

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

## HUMAN RIGHTS COMMITTEE 95<sup>TH</sup> SESSION METHODS OF WORK AND FOLLOW-UP PROCEDURES 16 MARCH - 3 APRIL 2009

Overview .....	1
Protracted debate to elect Chairperson .....	2
Consideration of State party reports .....	2
Report of Special Rapporteur for follow-up on concluding observations.....	3
Strengthening the follow-up procedure on concluding observations.....	4
Report on follow-up on individual communications .....	6
Discussion on setting time limits for the submission of communications – amending Rule 96.....	6
Conclusions and next steps .....	8

### Overview

The Human Rights Committee's programme of work originally did not include any public meetings on its methods of work, although this changed as the session progressed. Unfortunately these changes in the programme were often decided at the last minute and/or not well communicated by the Bureau or the Secretariat, which hindered NGO efforts to attend and report on the meetings. The Committee's ongoing practice of restricting access to documents that were the subject of discussion at its meetings presented a further challenge to NGOs, although at the instigation of Committee members, some restricted documents were released at the end of the session. In a more general attempt to increase transparency in the work of the Committee and encourage greater State party cooperation with the Committee, some members<sup>1</sup> recommended making public its correspondence with States parties regarding follow-up on concluding observations, and the inclusion of documents relating to its methods of work in its annual report to the General Assembly.

Overall, the Committee remained divided on how to reform its methods of work. Some members were reluctant to take action that might not be consistent with the Committee's past practice or in line with the overarching goal of harmonisation of methods of work across all the UN treaty bodies. Others were more willing to adopt new approaches that had been the subject of discussion for some time, and would in their view improve the efficiency and transparency of the Committee's work.

<sup>1</sup> Mr O'Flaherty, Mr. Rodley, Ms Wedgewood.

Although the Committee failed to conclude its consideration of several issues that had been the subject of discussion for some time (such as whether time limits should be set on the submission of individual communications), it did progress discussions on other aspects of its methods of work (such as measures to strengthen the follow-up procedure on concluding observations). This may pave the way for action to be taken by the Committee on some of these matters at its next session.

### Protracted debate to elect Chairperson

The opening of the Committee's 95th session was marred by over two hours of debate as to who should be elected Chairperson for the next two years. In a very public display of division, several Committee members supported the candidacy of Mr. Nigel Rodley (United Kingdom), while others supported the election of Mr. Iwasawa (Japan).

Mr. Rodley was nominated by Ms Wedgewood (United States), who spoke at length about his standing as a pre-eminent expert on international human rights law and his years of experience as a member of the Committee. She suggested that the Committee 'had no history of rotating the Chair amongst the regions' and should not impose this 'rigid rule' on itself. She regarded the practice of regional rotation as an 'anathema' that hindered the election of the most expert candidate. Ms Chanet (France) supported the candidacy of Mr. Rodley.

Mr. Iwasawa was nominated by Mr. Bhagwati (India) who made only brief remarks to support his candidacy. He defended the practice of the Chair being rotated on the basis of regional geographic representation and argued it was time for an Asian representative to be elected. Mr. Amour (Tunisia) supported the nomination, arguing the rotation rule had been applied 'systematically' by the Committee, except on one occasion. Although he conceded 'the rule might not be the best, it is the best we have'. Mr. Thelin (Sweden) acknowledged that Mr. Rodley was the best candidate in terms of experience, but ultimately supported Mr. Iwasawa to avoid three European Chairs being appointed in a short period of time. Ms Motoc (Romania) appeared to nominate herself on the basis that no representative of the Eastern European region had held the Chair.

Eventually it was agreed that the matter should be determined by a secret ballot, and Mr. Iwasawa was elected by 11 votes to 5. The election of the Bureau was a comparatively swift process and achieved by consensus. The Vice-Chairpersons elected were Ms Majodina (South Africa), Mr. Rodley and Mr. Sanchez-Cerro (Peru). Ms Motoc was elected Rapporteur.

### Consideration of State party reports

This discussion occurred after Sweden had presented its sixth report to the current session of the Committee,<sup>2</sup> which set somewhat of a high watermark. The Swedish delegation devoted all of its time before the Committee to answering questions, rather than repeating its responses to the list of issues, which is a tactic some delegations use to 'run down the clock' and limit time for substantive discussion. This led to a constructive, detailed, and comprehensive discussion, which prompted some members of the Committee to suggest this practice should be recommended to all delegations.

However, when the Committee revisited this issue in a meeting dedicated to 'methods of work', it was evident that its members were not of one view. The Chairperson opened the discussion declaring his support for the Swedish approach as a means of maximising time for substantive discussion. He was supported by Mr. O'Flaherty, Mr Rodley, Mr. Thelin and Ms Wedgewood, with the qualification that this approach was only

---

<sup>2</sup> Sweden appeared before the 95<sup>th</sup> session of the Committee on 25 March 2009. For more information, see ISHR's report on Sweden's interaction with the Committee, available at [http://www.ishr.ch/index.php?option=com\\_content&task=view&id=127&Itemid=188](http://www.ishr.ch/index.php?option=com_content&task=view&id=127&Itemid=188)

appropriate if the delegation had provided written responses to the Committee far enough in advance to allow sufficient time for their translation.<sup>3</sup> Ms Wedgewood and Mr. O’Flaherty went on to advise that they saw some value in delegations delivering a brief oral presentation to ‘set the scene,’ but such remarks should be kept to a minimum. In contrast, Mr. Rivas Posada advocated for the retention of oral presentations to provide context and background to the Committee.

Mr. O’Flaherty further suggested that the Chair should ensure that a balance was struck between the time delegations spent working through the first half of the list of issues.<sup>4</sup> He was concerned that frequently only a fraction of the meeting time was left to consider compliance with articles that were addressed in the second half of the list, such as article 27 relating to minority rights, and that this was not acceptable. He also encouraged the Committee to impress on delegations the need for all oral answers to be concise.

This prompted Ms Wedgewood to suggest that the country taskforce (which prepares the list of issues for a State party) should be free to prioritise the order in which articles were addressed in the list of issues, rather than adhering to the order they appear in the Covenant. She acknowledged this might not always be necessary and could be trialled on an *ad hoc* basis. Although this suggestion met with strong approval from Mr. O’Flaherty, Mr. Rivas Posada cautioned against altering aspects of the rules for the country taskforces. He regarded Ms Wedgewood’s proposal as a significant change to the Committee’s methods of work, and one that should be considered as part of a more comprehensive reappraisal. Ms Majodina concurred, pointing out the risk that a country team could inadvertently discount significant articles of the Covenant in the process of trying to allocate priority to others.

Other aspects of State party reports that the Committee considered included:

- Whether the Committee could more effectively examine a report over the course of two or more days, rather than just one. Mr. O’Flaherty was supportive of spending more time in interactive discussion with States parties where this was warranted and the time was available.
- Whether the Committee as a whole should be responsible for reminding a State party that its periodic report was overdue (as opposed to the Special Rapporteur on follow-up to concluding observations writing to this effect). Most members supported this suggestion by the Special Rapporteur, with the exception of Mr. O’Flaherty, who pointed out that most States parties were late in submitting their periodic reports and it would be wise for the Committee to reflect on the approach taken by other treaty bodies. The Secretary suggested that the matter could be discussed at the next inter-treaty body meeting.
- Concluding remarks from the Committee Chairperson at the end of an interactive dialogue with a State party. The incoming Chair, Mr. Iwasawa, explained that he had chosen not to continue with this practice as he felt the remarks were essentially the personal views of the Chair, rather than reflective of the views of the Committee. He did not want to create any misconception about his views, versus those of the Committee, which would be reflected in the concluding observations.

#### Report of Special Rapporteur for follow-up on concluding observations

The Special Rapporteur, Mr. Rodley, advised that the report<sup>5</sup> was presented in the now standard format adopted by the Committee, but a number of questions remained about further refinements that could make the report more informative and clarify Committee procedure regarding overdue State party reports. It was agreed

---

<sup>3</sup> The Secretary pointed out that written responses to the list of issues were requested about three months in advance of a State party’s scheduled appearance before the Committee to ensure there was sufficient time for translation into all official languages.

<sup>4</sup> Generally the Committee divides the list of issues into two parts, working through articles 1-14 in the first half, and articles 15-27 in the second half.

<sup>5</sup> CCPR/C/95/2, 20 February 2009.

that these options were best discussed when the Committee considered Mr. Rodley's report on 'Suggestions for strengthening the follow-up procedure' (see below).

Nonetheless, a discussion followed as Mr. Rivas Posada (Columbia) suggested that the Committee had reached consensus and now "needed to move ahead" with the new practice of providing a qualitative analysis of each State party response it received. This would bring to an end the practice of simply indicating whether there was a complete response, no response or only a partial response. He asked that this be the last report presented to the Committee in this format. Ms Wedgewood asked the Secretariat to advise how much time would be needed by a Secretariat staff member to undertake the qualitative assessment that was envisaged, and whether this was achievable given resource constraints. She also asked whether the report could be published on the Committee's website or published in relevant journals to 'incentivise' States parties to respond more fully and in a timely manner.

In relation to the current report, Mr. Rodley identified three gaps in its 'recommended action' sections which related to the Central African Republic, Namibia and Barbados. He advised that he had met with a representative from Barbados during the session and received a written response that would be considered at the Committee's next session. With the Committee's agreement, he would undertake to meet with the other two States parties. He then proceeded to outline the status of follow-up with each of the 33 States parties covered in the report. In several cases he recommended the termination of follow-up activity as the State party's next report was due or overdue.<sup>6</sup> In relation to Gambia (previously declared to be in a state of non-cooperation with the Committee in relation to its reporting obligations), Ms Wedgewood inquired whether the High Commissioner for Human Rights had acted on the Committee's request to meet with the State party. The Secretariat advised that the High Commissioner had sought such a meeting, but Gambia was yet to respond.

### Strengthening the follow-up procedure on concluding observations

As agreed at the previous session of the Committee, Mr. Rodley, in his capacity as the Special Rapporteur on follow-up to concluding observations, presented a written proposal on how to strengthen this procedure.<sup>7</sup> It contained an overview of the Committee's current approach as compared to those of three other treaty bodies that also have formal procedures to monitor the implementation of concluding observations.<sup>8</sup> It also outlined the follow-up procedure used by the Special Rapporteur on extrajudicial, summary or arbitrary executions to classify replies to communication received from States. When presenting the proposal to the Committee, Mr. Rodley focused on the suggestions for the Committee's consideration, namely that it should:

- Maintain the current practice of selecting two to four concluding observations that reflect the most important issues, and where a State party could be expected to take action on implementation within a year.
- Clarify at what point it will undertake consultations with a State party whose reply is overdue (ie. what constitutes 'long overdue', and how many reminder letters should be sent to the State party requesting a response before the Special Rapporteur seeks a meeting).
- Expand the categories used by the Special Rapporteur to assess the information provided by a State party in their follow-up reports to include: largely satisfactory information; cooperative but incomplete; recommendation not implemented; receipt acknowledged; and no response.
- Consider publishing on the website of the Office of the High Commissioner for Human Rights (OHCHR) the letters the Committee sends to individual States parties regarding their follow-up

<sup>6</sup> Mali, Suriname, Namibia, Paraguay, Democratic Republic of the Congo.

<sup>7</sup> CCPR/C/95/5, 31 March 2009.

<sup>8</sup> Committee against Torture, Committee on the Elimination of Racial Discrimination, Committee on the Elimination of Discrimination against Women.

responses. This would enhance the impact of the assessment made by the Special Rapporteur and bring the Committee's practice into line with that of the Committee against Torture and the Committee on the Elimination of Racial Discrimination (CERD).

- Consider conducting follow-up visits to a State party (where invited) to assess more thoroughly the implementation of its recommendations at the national level (as is the practice of CERD and the Committee on the Elimination of Discrimination against Women).
- Be responsible for writing to a State party to remind it that its periodic report is overdue (rather than this reminder letter being sent by the Special Rapporteur on follow-up).

In the discussion that followed, a number of other suggestions and questions were raised by Committee members. Mr O'Flaherty was particularly active here, asking whether:

- resources from NGOs and national human rights institutions could be used by the Special Rapporteur when he/she undertook the qualitative assessment of a State party's follow-up report;
- the Committee could liaise with OHCHR field offices to benefit from their expertise when assessing a country's implementation of the concluding observations;
- a State party's response to the follow-up procedure, or lack thereof, could be a point of consideration in the universal periodic review process of the Human Rights Council;
- the Special Rapporteurs on follow-up from all of the treaty bodies could meet periodically with the Human Rights Council to improve States parties' responses to the follow-up procedure;
- the Committee's concluding observations should be ranked according to their level of importance (rather than the order in which issues were dealt with in the Covenant), and if agreed, this should be reflected in the Committee's reporting guidelines as well as the current proposal;
- The Committee's correspondence to States parties could be included in the Committee's annual report, which is tabled in the General Assembly, as a means of increasing State party transparency and accountability.

Mr. Rodley responded positively to many of Mr. O'Flaherty's suggestions and urged the Committee to swiftly conclude discussion on this matter so that action could be taken prior to the end of his term as Special Rapporteur. The need for prompt action was also supported by Mr. Rivas Posada, who was keen to see the Committee take up the practice of providing a qualitative assessment of State party responses to the follow-up procedure.

Reflecting on the suggestions of other members,<sup>9</sup> Mr. Rodley commented that the Committee seemed supportive of the Special Rapporteur sending reminder letters to States parties "sooner rather than later". Rather than waiting for the one year deadline to lapse, he suggested the Committee might consider sending an "earlier reminder" and then only one subsequent reminder letter once the deadline for follow-up had passed.

There was agreement that the Committee should be more open in its deliberations on this matter. Mr. Rodley welcomed this, and with the support of Mr. O'Flaherty and Ms Wedgewood, successfully advocated that the proposal under discussion be released as a public document. These members also successfully advocated that the Committee publish the Special Rapporteur's revised suggestions for strengthening the follow-up procedure in the Committee's annual report.

The Committee supported the general thrust of Mr. Rodley's suggestions and adopted his proposal, subject to its revision to incorporate comments made during the meeting.

---

<sup>9</sup> Mr. Sanchez Cerro and Ms Wedgewood.

## Report on follow-up on individual communications

This report<sup>10</sup> was written by the former Special Rapporteur on the follow-up on individual communications, Mr Ivan Shearer (Australia). As the Committee was yet to appoint a new Special Rapporteur, the report was presented by Mr Iwasawa (Japan). Mr Iwasawa updated the Committee on the nine States parties which had responded to communications since the last session of the Committee, pointing out that Peru and the Republic of Korea had responded to multiple cases whilst all other States parties had responded to individual cases.<sup>11</sup> In the case concerning Zambia (right to life), the Committee agreed that the issue of whether the State parties' decision to commute a death penalty sentence to life imprisonment constituted a satisfactory remedy, or whether the dialogue remained ongoing, should be left to the incoming Special Rapporteur. Communications with the eight other States parties remained ongoing.

### Discussion on setting time limits for the submission of individual communications

A considerable amount of the Committee's time was taken up discussing this issue, which has been the focus of discussion over several years. Most Committee members were reticent, preferring a cautious and considered approach to what they regarded as a significant and potentially controversial decision. Although none of the proposals discussed during this session found consensus support and no decision was taken, there was agreement that the existing proposals, and any new ones developed in the interim, would be considered at the next session.

Discussions focussed on how the Committee should interpret Rule 96(c) of its rules of procedure,<sup>12</sup> which requires that the Committee ascertain that 'the communication does not constitute an abuse of the right of submission.' In the past, the Committee has tended to take the view that 'undue delay' in submission of a communication could constitute an abuse of the right of submission, but it has not adopted a consistent approach, preferring to consider the issue on a case by case basis.

At a previous session of the Committee, Mr. Ivan Shearer had suggested that the Committee create a new Rule 96(g), whereby the Committee would consider a period of four years following the exhaustion of domestic remedies or, where applicable, two years from the termination of another procedure of international investigation or settlement, as constituting 'undue delay'.<sup>13</sup> However some Committee members were concerned that this proposal had no basis in the Covenant, while others warned that the inflexible and arbitrary nature of time limits made them inherently undesirable.

At the current session, Mr. Rodley circulated an alternative approach, which would add a detailed footnote to existing Rule 96(c).<sup>14</sup> The footnote would clarify that abuse of the right of submission was not, in principle, a basis for a decision of inadmissibility, but also acknowledge that there were 'exceptional circumstances' that might result in the Committee determining that a delay in the submission of a communication was 'sufficiently excessive as to amount to an abuse of the right of submission'. The footnote would also outline

---

<sup>10</sup> CCPR/C/95/4, 17 February 2009.

<sup>11</sup> Peru (3 cases); the Republic of Korea (8 cases). Other States parties that had responded were Germany, Greece, Jamaica, Russian Federation, Spain, Sri Lanka and Zambia.

<sup>12</sup> Rule 96 sets out six rules to guide the Committee when it is deciding whether or not a communication is admissible. One of these, Rules 96(c), requires that the Committee decide whether 'the communication does not constitute an abuse of the right of submission'.

<sup>13</sup> Mr. Shearer proposed an addition Rule 96(g). The draft text for this rule remains a restricted document. The UN press release outlining the content of Mr. Shearer's proposal is available at <http://www.un.org/News/Press/docs/2009/hrct710.doc.htm>

<sup>14</sup> Mr Rodley's written proposal (CCPR/C/95/R.5, 30 March 2009) was restricted during the Committee's consideration of this matter, but was subsequently released as an official document.

the factors that the Committee would take into account to determine if ‘exceptional circumstances’ existed, some of which included timelines.<sup>15</sup>

In order to progress the Committee’s consideration of the matter, Mr. Rodley emphasised the need for the Committee to first agree on the overall question of whether ‘undue delay’ could constitute an abuse of the right of submission. To ensure consistency in its approach, he encouraged the Committee to review its own case law where it had used the rule on the abuse of the right of submission. He also encouraged the Committee to consult the *travaux préparatoires* for the Optional Protocol to determine what if any views the drafters had on the question of setting time limits for the submission of communications. He suggested that any hesitancy on the part of the drafters to address this matter should make the Committee ‘think twice’ before taking any action that might appear ‘cavalier’. Further, the Committee should have regard to the political implications if it were to ‘arbitrarily introduce time limits’.

At this point, the Chairperson (Mr. Iwasawa) suggested that the Committee focus on three questions. Firstly, whether it wanted to establish a rule on ‘undue delay’, or continue to consider the matter on a case by case basis. Secondly, whether it wanted to add a new paragraph to Rule 96 as proposed by Mr Shearer, or to add a footnote to elaborate on what circumstances would constitute an abuse of the right of submission, as proposed by Mr. Rodley. Thirdly, whether time limits should be included in Rule 96, which if exceeded would amount to an abuse of the right of submission.

Although there appeared to be general agreement amongst the members that the Committee had the authority to amend its rules of procedure, Mr. Fathalla’s (Egypt) question as to whether legally, a footnote carried as much weight as a paragraph, was met with uncertainty. Mr. Rodley suggested they carried equal legal effect and pointed to the footnote in Rule 51 that was similarly intended to provide the Committee with guidelines on how to exercise its judgement.

Mr Rivas Posada and Ms Wedgewood were of the view that the Committee needed to set time limits on the submission of communications in order to be more consistent in its approach and provide clarity for authors and States parties alike. However Mr. O’Flaherty (Ireland) disagreed, suggesting there was no basis in either the Covenant or the Optional Protocol to introduce time limits. Instead, he was supportive of Mr. Rodley’s approach that would provide an ‘indicative set of guidelines in a footnote’ to suggest when a delay could constitute an abuse of the right of submission’. Mr. O’Flaherty added that the Committee should not assume that there was a sufficient level of awareness in the community that potential authors or their legal advisers would be mindful of the Committee’s rules of procedure and specific time limits on the submission of communications. Further, he suggested a decision to overturn thirty years of Committee practice should not be taken lightly and only occur when all Committee members were present.

Mr Amour and Mr Thelin were of a different view, suggesting that the matter needed to be dealt with in a comprehensive manner and was therefore more appropriately taken up in a General Comment. However in comments on the margins of the meeting, some Committee members suggested that this was not an appropriate avenue as the Committee had only recently adopted General Comment No.33 on States parties obligations under the Optional Protocol, and it would be odd for the Committee to revisit this topic so soon after its adoption.

Following a suggestion by the Chair that responsibility for progressing the matter be delegated to the Bureau, Mr. Amour was quick to suggest that this was premature and given the Committee’s years of deliberation, it should remain seized of the matter. He indicated that he wished to submit his own proposal for consideration at the next session. This led to agreement that any Committee member who had views on the matter should develop a proposal for consideration at the next session, along with those already provided by Mr. Shearer

---

<sup>15</sup> For example, the Committee would consider whether ‘...the author of the communication had legal representation at the time of the exhaustion of domestic remedies ...and did not submit the communication within three years of the exhaustion of domestic remedies’.

and Mr. Rodley. Mr. O’Flaherty and Mr. Thelin encouraged Mr. Rodley to revisit his proposal after reviewing the *travaux préparatoires*.

### Conclusions and next steps

At the concluding meeting of this session, the Chairperson made several announcements about the Committee’s future activities and decisions taken by the Bureau. These included the following:

- The Bureau appointed Mr. Rodley to assist the Chair in his role as the Committee’s media spokesperson.
- The Bureau appointed Ms Keller (Switzerland) to continue work on its revised reporting guidelines for States parties.
- Mr. O’Flaherty would continue work on the Committee’s revised General Comment on article 19 (freedom of expression).
- Ms Majodina would represent the Committee at the Durban Review Conference on Racism and Racial Discrimination in April 2009.
- The Committee would be represented at the 2009 Inter-Committee Meeting of the UN treaty bodies by Mr. Rivas Posada and Ms Motoc.

The next session of the Committee will take place in Geneva from 13-31 July 2009.

*Last revised and updated: 1 May 2009.*

## **TREATY BODY MONITOR STAFF**

**Eléonore Dziurzynski**, Communications Officer, Geneva

**Gareth Sweeney**, Deputy Manager, Geneva

**Katrine Thomassen**, Manager International Programme, Geneva

**Michael Ineichen**, Human Rights Officer, Geneva

**Michelle Evans**, Representative to the UN, New York

**Vanessa Jackson**, Human Rights Officer, New York

## **AUTHOR OF THE WORKING METHODS REPORT**

**Vanessa Jackson**, Human Rights Officer, New York

## **ABOUT THE PUBLICATION**

The *Treaty Body Monitor* forms part of the Human Rights Monitor Series produced by ISHR. It reports on each country reviewed by the six treaty bodies (all but the Committee on the Rights of the Child) and provides an overview of every treaty body session. It is currently an online publication that can be found at [www.ishr.ch](http://www.ishr.ch).

## **COMMENTS AND FURTHER INFORMATION**

We would welcome your feedback on this publication so please send any comments and suggestions to [information@ishr.ch](mailto:information@ishr.ch). You can check the latest Treaty Body Monitor reports published on [www.ishr.ch](http://www.ishr.ch).

## **COPYRIGHT, DISTRIBUTION AND USE**

Copyright © 2009 International Service for Human Rights

Material from this publication may be reproduced for training, teaching or other non-commercial purposes as long as ISHR is fully acknowledged. You can also distribute this publication and link to it from your website as long as ISHR is fully acknowledged as the source. No part of this publication may be reproduced for any commercial purpose without the prior express permission of the copyright holders.

ISHR accepts no responsibility for any inaccuracies arising from or connected to unapproved or unofficial translations of its publications or parts thereof.

## **DISCLAIMER**

While every effort has been made to ensure the accuracy and reliability of the information contained in this publication, ISHR does not guarantee, and accepts no legal liability whatsoever arising from any possible mistakes in the information reported on, or any use of this publication. We are however happy to correct any errors you may come across so please notify [information@ishr.ch](mailto:information@ishr.ch).