OHCHR is currently developing a manual on the use of statistical information and indicators that should assist States in the formulation of policies and reporting. The manual should be ready in 2010. Ms Gabr argued that before guidelines on the use of indicators and statistical information are developed, the consensus of States must be reached. Mr Abdel-Moneim highlighted the importance of indicators, but argued that indicators must be constantly reviewed as some have been misleading. He also argued that common indicators are needed to be included in the core documents. He suggested that when it comes to treaty-specific reports, indicators should be first developed within the TBs. Mr Fasel responded with regard to the misleading indicators that there has been broad agreement on what the human rights indicator framework should measure. Mr Abel-Moneim argued that this issue should be further discussed and the treaty bodies should meet experts on the topic.

Follow-up

CERD member Mr Amir referred to the question of follow-up to concluding observations as a “communication motor-way and that should not have any blockages.” The communication must be impartial and the exchange should be based on mutual trust and credibility. Following the previous decision of the ICM to establish a working group on follow-up, he suggested the establishment of a team within each committee, responsible for follow-up and a report should be drawn up with a list of issues that will be discussed after which each committee reports back. This in turn leads to further cohesion. Mr Amir continued to argue for the need for a special rapporteur on the ground to assess developments. Aside from the alternative and State reports received, it would be helpful if the rapporteur would be able to visit States in order to gain a clear picture of the human rights situation.

CMW member Mr Prasad argued that expectations in terms of follow-up should vary across the treaty bodies and pointed to the fact that three of the treaty bodies are new.¹¹ He welcomed the NGO recommendation that all communication between the State parties and the committees should be published on the treaty body webpages and noted that CAT and CERD already carry out this practise.

CESCR member Mr Sadi agreed with the importance of the issue of follow-up and noted that the five year period before the next review required the injection of something to ensure that States’ obligations were being adhered to. He stressed that it was important for the committee to be flexible on the time given to States to meet the recommendations because in some cases up to one year is required to change certain laws. He expressed the financial implications CERD member Mr Amir’s suggestion would have and suggested that regional OHCHR offices take on follow-up duties. He also proposed the use of a rapporteur for follow-up as more efficient and satisfactory than a working group.

Advocates for Human rights, supported by Chairperson CESCR Mr Romero and Chairperson CAT Mr Grossman, proposed the use of a follow-up report card where State parties informally updated the treaty bodies on their progress in the years following the review. CESCR member Mr. Romero suggested discussions at the national level to examine issues raised at the review sessions.

CRC member Mr Kotrane spoke about the country visits made by the country rapporteur of the CRC after the concluding observations have been issued. He and CRC Chairperson Ms Lee pointed out that in comparison to other treaty bodies, the Committee on the Rights of the Child is accepted more on the grounds of State parties. He suggested the creation of a permanent follow-up body which would be a crossroads for all the different treaty bodies. CESCR member Mr Abel-Moneim questioned the possibility of Mr Kotrane’s suggestion and pointed out lack of funds and resources as the main limitations. CERD member Mr Amir

¹¹ CMW, OP CAT, CRPD.

suggested the creation of an *ad-hoc* group comprised of nine people, one representative from each committee, to make a contribution, to ‘ensure that the idea of follow-up does not die.’

Role of the ICM

The Inter-Committee meetings are held to ensure the greater harmonisation of the working methods and procedures of the treaty bodies and the greater coordination among the committees so that stakeholders can get a better view of what they do. CMW member Mr Kariyawasam suggested that the idea of a working group for the ICM be made a frequent practice because it is difficult for 27 committee members to meet up and effectively discuss issues.

Ms Baldwin from Amnesty International raised the fact that the same issues are discussed during the ICM every year without noticeable progress. She recommended the establishment of a working group to concentrate on thematic issues and suggested that the first ICM meeting of the year develop topics that will be discussed in the second meeting of the year.

Informal consultations with States parties

On 30 June 2009 the ICM held informal consultations with State parties to discuss the harmonization of working methods, the relationship between the UPR and the treaty monitoring bodies, the harmonisation of reporting guidelines, and follow-up mechanisms.

In the beginning of the informal consultations all chairpersons of the nine treaty bodies briefly described the current status of the revision of the reporting guidelines for States Parties and the general status of ratification of the treaties. Regarding how **to increase the impact of the treaty bodies**, all chairpersons pointed to the universal ratification of the treaties and their optional protocols, as well as the withdrawal of reservations. Several chairpersons underscored that the harmonisation of working methods and the consistency of concluding observations are crucial in order not to erode the legitimacy of the treaty body system. They stated that Committees should therefore take the concluding observations of other Committees into account. The chair of CEDAW argued that harmonisation and coordination is important but differences should remain so as not to limit of specificities of different Committees.

The ‘list of issues’ was also identified as an effective measure to provide transparency to States. Chairperson of the Human Rights Committee Mr Yuji Iwasawa outlined that the HRC formulates the list of issues on a thematic basis and groups them in clusters. The list of issues is sent two sessions before the scheduled examination to the State, as States should have enough time to prepare the answers and can submit them before the examination. This not only increases transparency for the State but also allows that translation can be provided. Brazil and Mexico supported CAT’s new process of prioritizing the list of issues by arguing this generally speeds up the process. HRC chairperson Mr Iwasawa, CAT chairperson Mr Grossman and the UK highlighted that it would be useful to also prioritise the concluding observations in order to facilitate implementation for States.

Egypt pointed to the importance of **integrity and independence of Committee members** to ensure the effectiveness of the system, and questioned if integrity and independence are always provided when experts are selected by States. Denmark also highlighted the importance of independence of the Committee members, and argued that committee members should be free to choose their own country rapporteurs. South Africa suggested that treaty bodies should hold thematic debates with States as they proved useful in the CRC and CMW.¹² Denmark argued that treaty bodies should learn from each other regarding working methods, and that younger bodies in particular have been innovative regarding their methods and can be seen as a source of

¹² These thematic debates were convened for example in the form of panels in the Context of the Human Rights Council. They have included the one-day thematic debates on the rights of the child, the rights of persons with disabilities and the rights of women.

inspiration. The United States restated the importance of the independence of committees as crucial to the quality of their work and the experts should be able to conduct their work free of political influence. It questioned how treaty bodies that are all based on different treaties and have different mandates can harmonise their procedures. The USA underscored that the UPR and the treaty monitoring system are two separate processes that need to stay independent and keep their integrity. The Council should not modify treaty body obligations.

Several Committee chairpersons, as well as Denmark and the UK, highlighted the importance of **NGO participation** in the treaty body system and argued that committees should be free to evaluate which kind of information it uses and discloses. China, Pakistan and Algeria argued that Committees need to ensure that the concluding observations are based on reliable and non-politically motivated information. The Russian Federation argued that treaty bodies cannot prefer NGO information and argued that such an approach would be detrimental for States.

Regarding the challenges to the impact of the treaty monitoring bodies, several Committee members pointed to the lack of compliance regarding **reporting obligations** by States, including long delays in submitting reports and non-submission. Vice-Chairperson CESC Mr Abdel-Moneim pointed out that the effectiveness and efficiency of treaty bodies depended on the quality of the State report and the integrity of the independent experts. The reports should be as detailed and as comprehensive as possible, for instance providing statistics, particularly in the case of CESC state reports. CEDAW Chairperson Ms Gabre reiterated the collective responsibility of the treaty bodies to the State report and list of issues. She stressed that this responsibility should not only fall on the Special Rapporteur but be dealt with by the committee as a whole. Supporting Mr Abdel-Moneim, she added that the positive development on treaty bodies depends on the information provided in State reports and the co-operation from the States. Several Committees stated that they consider the adoption of concluding observations even in the case of the absence of a State report. South Africa argued that it does not see the added value if a State concerned is not included in the monitoring process. CRC and CERD mentioned the backlog of reports as the main challenge to the effectiveness of the treaty system. Ms Yanghee Lee of CRC explained that she undertook country visits to better understand the challenges States face to fulfil their reporting obligations. China highlighted that the treaty body reform must decrease the burden of reporting obligations rather than increase it.

Concerning the question of how committees should proceed with regard to **long overdue reports**, South Africa suggested bi-lateral meetings between the State party and the committee in order to explain problems, challenges and reasons for late submission, which may for example be on account lack of financial or human resources. The Philippines explained that presenting reports to treaty bodies placed a strain on developing countries, and delays in turn meant that more time was required to respond to detailed issues.

Chairperson Mr Iwasawa explained the process followed by the Human Rights Committee in cases of the absence of a national report, where constant reminders are sent to the State party, after which a letter is sent to the State with a deadline for submission of their report in cases of continued lack of response. If the report is still not submitted by the proposed date, the State is reviewed in their absence.

States¹³ also argued about the use of wrong information submitted in the form of shadow reports by NGOs. CESC member Mr Sadi and CAT Chairperson Mr Grossman insisted that NGO information was considered but not fully relied upon and in cases where violations are alleged by NGOs, investigations can be carried out or verification can be sought from the State party. In cases where a mistake is made, the State raises the issue and it is dealt with at the time.

The UK recognised that **follow-up to concluding observations** is the major challenge for treaty body system. In this regard, the Chairpersons of the Human Rights Committee and CAT explained that their committees

¹³ Russia, China and Denmark.

ask State parties for further information regarding the implementation of two to three recommendations within a year. An appointed follow-up rapporteur then prepares a report on the status of the implementation of these recommendations. While the UK supported this general process, Russia described this latter process of a follow-up rapporteur as unnecessary. It argued that the information needed for an assessment was provided earlier by the respective State, however Russia but did not outline further this argument. The Chairperson of CESCR Mr Romero pointed out that according to the reporting guidelines of CESCR, States are asked to include their compliance or non-compliance with the concluding observations of the previous session. Algeria argued that examined States should be involved in the process of the drafting of the concluding observations and mentioned the practice of CERD of annexing States comments to the concluding observations as a good means to ensure transparency. .

Concerning **follow-up to concluding observations**, CERD member Mr Amir pointed out that after the dialogue is concluded, the observations are documented and sent out to the State parties for clarification and if there are any replies, these are read out and considered by the Committee. Thereafter the committee can choose to send further responses to the State, thus creating a ‘highway for communication and increased efficiency.’ SPT member Mr Coriolano further suggested an increase in joint work between the treaty bodies, the OHCHR and other NGOs. CEDAW Chairperson Ms Gabre also mentioned the importance of having a rapporteur from each Committee to manage follow-up.

The **identity of the country rapporteur** was also discussed, with the UK expressing the importance of knowing the identity of the rapporteur in advance as this allows for early engagement with government and civil society. The delegation encouraged all treaty monitoring bodies to go down that path. In response, CEDAW Chairperson Ms Gabre restated the lack of a unified position by the committees and explained that discussions were still underway.

South Africa stated its disagreement with the most recent **general comment made by CESCR** on discrimination on the grounds that it concludes **sexual orientation as a grounds for discrimination**. The representative claimed that ‘...sources which are not accepted by the UN member States create problems especially if these sources are a basis for the general comments made.’ South Africa went on to explain that ‘comments adopted by experts but not adopted at GA levels are not legally binding. These sources cause controversy because of the manner in which these principles have been imposed on the international human rights system. The South African representative acknowledged that these comments are intended to assist States but pointed out that their enforcement is limited by their non-binding nature and by situations where States are not in a position to apply these comments.

ICM meeting with representatives of NHRIs and the ICC

On Wednesday morning the ICM held informal consultations with national human rights institutions (NHRIs) on the role and participation of NHRIs in the treaty body monitoring mechanism. The Committee members heard presentations by Mr Gianni Magazzeni, Coordinator of the National Institutions Unit, Office of the High Commissioner (OHCHR); Ms Katarina Rose, International Co-ordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC); Mr Michel Frost, French National Human Rights Commission, Ms Kirsten Roberts, Irish Human Rights Commission; and a representative of the National Human Rights Commission of India. All speakers highlighted the importance of the participation of NHRIs in the treaty monitoring process. Ms Rose therefore suggested to include the participation of NHRIs as a regular item on the ICM agenda.

Mr Magazzeni highlighted that in the revision of the accreditation process for NHRIs by the ICC Sub-Committee on Accreditation, one of the criteria for considering the effectiveness of NHRIs is their

engagement with the international human rights system.¹⁴ He proceeded to outline the general responsibilities of NHRIs¹⁵ and highlighted how NHRIs have contributed to the work of the treaty bodies. NHRIs participate by contributing to State reports, providing information to treaty bodies in the drafting of the list of issues, and consolidating gains made in the development of human rights standards by monitoring follow up action to the concluding observations. Furthermore, NHRIs have been active in building the capacity for the State to report through the provision of training to relevant government officials and parliamentarians on human rights treaties, and the holding of seminars on concluding observations. NHRIs have also been active in encouraging ratification of human rights treaties by States. Several Committee members and Ms Rose underscored the important role NHRIs play in follow up to concluding observations by arguing that the cooperation between NHRIs and TBs in the follow up ensures the efficiency and legitimacy of the system.¹⁶ Ms Rose stated that through their analysis, the treaty bodies could provide guidance to NHRIs on dealing with thematic issues such as business and human rights, economic social and cultural rights, and rights of indigenous peoples, migrant workers and persons with disabilities. She also mentioned that the UPR process offered many opportunities for collaboration between NHRIs and the treaty bodies, as the latter could be used to follow-up on recommendations from the treaty bodies.

Mr Frost outlined the work of the French NHRI with the treaty bodies. He explained that a system has been developed with the Government on how to submit State reports to the committees. Moreover, the French NHRI informs the media on concluding observations and undertakes an annual follow up to the recommendations. Currently, all observations made to France by treaty bodies, the UPR and the Council of Europe Commissioner for Human Rights are compiled into one report in order to be able to identify common themes. Mr. Frost also mentioned that the French Commission has requested private meetings with treaty body committee members in order to raise issues more confidentially, and he recommended that this practice be systematised as a means to safeguard the independence of NHRIs and allow them to freely express their views.

In response to Ms Roberts question on how the NHRIs can best contribute to the work of the treaty bodies, CERD member Mr. Avtonomov and Chairperson CESCRC Mr Romero outlined that any form of oral or written contribution is essential, but that written information provided well in advance is of great value as it is a source of reliable information. Mr Romero added that it would be very useful if shadow reports could be structured along the articles of the treaty.

Mr Magazzeni described the current participation of NHRIs with treaty bodies. He pointed to the general comments on NHRIs participation that are issued by CERD, CESCRC, and CRC, CERD's formalised rules of procedure and CMW's practice to allow NHRIs to engage with them during and prior to the session, and CEDAW's statement on interaction with NHRIs,¹⁷ and CAT's practical information note to NHRIs and NGOs that wish to attend. He described all these engagements as useful and stated that these examples should encourage other treaty bodies to consider similar steps. However, Mr Magazzeni argued that to increase the actual attendance and the general input of NHRIs, in particular to the list of issues, the **development of uniform working methods** and rules of procedure, which are favourable to NHRIs participation, is vital.

Ms Rose and Mr Magazzeni called for a clear distinction between NHRIs and NGOs in the treaty body monitoring process as their mandates differ. This space could take the form of pre-sessional meetings and/or separate seating in the session. Mr Sadi and Mr Magazzeni reiterated that NHRIs should work together and complement each other. Mr Kotrane argued that time is often too limited to have separate sessions for NHRIs. Ms Lee was also sceptical about the demand for separate NHRI meetings from NGOs. She reiterated that

¹⁴ The assessment of the role of NHRIs in engaging with the international human rights bodies will be facilitated through the creation of a template which will specify the areas that the NHRI will be evaluated and reviewed by the ICC.

¹⁵ General reporting on the human rights situation in their countries, advising governments, investigating and at times quasi-judicial functions.

¹⁶ Ms Rose, Ms Gear, Mr Menendez, and Ms Roberts.

¹⁷ Available at <http://www.asiapacificforum.net>

NHRIs give balance to the information provided by NGOs. Mr Forst supported the suggestion of private meetings as he argued that in the absence of governmental institutions NHRIs are freer to speak out.

Mr Magazzeni further demanded clear guidelines on how NHRIs can provide information to the Committees and the modalities on the attendance and interaction in the treaty body sessions should be in writing. He encouraged the Committee members to use existing tools such as the Harmonized Approach on the interaction of NHRIs and Treaty Bodies, adopted in 2006, and the 'Role of NHRIs in the Treaty Body Process' produced by the German Institute for Human Rights with OHCHR in 2006.

With regard to challenges to NHRIs, Mr Magazzeni outlined that some NHRIs face threats when conducting their duties, and also that budget cuts threaten the independence of NHRIs. Ms Gaer and Mr Kariyawasam underscored that treaty bodies should stress the need for sufficient funding and protection for NHRIs. Mr Kariyawasam requested to include this recommendation in the final report of the ICM. Ms Gaer pointed to the time constraint during the sessions for NHRIs. Ms Rose demanded that treaty bodies should address limitations of mandates for certain NHRIs with States. Ms Roberts pointed to the fact that NHRIs can face obstacles when engaging in the international monitoring process as States regard them as institutions mandated only to work at the national level. Thus treaty bodies should highlight their important role in monitoring of treaties. Ms Rose expressed that NHRIs would like to be included in all steps of the monitoring process.

The independence of NHRIs was a major issue that resurfaced during the discussions with some Committee members, who expressed concern at the reliability of information provided by NHRIs that are not fully compliant with the Paris Principles.¹⁸ Mr Magazzeni and Ms Rose however stated that the accreditation process for NHRIs has been reviewed and strengthened in order to ensure better compliance with the Paris Principles.

An important point that was raised by several committee members in response to the Indian NHRC representative's comment regarding their desire to not have to work with NGOs due to their different mandates, was the complementary roles that NHRIs and NGOs have when monitoring the national human rights situation, and also the importance of NHRIs maintaining links with NGOs within their own countries.

Consideration of the draft report

The committee members, chaired by CEDAW Chairperson Ms Gabre, went through the draft report of the 9th ICM meeting, editorial changes were made and views and opinions were received from the other committee members.¹⁹

There was a lot of debate on the inclusion of the issue of reprisals against NGOs. CEDAW member Ms Kaddari and CAT Chairperson Mr Grossman were adamant that the issue be included in the draft report as it was discussed during the meeting. CEDAW Chairperson Ms Gabre in opposition of the idea felt that this issue had not been fully discussed during the meeting and should therefore be included in the next Inter-Committee Meeting.

The committee members finally came to an agreement and it was decided that the issue of reprisals would be included in the report of the 9th Inter-Committee Meeting with the insertion of a recommendation for treaty bodies to disseminate NGO information to the public with the consideration of potential reprisals from their home countries.

¹⁸ Mr Posada, Ms Pimentel, Mr Menendez.

¹⁹ Mr Grossman, Ms Kaddari, Mr Abel-Moneim, Ms Lee, Mr Amir.

The meeting closed with the intent to pass the draft report to the meeting of the chairpersons of treaty bodies for adoption.

Annual Meeting of Chairpersons

The 21st Meeting of Chairpersons, convened on 2 July 2009, brought together chairpersons of the nine core human rights treaty bodies²⁰ and the new president of the Human Rights Council, Mr Alex Van Meeuwen, Ambassador of Belgium to Geneva, to address the interactions in between the treaty bodies and the Council. Mr Van Meeuwen began by stressing that he will be in a ‘listening mode’ and hoped to learn much from colleagues. He spoke primarily about the important role of treaty bodies and underlined his confidence that cooperation between the Council and treaty bodies is of mutual benefit.

All the chairpersons then took the floor to comment and ask questions to the new President. CRPD Chairperson Mr Tarawneh commented on the new establishment of the CRPD and encouraged Chairpersons to establish a horizontal linkage in between the CRPD and the Council, the treaty bodies, national human rights institutions and NGOs. He insisted that rights of persons with disabilities is a cross cutting issue. CRC Chairperson Ms Lee referred to the new draft optional protocol that the CRC is embarking into and solicited Mr Van Meeuwen’s advice in pushing this optional protocol forward.

Many chairpersons²¹ were concerned about treaty bodies’ recommendations being discussed during the UPR process. CESCR Chairperson Mr Romero argued that in CESCR committee members express concerns that have a legal dimension with regard to contractual obligations. He argued that if these concerns voiced by CESCR were changed from a quasi-judicial system to an inter-governmental system, it would ‘be hard to handle it’.

Among other issues addressed was the need to give more weight to concluding observations,²² the need to refer during the UPR review to the lack of reporting by States to treaty bodies,²³ the issue of States writing reports to the UPR but not fulfilling their obligations towards treaty bodies,²⁴ the issue of treaty bodies’ resources provided to the UPR²⁵ and the idea of webcasting treaty body sessions.²⁶

In response to CERD Chairperson Ms Dah and CAT Chairperson Mr Grossman’s criticism regarding the issue of resources, Mr Van Meeuwen informed the chairpersons that the following week a discussion would be held concerning resources for the Council. The new President concluded that he could not offer a ‘miracle solution’ but he recommended that he and the chairpersons meet on a regular basis and suggested that a Council focal point should be designated for information to circulate properly between treaty bodies and the Council.

Equitable geographic representation in treaty body membership

The Third Committee of the General Assembly requested in a draft resolution on the equitable geographic distribution in the membership of the treaty bodies that the chairpersons of the treaty bodies submit, through the OHCHR, specific recommendations for the achievement of the goal of equitable geographic

²⁰ CRPD member Mr Al Tarawneh ,CMW Chairperson Mr El Jamri, CEDAW Chairperson Ms Gabr ,CAT Chairperson Mr Grossman ,HRC Chairperson Mr Iwasaw , CRC ChairpersonMs Lee , CESCR Chairperson Mr Romero,Chairperson SPT Mr Rodriguez Rescia , CERD Chairperson Ms Dah.

²¹ Mr Romero, Mr Grossman, Ms Dah.

²² Mr Grossman.

²³ Mr Romero, Mr Grossman and Ms Dah.

²⁴ Mr Grossman and Ms Dah.

²⁵ Mr Grossman and Ms Dah.

²⁶ International Women’s Rights Action Watch .

representation in the membership of the treaty bodies.²⁷ The resolution was drafted as a result of a general concern that there is regional imbalance in the current composition of the membership of some treaty bodies. It also calls upon States to consider and adopt concrete actions such as the establishment of a quota distribution system by geographical region for the election of the members of the treaty bodies.

After a short presentation by the Secretariat on statistical information showing the current geographic and gender distribution within each treaty body, the chairpersons expressed that their mandate does not provide them with the necessary means to ensure equitable geographic representation in the treaty body, as members are selected by States.²⁸ The Secretariat pointed out that CESCR has this function because of its linkage with ECOSOC. CAT Chairperson Mr Grossman claimed that equitable geographic representation is a good principle but it should not be necessarily automated in the TBs. CERD Chairperson Ms Dah supported this point by stating that independence and expertise are of greater importance. CEDAW Chairperson Ms Gabr highlighted that the number of experts of a specific region is higher than the number of ratifications by States from that region in certain Committees. SPT Chairperson Mr Rodriguez pointed to the fact that OP-CAT has been ratified also by Asian and African States and argued that all regions need to be represented. He therefore recommended issuing a recommendation that highlights the importance of equitable geographic distribution and urges States to enhance it.

Meeting with the UN Independent Expert on minority issues

The Chairpersons met on 3 July 2009 with the UN Independent Expert on minority issues, Ms Gay McDougal. She explained that the Council adopted a resolution in 2007 creating a Forum on Minority Issues. Ms McDougal presented the outcome document of the first forum, which focused on education for children, and she underscored the fact that CERD member Mr Patrick Thornberry participated in the drafting of the outcome document. She explained that the document uses the jurisprudence of all treaty bodies and the idea is to use the document as a basis for the formulation of treaty bodies' recommendations. Ms McDougal explained that the goal of this meeting was cooperation and 'brainstorming' about how treaty bodies might further use the recommendations on education.

All Chairpersons took the floor and commented on the positive value of this document for their treaty bodies. CERD Chairperson Ms Dah stated that 'the outcome document is excellent' and referred to it as a 'benchmark document' for CERD.

CRC Chairperson Ms Lee, CAT Chairperson Mr Grossman and HRC Chairperson Mr Iwasawa all referred to the need for disaggregated data. Concerning this issue, Ms McDougal agreed that disaggregated data is important for treaty bodies having a mandate related to areas of discrimination. However, she noted the positive trend of some States 'beginning to approach the road of disaggregated data, as for instance France'.

Further, CESCR Chairperson Mr Romero referred to the importance of the identity of minorities and the dichotomy between individual and collective rights. Ms McDougal responded that her mandate on minorities is a way of combining individual rights with minority rights and argued that individual rights could be enjoyed in a collective situation.

Among other issues discussed was the need for the draft report to include a reference to the outcome document of the first Forum on Minority Issues and its applicability across the board,²⁹ the need to use more innovative technologies and new communication possibilities via internet, such as Facebook, the role of criminal law in theory and practice,³⁰ the issue of land title for indigenous peoples³¹ and the need for UN

²⁷ Draft resolution A/C.3/63/L.45 available at <http://www.un.org/ga/third/63/propslist.shtml>

²⁸ Mr Jamri, Mr Iwasawa, Ms Dah, Mr Grossman, Mr Romero.

²⁹ Advocates for Human Rights.

³⁰ Mr Grossman.

agencies to systematise these kinds of documents, such as the outcome document of the first Forum on Minorities, and to implement policies on education for minorities.³²

In conclusion, Ms McDougal referred to the second Forum on Minority Issues, which will focus on political participation.

At the end of the meeting, the chairpersons went through every paragraph of the *Draft Report of the 21st Meeting of Chairpersons*. The draft report was adopted without major amendments.

Consideration of the recommendations of the 8th and 9th Inter-Committee Meetings

The chairpersons adopted the recommendations of the 8 and 9th ICM. CERD Chairperson Ms Dah suggested to include in the recommendations of the 9th ICM a reference to the meeting with the special procedures and the president of the Human Rights Council. CAT Chairperson Mr Grossman and SPT Chairperson Mr Rodriguez supported this suggestion and argued that it needed to be highlighted that the UPR seems to withdraw funds that are originally designated for the work of the treaty bodies. SPT Chairperson Mr Rodriguez stated that this can impair the work of the treaty bodies significantly and suggested that an analysis should be conducted on this issue. CAT Chairperson Mr Grossman argued also that financial allocation needs to be based on the principle of complementarity. CRPD Chairperson Mr Tarawneh stated further that the issue of financial and human resources has been already addressed at the 8th session of the ICM, and OHCHR should share information on trends in allocation with the chairpersons. Concerning the relationship between the UPR and the treaty bodies, the chairpersons agreed that the two processes are of different nature, where the UPR is an inter-governmental process and not an appeal body for individual complaints. Regarding the meeting of the special procedures, CRPD Chairperson Mr Tarawneh argued that focal points in the Committees need to be established for special procedures. CAT Chairperson Mr Grossman emphasised that the coordination and the information sharing between the special procedures and the treaty bodies needs to be improved. CRPD Chairperson Mr Tarawneh requested to include in the recommendations the issue of accessibility for persons with disabilities. SPT Chairperson Mr Rodriguez underscored the importance of including a recommendation regarding the translation of documents as the lack of translation endangers the quality of the work of the Committees.

UN Forum on Minority Issues preparatory meeting

On 3 July 2009 the Independent Expert on Minority Issues, Ms Gay McDougall, held a meeting to seek ideas for the agenda and collaboration on the preparation of the Forum on Minority Issues scheduled for November 2009. Among those present were the Organisation for Security and Co-operation in Europe (OSCE), the Inter-Parliamentary Union (IPU), Minority Rights Group International (MRG), the International Service for Human Rights, CAT Chairperson Mr Grossman, CRPD Chairperson Mr Tarawneh, SPT Chairperson Mr Rodriguez and HRC Chairperson Mr Iwasawa.

The IPU explained that it is currently involved in a 3-year project with UNDP on minorities, and has three main objectives in place: building knowledge on the current State's interaction with minorities outside of parliament; providing tools and guidance for parliaments and other key political actors to identify key international obligations and good practices; and advocacy towards members of parliament putting the issue of minority representation on the table.

³¹ Mr Grossman.

³² Mr Rodriguez.

OSCE provided recommendations on election laws and consultation mechanisms to increase minority participation, and explained its plans for a handbook on minorities in the electoral process, scheduled to come out later this year. The OSCE representative pointed out the need to ensure that minority representation at central and local levels is part of the Forum agenda. She pointed out that decision-making on the contents of the agenda for the second forum on minority issues should be based on the budgets available.

Ideas on agenda topics

Ms Parker from Advocates for Human Rights recommended publication of a practical handbook after receiving feedback from the participants at the Forum. Topics for the handbook could include ‘how to file for judicial office’, ‘rules to follow when in office’, or ‘how to file a complaint’. In addition, she recommended informal networking at the Forum, which can assist people encountering problems on how to deal with them.

SPT Chairperson Mr. Rodriguez suggested defining topics of discussion during the preparatory meetings so that the Forum is focused on coming up with solutions and ways forward.

CAT Chairperson Mr. Grossman proposed a few topics for the agenda, including obstacles to the political participation of minorities, classical norms of criminal law for minorities and the presence of minorities in law enforcement agencies.

CCPR Chairperson Mr Iwasawa drew attention to the impact of the *International Covenant on Civil and Political Rights* on the work on the Forum. Article 25 stipulates that every citizen shall have the right and the opportunity without any distinctions or restrictions to take part in the conduct of public affairs.

CRPD Chairperson Mr Tarawneh recommended the insertion of a clear definition of minorities on the agenda for the Forum.

The proposed agenda would include discussion of the following topics;

- International and regional norms
- Political participation and discrimination
- National practices and real experiences
- Concrete steps to advance the effective political participation of minorities.

The Chair closed the meeting with an expression of gratitude for the very useful brainstorming exercise and a guarantee for more meetings to refine these ideas.

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