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**EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS:
TREATY BODIES**

**Note by the Office of the United Nations High Commissioner for
Human Rights***

Summary

In its resolution 2004/78, on effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights, the Commission on Human Rights requested the Secretary-General to report at its sixty-second session on measures taken to implement that resolution and obstacles to its implementation, and on measures taken including efforts of the treaty bodies to integrate a gender perspective throughout their work. The present report is submitted pursuant to that request.

* This document is submitted late so as to include the most up-to-date information possible.

Introduction

1. In its resolution 2004/78, the Commission on Human Rights requested the Secretary-General to report to the Commission at its sixty-second session on measures taken to implement that resolution and obstacles to its implementation, including efforts of the treaty bodies to integrate a gender perspective throughout their work.

Developments in the human rights treaty body system, including harmonization of working methods

2. Since the adoption of resolution 2004/78, there have been a number of developments in the human rights treaty body system, including in relation to harmonization of working methods.

3. The current working methods of the human rights treaty bodies relating to the reporting process are compiled in the comparative report on the working methods of all committees presented to the fourth inter-committee meeting and seventeenth meeting of human rights chairpersons (HRI/MC/2005/4). This report, which will be regularly updated, provides information on current reporting guidelines, including page limits, periodicity of reporting, lists of issues and questions, pre-sessional working groups and country task forces, the conduct of constructive dialogue with States parties, the role of the country rapporteur, postponement of the consideration of reports and consideration of reports in the absence of a delegation. The report also includes information on the adoption of concluding observations, and follow-up to concluding observations, strategies to encourage reporting by States parties, including consideration of implementation in the absence of a report, the participation of United Nations agencies, funds and programmes, non-governmental organizations (NGOs), national human rights institutions, interaction of treaty bodies with special procedures of the Commission on Human Rights and other activities related to the reporting process, including the process for the formulation of general comments, days of discussion organized by treaty bodies, country visits and committee statements.

4. Developments in the working methods of treaty bodies since the compilation of that report include the decision of the Committee on the Rights of the Child adopted at its thirty-ninth session, held from 16 May to 3 June 2005 on the modalities of consideration of reports submitted under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. The decision provides that reports on implementation of the Optional Protocols received at approximately the same time as a regular periodic report on the implementation of the Convention will be considered at the session at which this regular periodic report will be examined. Additional separate time will be scheduled for this examination if the State is a party to both Protocols and has submitted both initial reports at approximately the same time. The decision encourages States parties to both Optional Protocols to submit their initial reports, whenever possible, and preferably not later, than the date on which the initial report is due for the Optional Protocol ratified earlier. Where the State is party to the Optional Protocol on the involvement of children in armed conflict only, the initial report on implementation of this Protocol will be considered at a Committee session in cases where the State party concerned is facing or has recently faced serious difficulties in respecting and implementing the Protocol. Other States parties will be offered the choice of a written technical review of implementation, or review, including dialogue with the Committee,

during a session. Where the State is party to the Optional Protocol on the sale of children, child prostitution and child pornography, its initial report on the implementation of this Protocol will be considered at a session of the Committee.

5. During its thirty-third session held from 5 to 22 July 2005, the Committee on the Elimination of Discrimination against Women established country task forces to facilitate the consideration of the periodic reports of two States parties, and decided that country task forces, whose working modalities should be flexible, would be established for the examination of the reports of up to four States parties at the thirty-fourth session (16 January to 3 February). A working group on rationalization of lists of issues addressed to States parties was established by the Human Rights Committee at its eighty-fifth session held from 17 October to 3 November 2005, while the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted a list of issues and questions with respect to the first initial report presented by a State party at its third session held from 12 to 16 December 2005. The Committee on the Rights of the Child decided to formulate lists of issues and questions on reports submitted by States parties in compliance with the Optional Protocol on the involvement of children in armed conflict and the sale of children, child pornography and child prostitution. Also during its eighty-fifth session, the Human Rights Committee decided to conduct its agenda item on follow-up to concluding observations in public.

6. At its thirty-fourth session held from 2 to 21 May 2005, the Committee against Torture adopted revised guidelines on initial reports (A/60/44) and at its thirty-fifth session held from 7 to 25 November 2005 decided to hold two sessions of three weeks in 2006, rather than convening a working group prior to its usual session of two weeks in order to address the backlog of reports and communications awaiting review. The Committee also decided to harmonize the format of its concluding observations with those of other treaty bodies.

7. Committees have continued the practice of meeting informally with States parties to discuss working methods and other matters of mutual interest, while a meeting with States parties is part of the agenda of the annual meeting of chairpersons of human rights treaty bodies. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families met with States parties during its second session held from 25 to 29 April 2005, and the Committee against Torture met with States parties during its thirty-fourth session in May 2005. The Committee on the Rights of the Child will convene its third meeting with States parties during its forty-first session which will meet from 9 to 27 January 2006.

8. Committees have also developed their working relationships with national human rights institutions (NHRIs) during the reporting period. The fourth inter-committee meeting met with representatives of NHRIs, and the meeting recommended that treaty bodies should continue to engage with national human rights institutions, that the fifth inter-committee should consider developing harmonized criteria for the participation of NHRIs in treaty body sessions and requested that OHCHR prepare a compilation of existing practice of treaty bodies with respect to NHRIs. The Committee on the Elimination of Racial Discrimination has allowed NHRIs to address the Committee during plenary on two occasions during the reporting period, while the Committee on the Elimination of Discrimination against Women received information from an NHRI for the first time during its thirty-third session, during a separate segment during its informal meeting with non-governmental institutions. The Committee intends to develop

modalities for interaction with NHRIs, in coordination with other human rights treaty bodies (A/60/38, para. 426). Similarly, the Committee against Torture met informally with representatives of a NHRI in a separate segment during its thirty-fifth session.

9. Several of the Committees provide guidance to States parties on the length of the reports, and the Committee on the Elimination of Discrimination against Women has also established a limit of 25 to 30 pages for responses to lists of issues and questions. In this connection, the secretariat of the Office of the High Commissioner for Human Rights has circulated notes verbales on the presentation and formatting of reports submitted by States parties to human rights treaty bodies. Notes circulated in 2003 and 2004, recommended that States ensure that their reports are edited before submission and that they are limited to 120 pages for initial reports, and 80 pages for periodic reports. A note circulated on 15 August 2005, provides further information on technical details that should be addressed in order to facilitate the processing and translation of reports.

General comments and general recommendations

10. The Committees have continued to formulate general comments/recommendations on individual articles of the treaties or themes addressed in their work. General comments/recommendations adopted by the treaty bodies up to June 2005, are compiled in HRI/GEN/1/Rev.7 and Add.1. At its sixty-seventh session, held from 2 to 19 August 2005, the Committee on the Elimination of Racial Discrimination adopted general recommendation No. 31 (2005) on the Prevention of racial discrimination in the administration and functioning of the criminal justice system. At its thirty-fifth session, held from 7 to 25 November, 2005, the Committee on Economic, Social and Cultural Rights adopted general comment No. 17 (2005) on the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (article 15, paragraph 1 (c) of the International Covenant on Economic, Social and Cultural Rights), and general comment No. 18 (2005) on the right to work (article 6 of the Covenant). At its thirty-ninth session, held from 17 May to 3 June 2005, and its fortieth session, held from 12 to 30 September 2005, the Committee on the Rights of the Child adopted general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin and general comment No. 7 (2005) on implementing child rights in early childhood (CRC/GC/2005/6 and CRC/C/GC/7).

Individual complaints procedures

11. In order to address the backlog of communications awaiting review, during its eighty-fourth session held from 11 to 29 July 2005, the Human Rights Committee included rule 93, paragraph 3, in its rules of procedure which provides that “[A] working group established under rule 95, paragraph 1, of these rules of procedure may decide to declare a communication inadmissible, when it is composed of at least five members and all members so agree. The decision will be transmitted to the Committee plenary, which may confirm it and adopt it without further discussion. If any Committee member requests a plenary discussion, the plenary will examine the communication and take a decision”. The experience of the Committee with the new working methods and enhanced powers of the working group during its eighty-fourth and eighty-fifth sessions was positive, with very few decisions on inadmissibility adopted by the working group requiring formal discussion by the Committee as a whole.

12. At its sixty-seventh session held from 2 to 19 August 2005, the Committee on the Elimination of Racial Discrimination added two paragraphs to rule 95 of its rules of procedure which provide that “the Committee may designate one or several special rapporteurs for follow-up on opinions adopted by the Committee under article 14, paragraph 7 of the Convention, for the purpose of ascertaining the measures taken by States parties in the light of the Committee’s suggestions and recommendations. The special rapporteur(s) may establish such contacts and take such action as is appropriate for the proper discharge of the follow-up mandate. The rapporteur(s) will make such recommendations for further action by the Committee as may be necessary; he or she will report to the Committee on follow-up activities as required, and the Committee shall include information on follow-up activities in its annual report”.

Streamlining reporting procedures

13. Treaty bodies have continued to devote significant attention to streamlining reporting procedures. At the request of the second inter-committee meeting and the fifteenth meeting of chairpersons of human rights treaty bodies (A/58/350), draft guidelines for an expanded core document and harmonized reporting for reporting to all treaty bodies (HRI/MC/2004/3) were prepared by the secretariat, through an open and consultative process involving treaty body members, States parties, the broader United Nations system, NGOs, national human rights institutions and others. The guidelines were presented to the third inter-committee meeting and sixteenth meeting of chairpersons, which recommended that the Chairpersons forward them, along with the report of the third inter-committee meeting, to their respective committees for discussion as a priority item of their agenda. The meetings also appointed Kamel Filali, a participant in the inter-committee meeting to facilitate consultations among the committees, and requested the OHCHR, in consultation with the Division for the Advancement of Women, to revise the draft guidelines, taking into account comments and suggestions made by each committee, and States parties, NGOs, national human rights institutions for the consideration of the fourth inter-committee meeting in June 2005. The meetings also agreed that any States parties wishing to prepare reports in accordance with the draft guidelines should be entitled to do so, and encouraged such States to seek technical assistance from OHCHR and the Division for the Advancement of Women in this regard (A/59/254).

14. Revised draft reporting guidelines were presented to the fourth inter-committee meeting and the seventeenth meeting of chairpersons of human rights treaty bodies, which met in Geneva from 20 to 22 and 23 to 24 June 2005, respectively. The meetings requested that the secretariat provide an analysis of the extent to which States parties comply with the existing reporting guidelines relating to reports and called for the establishment of a technical working group composed of a member designated by each committee to finalize the guidelines for adoption by each committee (A/60/278). The first meeting of the technical working group met in Geneva on 8 and 9 December 2005, and will meet again from 15 to 17 February 2006 to finalize their work.

15. Pursuant to the recommendation of the third inter-committee meeting and the sixteenth meeting of chairpersons of human rights treaty bodies, several States parties have opted to prepare their reports in accordance with the draft guidelines. The Government of Afghanistan has embarked on a programme of systematic reporting on the implementation of the six treaties to which Afghanistan is a party, in cooperation with the Afghan Independent Human Rights

Commission, and the support of United Nations Assistance Mission in Afghanistan and United Nations Development Programme (UNDP) which is currently recruiting a technical adviser on reporting to be seconded to the Ministry for Foreign Affairs. The Government of Angola has discussed possible support for the preparation of reports in accordance with the guidelines with the human rights section of the Technical Unit within the Office of the Resident Humanitarian Coordinator in Luanda, while the Government of Timor-Leste has established a reporting team in its Foreign Ministry to prepare the reports on implementation of the seven human rights treaties to which it is a party in accordance with the guidelines. The team is supported by an international technical adviser on reporting and by the Human Rights Unit of the United Nations Office in Timor-Leste, with further support being provided by the United Nations Country Team. Focal points have been appointed in each ministry to coordinate the collection of information for the reports, and an inter-ministerial drafting committee will coordinate the writing and submission of reports. The United Nations Interim Administration Mission in Kosovo has also indicated that it will submit an expanded core document and treaty specific reports to the Human Rights Committee and the Committee on Economic, Social and Cultural Rights.

Plan of Action of the High Commissioner

16. In her Plan of Action submitted to the Secretary-General as called for in his report, “In larger freedom: towards development, security and human rights for all” (A/59/2005), the High Commissioner identifies the United Nations human rights treaty system as one of the Organization’s great achievements, which have had direct impact on national law and policy and the lives of individuals (A/59/2005/Add.3, paras. 95-100). However, she indicates that the problems with the current system are well-documented, and that inefficiencies in the system will worsen if, as is hoped, universal ratification is achieved. She notes that finalization and implementation of the draft harmonized guidelines on reporting will allow the treaty bodies to begin to function as a unified system. In the longer term, however, she indicates that some means must be found to consolidate the work of the seven treaty bodies and to create a unified standing treaty body, and that she intends to submit options of treaty body reform for consideration at an intergovernmental meeting to be held in 2006. The High Commissioner also proposes that consideration be given to transferring responsibility for supporting the Committee on the Elimination of Discrimination against Women to OHCHR, in order to ensure a holistic approach, as well as jurisprudential coherence.

17. As outlined by the High Commissioner in her statement to the fourth inter-committee meeting, OHCHR is currently finalizing a concept paper on her ideas, which will be circulated to treaty bodies, States parties, United Nations system partners, NGOs and others for comments. The High Commissioner has written to the chairpersons of all human rights treaty bodies inviting their committees to submit views on the proposed unified treaty body, and she has met with several committees to discuss her ideas. The Office of the High Commissioner hosted a five-week online dialogue on treaty body reform, which concluded on 6 December 2005, and which attracted almost 100 submissions.

Dissemination of the work of treaty bodies

18. During the reporting period, OHCHR published a fact sheet on the United Nations Human Rights Treaty System, which provides an overview of the seven core treaties and the

treaty bodies which monitor their implementation. It also published a fact sheet on the International Convention on the Rights of All Migrant Workers and Members of Their Families, and the work of its Committee.

19. In 2004, the OHCHR regional office in Santiago published compilations of the concluding observations adopted by three treaty bodies on the reports of States parties of Latin America and the Caribbean: the concluding observations of the Human Rights Committee were published with the support of the Centro de Derechos Humanos of the University of Santiago; those of the Committee on Economic, Social and Cultural Rights with the support of UNDP and those of the Committee on the Rights of the Child with the United Nations Children's Fund (UNICEF) regional office for Latin America and the Caribbean-TACRO, Panama. A compilation of the concluding comments of the Committee on the Elimination of Discrimination against Women was published by the OHCHR regional office in Santiago, the Division for the Advancement of Women and the Economic Commission for Latin America and the Caribbean in September 2005. Compilations of the concluding comments of the Committee against Torture and the Committee on the Elimination of Racial Discrimination are currently being finalized.

20. Several workshops on the implementation of the concluding observations of human rights treaty bodies were convened during 2004 and 2005, including a workshop on the implementation of the concluding observations of the Committee on the Rights of the Child organized with the support of UNICEF hosted by the Government of Thailand in Bangkok held from 11 to 13 November 2004, a subregional seminar on the implementation of the concluding observations of the Committee on the Rights of the Child organized with the support of UNICEF and Plan International hosted by the Government of Argentina in Buenos Aires from 28 to 30 November 2005 and a subregional workshop on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women organized in collaboration with the Division for the Advancement of Women, hosted by the Government of Egypt in Cairo from 19 to 22 December 2005.

Resources for treaty bodies

21. During the reporting period, additional resources were provided to the Committee on the Rights of the Child pursuant to the approval by the General Assembly of its decision to work in two chambers, as an exceptional and temporary measure, for a period of two years in order to clear the backlog of reports awaiting consideration (General Assembly resolution 59/261, para. 9; A/C.5/59/22). Additional resources were also provided to the Committee on the Elimination of Discrimination against Women pursuant to the authorization by the General Assembly of its request to hold three annual sessions of three weeks each, with a one-week pre-session working group for each session, effective from January 2006 as a temporary measure, its continued authorization of two annual sessions of the Working Group on Communications under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, as well as its authorization of the Committee's request to meet in 2006 and 2007 for up to seven days in parallel working groups for three sessions, for the purpose of considering the reports of States parties submitted under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women (A/C.3/60/L.17; A/C.5/60/L.22).

22. In addition to existing posts, seven professional and one general service post were requested in the OHCHR 2006-2007 regular budget to support the work of treaty bodies. These will be supplemented by two professional and two general service posts supported by extrabudgetary resources.

Integration of a gender perspective in the work of the treaty bodies

23. The treaty bodies have continued to integrate a gender perspective into all their activities, including concluding observations, general comments and general recommendations and in their days of general discussion, in general focusing on the steps required to ensure women and girls enjoy the rights enshrined in the treaties, and the adverse impact legislation, policies and programmes developed without attention to a gender perspective may have on their enjoyment of rights.

24. At its thirty-fourth session held from 25 April to 13 May 2005, the Committee on Economic, Social and Cultural Rights adopted general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights. Several committees have provided input into the in-depth study of the Secretary-General on violence against women requested by the General Assembly in its resolution 58/185, which is currently being prepared by the Division for the Advancement of Women. In September 2005, the Human Rights Committee submitted a comprehensive paper on its treatment of violence against women in its concluding observations, general comments and jurisprudence, while the Committee on the Rights of the Child also provided input. The Committee on the Elimination of Racial Discrimination is currently finalizing its contribution.
