

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

**HUMAN RIGHTS COMMITTEE**  
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## Overview

In addition to its consideration of States reports, the Human Rights Committee (the Committee) continued to review its methods of work and took action on a number of draft documents. All of the documents were discussed in detail, but only one of them was made available to conference room. This made it very difficult for observers to follow the complex and at times legalistic debates between Committee members. The transparency of the Committee's work was further reduced by the fact that the United Nations (UN) only reported on one of these meetings in its daily press releases. Therefore, although these meetings were categorised as 'public' on the Committee's program of work, they were more akin to closed meetings. These factors add to the challenges civil society organisations face in following the UN treaty body reform process and contributing to it.

The following documents were before the Committee, but are not available electronically:

- Revised Guidelines for State Reports under the International Covenant on Civil and Political Rights (the Covenant);
- A media and public relations strategy;

- Draft General Comment No 33 on States Parties' obligations under the Optional Protocol to the Covenant;<sup>1</sup>
- Progress report of the Special Rapporteur for Follow-up to Concluding observations; and
- Progress report of the Special Rapporteur for Follow-up to Views.

The first three documents listed above were discussed by the Committee at length, however none were finalised and will be taken up at future sessions. Discussions reflected the Committee's need and desire to update its methods of work and rules of procedure, as well as the divergent views amongst members about the best way to do so. Some members were keen to take immediate and decisive action, whereas others appeared to favour a more cautious or evolutionary approach.

After considering the draft report on the Follow-up to Concluding Observations, the Committee agreed to take the unprecedented step of advising that if the initial country report of Gambia (a State party that has consistently been 'non-cooperative' with the Committee over many years) is not submitted by its next session, the Committee will declare it to be in breach of the Covenant. The Committee made a similar decision in relation to Equatorial Guinea.

Several Committee members expressed concern about the growing backlog of 20 State reports and some 400 communications. Although the Committee expressed the desire to improve its efficiency, members were unable to identify a week in the next 12 months to hold an additional meeting to deal with communications, and deferred this matter to the next session.

### Revision of Guidelines for State Party Reports

Professor Michael O'Flaherty (Ireland) presented this report, which offered a range of options for the revision of the Committee's guidelines. Last updated in 1999, several developments necessitate their revision, including the need to make the Committee's guidelines consistent with the guidelines for the common core document (CCD). The Committee's current practices and procedures, as well as its more recent General Comments all need to be accurately reflected in the guidelines.

The report provided clear recommendations to the Committee on some matters, such as the need for urgent action on the review of its guidelines, and the fact that some of the Covenant's provisions (such as those prohibiting discrimination) are unique and could not be addressed solely through the CCD guidelines. The report also favoured having differentiated guidelines for initial and periodic reports, and removing the option for States to report that there are 'no new developments' in relation to the implementation of a particular article since its last report.

However, the report avoided making a recommendation about the overall method of review the Committee should adopt to assess State party reports. Instead, it provided an analysis of the advantages and disadvantages of two alternatives to its current 'generalised approach', namely:

- i. an 'article by article' (comprehensive) approach, or a cluster approach (grouping relevant articles together); and
- ii. a 'list of issues' approach for periodic reports, which would allow the Committee to prepare specific questions that become the basis for the State report. States could raise additional issues in both the report and when appearing before the Committee.

In the lengthy discussion that followed, it was clear that several Committee members had initially found the 'list of issues' approach very appealing. Its potential to allow the Committee to hone in on the key challenges

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<sup>1</sup> Although this document was circulated at the meeting, its distribution is restricted and it is not available electronically.

to implementation from the very beginning, whilst also reducing the reporting burden on States, were compelling arguments. Its initial appeal was also related to the noticeable improvement in the Committee's efficiency since adopting a 'list of issues' approach to focus discussions with State parties. However, upon hearing Mr O'Flaherty's list of potential downsides,<sup>2</sup> several members looked more favourably on the 'article by article' approach.

There was no clear consensus amongst Committee members. Some favoured waiting to observe the experience of the Committee against Torture when it begins trialling the 'issues by issues' approach next year. Others stressed the need for urgent action to provide clearer and more relevant guidance to State parties. A further perspective was the suggestion of a 'hybrid model' that would retain the requirement for States to submit comprehensive periodic reports, but in addition, the Committee would issue a list of four or five priority questions that must be addressed in the report. It was also pointed out that the harmonisation of treaty body procedures does not require that all treaty body reports are the same. Due to time constraints and the lack of consensus, further consideration of the matter was deferred to the next session.

### The impact of the universal periodic review process on the Committee's working methods

The Committee met less than two months before the first session of the Human Rights Council's universal periodic review (UPR) process, and several members were concerned about how it might impact on the work of the treaty bodies. They commented that the human rights system is being fragmented and the Committee needs to protect its comprehensive approach that allows both States and NGOs to present their perspectives *directly* to the Committee. One or two members commented that the highly political nature of the UPR mechanism and the fact that it is a less burdensome reporting procedure and hearing process for States 'may pose a threat' to the Committee. Consequently they advocated that the impact of the UPR should be among the factors taken into consideration when revising the Committee's working methods.

### Consideration of a public relations and media strategy<sup>3</sup>

The Rapporteur on this issue, Mr Ivan Shearer (Australia), introduced the draft strategy and explained that it focused on eleven recommendations. These were discussed in detail, and several members brought up long standing points of contention, such as the merits of the Committee meeting in New York; which UN building it should hold its meetings at in Geneva;<sup>4</sup> and whether its proceedings should be webcast,<sup>5</sup> podcast, or made

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<sup>2</sup> The concerns about the 'list of issues' approach included: States no longer undertake a broad and systemic review of their practice; the identification of issues would burden the country rapporteur, country taskforce and the Secretariat; critical issues may inadvertently be overlooked; the role of non-governmental organisations (NGOs) and civil society organisations that seek to present information to the Committee would change and they would have to compete with each other to have their issues picked up by the Committee; there would be no parity of treatment between States; there would be no consideration of achievements and good practices; although this approach is to be trialled by the Committee Against Torture (CAT) in 2009, it otherwise would not be compatible with the goal of harmonisation of treaty body procedures.

<sup>3</sup> The Committee began consideration of a media strategy at its last session with the intention of improving public awareness about its work and more effectively using the media to influence national laws and practices. The initial paper has not been circulated.

<sup>4</sup> Some Committee members advocated all meetings be moved to the Palais des Nation, which has larger meeting rooms that can accommodate larger NGO and media attendance, as compared to the Palais Wilson. Others were opposed, arguing such audience interest only exists in relation to a handful of States, and when these States are to appear before the Committee, it can relocate to the Palais Nation. This suggestion was rejected by some members on the grounds it sets up two categories of States.

<sup>5</sup> Some Committee members were opposed to any filming of the public meetings, expressing concern that they could be quoted out of context or the footage edited inappropriately. Other members advocated live webcasting to increase awareness about the Committee's work, acknowledging the budgetary implications. A further suggestion of trialling filming of the public meetings was also proposed as a compromise.

available only as audio recordings and only for use by Committee members.<sup>6</sup> Some members expressed surprise at the broad-ranging nature of the debate, others were frustrated that matters that appeared to have been resolved in the previous session were reopened. None of these matters were resolved, and it was left to Mr Shearer to propose alternative language for consideration at the next session.

Although the Committee was able to agree on a range of new practices to improve its engagement with and accessibility to the media,<sup>7</sup> it was reluctant to rush into others. For example, some members encouraged the Committee to end the practice of keeping the identity of members of the Taskforce members and Country Rapporteurs confidential, arguing they had particular expert knowledge that would interest the media, and all other Committees have abandoned this ‘anachronism.’ Instead the Committee asked the Secretariat to study the experience of other treaty bodies, particularly in relation to the issue of when they allow the identities of these members to be made public, and report back at the next session. There was similar reluctance to appoint a Rapporteur for public information, or even a ‘troika’ of three members, each with a different UN language, to foster broader media interest in the work of the Committee. Some felt this would encroach on the Chairperson’s role as spokesperson for the Committee and preferred to defer consideration of the matter to the next session.<sup>8</sup>

### Discussion of draft General Comment No 33 on State party obligations under the optional protocol to the Covenant

As the Rapporteur of the draft, Mr Shearer explained that it was designed to address the misconception of some State parties that the Committee’s views issued under the Optional Protocol to the Covenant are only advisory or recommendatory, or that they can be ignored altogether. When asked about his methodology, Mr Shearer explained that he had drafted the text from the premise that the true nature of State parties’ obligations is to *respect* the views of the Committee; although the views of the Committee under the Optional Protocol are not legally binding per se, they present authoritative interpretations of the Covenant and as such have legal weight, as international and national case law demonstrates.

The Committee welcomed the draft text, particularly its brevity and clarity, and the fact that it addressed a significant gap in the existing General Comments. Some Committee members queried whether certain introductory paragraphs could be expanded to define and elaborate on the Committee’s understanding of key terminology, such as ‘victim’, ‘jurisdiction,’ ‘admissibility’ and ‘communication,’ or to include citations to the Committee’s extensive jurisprudence. This prompted a lengthy debate.

The Committee agreed that the focus of the General Comment must be restricted to the obligations of States party under the Optional Protocol, and not seek to elaborate on the detail of the procedure that the Committee follows when considering individual communications. There was consensus that these procedural issues are more appropriately addressed by updating the Committee’s rules of procedure. Moreover, this would help to keep the General Comment brief. Further, it was agreed that the General Comment should provide brief definitions of key terms to help States understand how and to what extent they are obligated to other groups

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<sup>6</sup> The Secretary of the Bureau explained that past practice has been to provide audio tapes of the public meetings on request. However in 2007, some Committee members requested that tapes not be made available to anyone outside the Committee. Other members opposed this request, and asked the Committee to make a formal decision on the matter, which did not happen during this session.

<sup>7</sup> It was agreed that all members should be encouraged to make public comment on the work of the Committee, in their individual capacity; the Committee should hold press briefings and conferences, and issue media releases *during* the session if news-worthy developments arose; the media conference to announce the Concluding Observations should be brought forward to the middle of the last week of the session when media can attend; and the UN Department of Public Information (DPI) should organise an informal social function with members of the press at the beginning of each session.

<sup>8</sup> The UN press release on the Committee’s discussion of its public relations strategy is available at <http://www.un.org/News/Press/docs/2008/hrct700.doc.htm>

(such as victims). Citations should be minimized and refer to the Committee's decisions, rather than what legal commentators have written about the Committee's work.

The Committee completed a first reading of half of the draft text. Mr Shearer incorporated a range of suggestions to strengthen and clarify the text. It was agreed that the Committee would consider the revised text at its next session.

## Report of the Special Rapporteur for Follow-up to Concluding Observations

Introducing his report, the Special Rapporteur, Sir Nigel Rodley (United Kingdom), commented that State parties responses to requests for follow-up to the Committee's Concluding Observations are generally late and much of his work involves chasing up the responses. However some responses are so late that it becomes more relevant for the Special Rapporteur to encourage the State party to submit its next periodic report. The Special Rapporteur also expressed concern that States are only required to follow-up in relation to requests for additional information that are made in the Concluding Observations, and not to the Concluding Observations as a whole. Committee members agreed that this gives the false impression that they are not giving equal attention to all treaty rights and obligations, and there are downsides to prioritizing additional questions for State parties' responses. It was agreed that these concerns require the Committee to revisit its methods of work, and this should be done at the earliest opportunity.

The Committee then turned to the substance of the Special Rapporteur's report. In relation to **Gambia**, the Special Rapporteur recommended that if the State party failed to submit its initial report before the Committee's next session in July 2008, it 'should be declared to be in breach of its obligations to cooperate with the Committee in the performance of its functions under Part IV of the Covenant.' The Special Rapporteur pointed out that this was the first time the Committee has contemplated such language, but it had not received Gambia's initial report,<sup>9</sup> nor did it send a delegation when the Committee considered its situation in the absence of a report, and it had failed to respond to the Committee's request for follow up on its Concluding Observations. The Committee agreed that the 'persistent non-cooperation' and 'failure to comply with any obligations under Part IV of the Covenant' left it no other option. Committee members expressed the view that Gambia had not been prepared to cooperate with the Committee in good faith or even 'give the illusion of wanting to cooperate with the Committee.'

The Committee also expressed concern about a similar lack of cooperation from **Equatorial Guinea**. Like Gambia, it had failed to submit an initial report<sup>10</sup> or send a delegation when the Committee considered its implementation of the Covenant in the absence of a report. However the State party had undertaken to submit its initial report<sup>11</sup> and although this was now overdue, the Committee decided that if by its next session Equatorial Guinea's report had not been submitted, it would be 'declared to be in a state of non-cooperation with the Committee'. The Secretariat was requested to convey this decision to the State party.

The Committee agreed to send further reminders for follow-up to the following State parties: Mali, Sri Lanka (submission of initial report), Yemen, Brazil and Paraguay. The Committee agreed no further action was needed in relation to Moldova and Uzbekistan because it had received those States' next periodic reports. The Special Rapporteur was to meet with representatives of the Democratic Republic of Congo later in the session and report back to the next session on the outcome.

The draft recommendations regarding the following State parties were adopted by the Committee (but the content of the recommendations was not discussed): Suriname, Namibia, Hong Kong (China), Central African

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<sup>9</sup> Gambia's initial report was due 21 June, 1985.

<sup>10</sup> Equatorial Guinea's initial report was due 24 December 1988.

<sup>11</sup> In October 2007 the Rapporteur met with a representative of the Government of Equatorial Guinea, who undertook to submit the initial report by 31 December 2007. However the Committee had not received the report prior to this session.

Republic (CAR), United of America (USA), Kosovo (Serbia), Bosnia Herzegovina, Honduras, Republic of Korea, Ukraine, Barbados and Chile. The Committee noted that it was expecting responses from the following State parties in the very near future: Madagascar, Grenada, Czech Republic, Sudan, Zambia, Georgia, Austria, Algeria and Costa Rica.

### Progress Report of the Special Rapporteur for Follow-up to Views on Individual Communications

The Special Rapporteur, Mr Shearer, updated the Committee on the status of communications with authors and concerned State parties. The Committee agreed that no further action was needed in relation to follow-up with the following State parties: Belarus (secret execution and burial of two citizens);<sup>12</sup> Burkina Faso (assassination of former President Sankara)<sup>13</sup> and Peru (therapeutic abortion).<sup>14</sup> The Special Rapporteur also advised that Australia continued to contest the Committee's views in relation to a number of cases (mostly related to immigration matters) and that further dialogue appeared to be fruitless.

The Committee decided to continue dialogue with the following State parties: Algeria (Medjnoune case), Austria (Lederbauer case), Belarus (NGO deregistration); Cameroon (Fongum case); Columbia (equal access to benefits and other entitlements for same sex partners).

### Looking forward

Given the Committee's current focus on examining key issues in its working methods, civil society organisations appear to have several advocacy opportunities available to them, including providing specific input to the Committee on the documents and processes outlined in this report, and contributing to the broader process of treaty body reform. Civil society's unique insights and analysis of these issues are particularly important in the context of the newly-instituted UPR process, whose first few sessions took place earlier this year. In particular, an evaluation and analysis of the effectiveness of this new process, and its complementarity with the work of the treaty bodies is needed.

The next session of the Committee will take place in Geneva from 7-25 July 2008. It will examine State reports from France, San Marino, Ireland, United Kingdom of Great Britain and Northern Ireland. Its Task Force will examine: Denmark, Sweden, Spain and Monaco.

*Last revised and updated: 9 June 2008.*

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<sup>12</sup> Belarus advised it intends to abolish the death penalty, but refused to accept the Committee's views in relation to a violation of article 7. The Committee agreed with the Special Rapporteur's conclusion that further attempts at dialogue would 'serve no useful purpose'.

<sup>13</sup> The Committee agreed that the State party's response is satisfactory in terms of its follow-up on the Committee's views, which has included recognition of Sankara's grave site, the declaration of Sankara as a national hero, the erection of a monument in his honour and the offer of financial compensation to his family. It noted that the Committee's views did not include the need to open an inquiry, and it cannot now revisit its views to request an inquiry to accommodate the wishes of the victim's family.

<sup>14</sup> The Committee accepted that the legislative reform to legalise therapeutic abortion in relation to the very particular medical condition the author suffered provided an adequate remedy. The Committee agreed it cannot continue the dialogue with the State party to achieve systemic legal reforms that it did not raise in its initial views.

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## **ABOUT THE PUBLICATION**

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