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United Nations
Proposals to Strengthen the Human Rights Treaty Bodies

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1 Introduction

Every member state of the United Nations (UN) has ratified at least one of the seven international human rights treaties, and over 81% of member states have ratified four. The "concerted effort" to ratify the treaties and their protocols, called for ten years ago, has yielded some positive results, with a 32% increase in ratifications.[1] Although no treaty has achieved universal ratification, the Convention on the Rights of the Child has been ratified by all but two member states.[2]

The committees charged with monitoring states' compliance with their treaty obligations – the ***treaty bodies*** – do so by reviewing reports submitted by states parties on implementation of the treaties, considering individual and inter-state complaints, and carrying out confidential inquiries.[3] The treaty bodies are:

- The Committee on the Elimination of Racial Discrimination, established by the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which entered into force on 4 January1969;
- The Committee on Economic, Social and Cultural Rights, established by the Economic and Social Council (ECOSOC) to monitor compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR), which entered into force on 3 January 1976;
- The Human Rights Committee, established by the International Covenant on Civil and Political Rights (ICCPR), which entered into force on 23 March 1976;
- The Committee on the Elimination of Discrimination against Women, established by the Convention on the Elimination of All Forms of Discrimination against Women (Women's Convention), which entered into force on 3 September 1981;

[1] *The Vienna Declaration and Programme of Action*, adopted in June 1993 following the World Conference on Human Rights, recommended that "a concerted effort be made" to encourage ratification of the international human rights treaties and protocols. Information about ratifications is available from the UN website, http://untreaty.un.org/ENGLISH/bible/englishinternetbible/bible.asp.
[2] These are Somalia and the United States of America.
[3] Further information about the functions of the treaty bodies is available from the AI website, see: http://www.amnesty.org/treatybodies

- The Committee against Torture, established by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which entered into force on 26 June 1987;
- The Committee on the Rights of the Child, established under the Convention on the Rights of the Child (CRC), which entered into force on 2 September 1990.
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers' Convention), which entered into force on 1 July 2003, will be supervised by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, to be elected by the end of this year.

The approach of the treaty bodies is characterized by "constructive dialogue" with states parties and by consensus between the treaty body members themselves. Their remit is defined by the terms of the treaty.

Since the appointment in 1989 of an independent expert to study possible long-term approaches to enhancing the effective operation of the treaty bodies, the subject of treaty body reform has rarely been off the UN's agenda.[4] At the time of the World Conference on Human Rights in 1993, the independent expert noted that the system was only able to function "by relying upon the continuing delinquency of states", with the treaty bodies struggling to cope with vast backlogs of reports and individual complaints, and an ever-growing number of overdue reports.[5] Today, the problem of reports waiting to be reviewed has largely been overcome, but the number of overdue reports still stands at well over 1,000. While states offer different reasons to justify their inability to present their reports on time, it is clear that many do not possess the political will to meet their reporting obligations: for some, reporting is simply not a priority.[6]

In September 2002, the Secretary-General presented a document entitled *"Strengthening of the United Nations: an agenda for further change"*, which contains two specific proposals aimed at relieving the "reporting burden" on states:

> *"First, the committees should craft a more co-ordinated approach to their activities and standardize their varied reporting requirements. Second, each state should be*

[4] The reports of the Independent Expert Professor Philip Alston, UN Doc. A/44/668, UN Doc. A/CONF.157/PC/62/Add.11/Rev.1 and UN Doc. E/CN.4/1997/74, are available on the website of the Office of the High Commissioner for Human Rights: www.unhchr.ch together with other documents relevant to recent reform discussions. See also *The Future of UN Human Rights Treaty Monitoring*, ed P Alston and J Crawford, Cambridge University Press, 2000. Other publications and articles on treaty body reform are cited elsewhere in this document.
[5] Ibid. UN Doc. A/CONF.157/PC/62/Add.11/Rev.1.
[6] *The Impact of the United Nations Human Rights Treaties on the Domestic Level*, Christof Heyns and Frans Viljoen, Kluwer Law International, 2002.

allowed to produce a single report summarizing its adherence to the full range of international human rights treaties to which it is a party".[7]

These suggestions have focused debate on reporting models and treaty body working methods, and will be the subject of further attention at the forthcoming 58th regular session of the General Assembly.

There is a consensus among the treaty bodies for a new reporting model which would require states parties to present an "expanded core" document together with a "focused" report for each relevant treaty body.[8] States are already encouraged to produce a "core" document to provide information on land and people, the general political structure, the general legal framework within which human rights are protected, and information and publicity as they relate to human rights promotion and protection.[9] The purpose of the core document, as originally conceived, was to avoid duplication by allowing states to include this general information in one document rather than several. Yet, just over half of all member states have managed to produce core documents since they were first requested in 1991. Many of these are now ten years old and few have been updated since they were first produced. This would suggest the need for renewed efforts to entice states to produce or update the core documents.

The proposal for a focused report is not a new one, having been suggested in the past by the independent expert and by the treaty body chairpersons themselves. The aim of this model is to focus the state party report on a limited range of issues, after consideration of a comprehensive initial report. The "focus" would be identified in advance, and would be based on the concluding observations of the previous review of the state party report, together with new and significant developments.[10] This model raises questions about a reporting process which, over time, could become so slim that critical issues fall off the agenda. Its success is also largely dependent on a preparatory process into which a breadth of reliable information from knowledgeable sources can flow, and on concluding observations which are comprehensive, specific, and accurately reflect the concerns expressed during the review of the state party report.

The emphasis during the current reform debate on state reporting has detracted attention from other weaknesses of the system, for example chronic under-funding. It has also

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[7] UN Doc. A/57/387, 9 September 2002.

[8] UN Doc. HRI/ICM/2003/5, *Report of the Second Inter-Committee Meeting of the Human Rights Treaty Bodies*, 27 June 2003. This records the agreement of all treaty body participants with these models.

[9] UN Doc. HRI/GEN/2/Rev.1, *Compilation of guidelines on the form and content of reports to be submitted by states parties to the international human rights treaties*, 9 May 2001.

[10] UN Doc. A/53/125*, Report of the ninth meeting of persons chairing the treaty bodies*, 25-27 February 1998. As conceived by the chairpersons "the principal criteria in determining the appropriate focus of more limited reports should include the recommendations contained in the previous concluding observations relating to the State in question, significant new measures of a legislative, judicial, administrative or policy nature adopted since the examination of the last report, and any issues identified by a pre-sessional working group as requiring a sustained focus."

obscured the many achievements of the system, such as the elaboration of general comments and the formulation of views about individual complaints, both of which have positively affected human rights protection, at the international as well as at country level. Amnesty International has contributed to the treaty system for many years, from campaigning for the elaboration of the treaties, to reporting on their implementation. This document highlights some elements which are critical to the success of the treaty system and provides recommendations for strengthening the treaty bodies.

2 Ratification and withdrawal of reservations

2.1 General legal obligations arising from ratification of human rights treaties

When a state ratifies a treaty, it undertakes to implement effectively the provisions of the treaty to ensure that the rights contained therein form part of its national legal system. The core international human rights treaties all contain a provision spelling out the obligation of the state party to ensure the rights guaranteed under the relevant treaty, some of which have been further elaborated through general comments.[11] This provision derives from the general principle of international law that state parties should implement their obligations in good faith ("pacta sunt servanda").[12]

Further, under international law, a state has clear responsibilities for human rights abuses committed by non-state actors. In the case of *Velásquez-Rodríguez v. Honduras*, the Inter-American Court of Human Rights found that the obligation to *respect* human rights implies that officials must not violate them, while the obligations to *ensure* and *fulfil* imply duties of prevention, investigation, punishment and reparation.[13] A state can be deemed responsible for human rights abuses if it has a specific connection with the non-state actor, as

[11] See General Comment No. 3 of the Committee on Economic, Social and Cultural Rights and General Recommendations I and II of the Committee on the Elimination of Racial Discrimination. See also the draft General Comment on Article 2 of the Human Rights Committee. A compilation of general comments and general recommendations adopted by the treaty bodies can be found in UN Doc. HIR/GEN/1/Rev.5/Add.1, April 2002, available from the OHCHR website.

[12] The Vienna Convention on the Law of Treaties states in Article 26 that "Every treaty in force is binding upon the parties to it and must be performed by them in good faith".

[13] The Court said that "Whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in the Convention." It also said that as a consequence of the obligation to ensure the free and full exercise of human rights "States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation", *Velásquez-Rodríguez v. Honduras*, ser. C., No. 4, 9 Hum. Rts.I.J. (1998).

well as if it fails to take reasonable steps to prevent an abuse and/or bring the perpetrators of such abuses to justice.[14]

The treaty bodies have also reflected on the obligations arising from the ratification of the human rights treaties they are mandated to monitor. In its General Comment No. 3, the Committee on Economic, Social and Cultural Rights has identified the kind of steps a state should take to achieve the full realization of the rights guaranteed in the ICESCR, including legislative measures, provision of judicial remedies and administrative, financial, educational, social and other measures. The Committee went on to state that "a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every state party".[15]

The Human Rights Committee is currently developing a general comment to Article 2 on the nature of the general legal obligation imposed on states parties to the ICCPR. Paragraphs 5 and 6 of the draft currently read:

> *"The legal obligation under article 2, paragraph 1, is both negative and positive in nature. States Parties must refrain from violation of the rights guaranteed in the Covenant, and any restrictions on those rights must be permissible under the relevant provisions of the Covenant. Where such limitations are permitted, States must in any case demonstrate their necessity and only take measures which are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the limitations be applied or invoked in a manner that would impair the essence of a Covenant right [...].*
>
> *The obligation of States Parties to ensure the rights guaranteed implies [...] the use of positive measures in order effectively to promote and protect the Covenant's guarantees in the domestic arena. Article 2 requires that States Parties act to remove all obstacles which impede the effective realization of Covenant rights and to that end should pursue legislative, judicial, administrative, educative and other appropriate measures in order to fulfil their legal obligations."* [16]

Thus, the general legal obligations arising from ratification of the international human rights treaties are both of a positive and negative nature, and include obligations to ensure the

[14] The African Commission on Human and Peoples' Rights (African Commission) has elaborated the obligations stemming from states' ratification of human rights treaties in a decision on Nigeria, where it stated: "Internationally accepted ideas of the various obligations engendered by human rights indicate that all rights - both civil and political rights and social and economic-generate at least four levels of duties for a State that undertakes to adhere to a rights regime, namely the duty to respect, protect, promote, and fulfil these rights. These obligations universally apply to all rights and entail a combination of negative and positive duties" (155/96 The Social and Economic Rights Action Center and the Center for Economic and Social Rights / Nigeria). See also Amnesty International, *Respect, Protect, Fulfil Women's Rights: State responsibility for abuses by non-state actors*, 1 September 2000 (AI Index: IOR 50/01/00).

[15] Committee on Economic, Social and Cultural Rights, General Comment No. 3.

[16] For the current draft, see UN Doc. CCPR/C/74/CRP.4/Rev.3.

promotion, protection and fulfilment of the rights guaranteed in those treaties. Three of these obligations are highlighted below.

2.1.1 Review of national legislation, institutions and practices

Before or immediately after the ratification of a treaty, the state party concerned must review domestic legislation to ensure its adherence to the provisions of human rights treaties and to incorporate human rights treaty provisions into the national legal system. The Human Rights Committee has stated that:

> *"The intention of the Covenant is that the rights contained therein should be ensured to all those under a State party's jurisdiction. To this end certain attendant requirements are likely to be necessary. Domestic laws may need to be altered properly to reflect the requirements of the Covenant; and mechanisms at the domestic level will be needed to allow the Covenant rights to be enforceable at the local level. [...] And when there is an absence of provisions to ensure that Covenant rights may be sued on in domestic courts, and, further, a failure to allow individual complaints to be brought to the Committee under the first Optional Protocol, all the essential elements of the Covenant guarantees have been removed."*[17]

A state party must also determine that state institutions adopt practices in conformity with its obligations under the treaties it has ratified. In this regard, the Inter-American Court of Human Rights has stated that "the obligation [to ensure the free and full exercise of the rights recognized by the Inter-American Convention to every person subject to its jurisdiction] implies the duty of the states parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights".[18]

Some states assert that imposing the implementation of rights, for example on the judiciary, would interfere with the independence of the judiciary, or that the judiciary does not accept that an international obligation should be transformed into a domestic legal obligation. Similarly, some federal states seek to invoke the limitations in their constitutions to justify the failure to implement treaty obligations by their national states. These arguments are contrary to international law, as provided for in Article 27 of the Vienna Convention on the Law of Treaties (the Vienna Convention), which states that a state party "may not invoke the provisions of its internal law as justification for its failure to perform a treaty".[19]

Failures of particular state organs to implement rights may be a reflection of a state's failure to communicate the content of rights in detail to the relevant branches of government, or to emphasize that these rights must be implemented as a matter of law.

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[17] Human Rights Committee General Comment No. 24.
[18] *Velásquez-Rodríguez v. Honduras*, ser. C.,No. 4, 9 Hum. Rts.I.J. (1998).
[19] On the issue of federal states, Article 50 of the ICCPR clearly states: "The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions".

States are also obliged to raise awareness among the general public of the content of the human rights treaties to which they are parties, for example through programs which inform the public of their rights and how to access remedies if these are violated or abused. States must provide training to all relevant state organs on the human rights provisions and their implementation, including educational programs for state actors, such as the police and military, and relevant professionals, such as the judiciary and lawyers.

2.1.2 Providing effective remedy

A key obligation arising from the ratification of human rights treaties is that of ensuring that individuals whose rights under the treaty are violated have access to effective and enforceable remedies. These include not only redress at judicial level, but also through administrative mechanisms.

In its General Comment No. 3 the Committee on Economic, Social and Cultural Rights states: "among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable".

Further, the aforementioned draft General Comment of the Human Rights Committee to Article 2 of the ICCPR states:

> *"Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States Parties must ensure that individuals also have accessible, effective and enforceable remedies to vindicate those rights. The Committee attaches considerable importance to States Parties' establishing appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law. [...] Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies*".

Providing effective remedies includes an obligation on states to ensure that individuals whose rights have been violated receive reparations. The scope of reparation is wider than monetary compensation alone, and should include other forms of reparations, such as restitution, rehabilitation, satisfaction and guarantees of non-repetition.[20]

2.1.3 Reporting and implementation

In ratifying international human rights treaties, states parties are bound to co-operate with international monitoring mechanisms - the treaty bodies - including by providing periodic reports on the implementation of treaty provisions. Such reports fulfil various aims: they represent an opportunity for a state to monitor and review its legislation and practices; they

[20] UN Doc. E/CN.4/2000/62, *Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law*, Final Report of the Special Rapporteur Mr. M. Cherif Bassiouni, submitted in accordance with Commission resolution 1999/33.

offer a tool for the treaty bodies to evaluate a state party's compliance with its treaty obligations; and they can encourage public scrutiny of the actions of a government.[21] The periodicity for reporting is established either by the treaty or by the treaty body's rules of procedure, and the format of reports has been guided by the treaty bodies through their reporting guidelines. Despite the obligation to provide periodic reports, at present there are 1,433 overdue reports.[22] Further, some reports which are submitted fall far short of the treaty bodies' reporting guidelines, frustrating the ensuing dialogue between the treaty body and the state party.

The process of reviewing a report culminates in the treaty bodies issuing their recommendations – the "concluding observations".[23] These constitute the collective assessment of the report and offer the government suggestions on how to effectively implement the rights enshrined in the treaty in their jurisdiction. Under the general principle of implementing treaty provisions in good faith, and in light of the fact that one of the purposes of the dialogue is for the state to receive advice on how to better implement the treaty, states parties should implement the concluding observations issued by the treaty bodies and report on the measures taken to address these in subsequent reports.[24]

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[21] See Committee on Economic, Social and Cultural Rights, General Comment No. 1.

[22] Figures taken from the OHCHR Treaty Body Database: http://www.unhchr.ch/tbs/Doc..nsf/RepStatfrset?OpenFrameSet , as of 31 July 2003.

[23] For the purposes of this document, the phrase "concluding observations" includes the terms "concluding recommendations" and "concluding comments", also used by the treaty bodies.

[24] The good faith principle also extends to treaty body requests for interim measures and decisions taken in the framework of the individual complaints procedures. The Human Rights Committee has repeatedly stated in its decisions that: "Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to Article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's views." (Sooklal v Trinidad and Tobago, Communication 928/2000). Similarly, a state is required to comply with the request for interim measures, as recently stated by the Human Rights Committee, when it "reminded the State party of its position that it amounts to a grave breach of the Optional Protocol to execute an individual whose case is pending before the Committee, in particular where a request for interim protection under rule 86 of the Committee's Rules of Procedure has been issued." See Human Rights Committee press release, 24 July 2003. Also see Piandiong et al v the Philippines, Communication 869/1999.

2.2 Withdrawal of reservations that prevent the full implementation of the rights enshrined in the treaties

Reservations have been entered to all the main international human rights treaties.[25] By 2000, states parties had entered 45 such reservations to the CAT, 83 to the ICESCR, 101 to the CERD, 132 to the Women's Convention, 181 to the ICCPR and 204 to the CRC.[26]

Reservations can be made to both procedural and substantive norms. Among the latter category are many reservations which are of a general scope, and which seriously limit the rights provided for in the human rights treaties, to an extent that make them incompatible with the object and purpose of the treaty.[27] Article 20 of the Vienna Convention provides a possibility for states parties to object to the reservations of others. Although this possibility has been taken up by some states, the fact that other states parties object to a reservation has rarely led to the withdrawal of such reservations.

Four treaties expressly prohibit reservations that are incompatible with the object and purpose of a treaty.[28] The Human Rights Committee has argued that, in its view, an unacceptable reservation is null and void and that the reserving state party will be bound to apply the treaty as if it had not entered the reservation.[29]

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[25] According to Article 2.1(d) of the Vienna Convention, reservation means a unilateral statement, however phrased or named, made by a state, whereby the state excludes or modifies the legal effect of certain provisions of the treaty in their application to that state.

[26] *The UN Human Rights Treaty System: Universality at the crossroads*, Anne F Bayefsky, Kluwer Law International, 2001.

[27] An example of a reservation which is general in nature and scope is that entered by Bahrain to the Women's Convention: "the Kingdom of Bahrain make reservations with respect to the following provisions of the Convention: Article 2, in order to ensure its implementation within the bounds of the provisions of the Islamic Shariah; - Article 9, paragraph 2; - Article 15, paragraph 4; - Article 16, in so far as it is incompatible with the provisions of the Islamic Shariah". An example of a reservation which is incompatible with the spirit of the treaty is that entered to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict by the UK, which pledged to: "take all feasible measures to ensure that members of its armed forces who have not attained the age of 18 years do not take a direct part in hostilities. The United Kingdom understands that Article 1 of the Optional Protocol would not exclude the deployment of members of its armed forces under the age of 18 to take a direct part in hostilities where: (a) there is a genuine military need to deploy their unit or ship to an area in which hostilities are taking place; and (b) by reason of the nature and urgency of the situation:-(i) it is not practicable to withdraw such persons before deployment; or (ii) to do so would undermine the operational effectiveness of their ship or unit, and thereby put at risk the successful completion of the military mission and/or the safety of other personnel."

[28] Article 20 of the CERD, Article 28 of the Women's Convention, Article 51 of the CRC and Article 91 of the Migrant Workers' Convention.

[29] "The normal consequence of an unacceptable reservation is not that the Covenant will not be in effect at all for a reserving party. Rather, such a reservation will generally be severable, in the sense that the Covenant will be operative for the reserving party without benefit of the reservation.", General Comment No. 24.

There is an on-going debate about reservations which has focussed on whether a treaty body can determine the validity of a reservation, and the effect of that determination if the reservation is deemed invalid. Although the assertion by the Human Rights Committee that it is best placed to establish the compatibility of a reservation with the object and purpose of the ICCPR caused considerable controversy, the treaty bodies have continued to comment on the compatibility of reservations and to raise questions about reservations as a matter of routine during their dialogue with states parties.[30] In addition, the current guidelines for reporting require states parties to provide information to the treaty bodies about reservations.

States have committed themselves to limiting the extent of any reservation, ensuring that none are incompatible with the object and purpose of the relevant treaty, and regularly reviewing reservations with a view to withdrawing them.[31] Strategies which encourage governments to honour this pledge should be actively pursued.

2.3 Towards universality

While much remains to be done by states parties to implement their treaty obligations, and despite the overall trend towards universal ratification, it should be recalled that there are still many states which have not ratified international human rights treaties and that the acceptance of individual complaints procedures remains low.[32] Currently there are 34 member states which have yet to ratify either of the two International Covenants and a further six which have only ratified one of the Covenants.[33]

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[30] General Comment No. 24. See also International Law Commission, *Report on the work of its fifty-fourth session*, UN Doc. A/57/10 and *Reservations to human rights treaties*, working paper submitted by Ms François Hampson pursuant to Sub-Commission decision 1998/133; UN Doc. E/CN.4/Sub.2/1999/28. The 55th session of the Sub-Commission on the Promotion and Protection of Human Rights held in August 2003, requested Ms Hampson to update the working paper and submit a final paper to its 56th session, to be held in 2004.

[31] *The Vienna Declaration and Programme of Action*. In its General Comment No.24, the Human Rights Committee stated that: "States should also ensure that the necessity for maintaining reservations is periodically reviewed, taking into account any observations and recommendations made by the Committee during examination of their reports. Reservations should be withdrawn at the earliest possible moment".

[32] As of 24 July 2003, 985 out of a maximum 1,337 ratifications of treaties had been deposited (73%) and 253 out of a possible 764 individual complaints procedures had been provided for (33%). Figures calculated on the basis of 191 member states, seven treaties and four individual complaints procedures. Under the individual complaints procedure, if a state party has recognized the competence of the treaty body to consider such complaints, any individual under its jurisdiction who claims to be a victim of a violation under the international human rights treaty may submit a complaint to the treaty body.

[33] As of 24 July 2003, 168 states have ratified the CERD; 147 the ICESCR; 149 the ICCPR; 49 the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty; 174 the Women's Convention; 133 the CAT; 192 the CRC; 54 the Optional Protocol to the CRC on the involvement of children in armed conflict; 60 the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography; 22 the Migrant Workers' Convention. As for individual complaints procedures, 43 states have made the declaration under Article 14 of the CERD; 104 have ratified the

The Office of the High Commissioner for Human Rights (OHCHR) can play a major role in stimulating efforts to achieve universal ratification by, for example, initiating a global campaign for ratification which is designed to mobilize states, civil society, intergovernmental organizations and resources. Within the UN system, OHCHR can promote the inclusion of specific targets for ratification of the international human rights treaties in the design of Common Country Assessments/UN Development Assistance Frameworks.[34]

The OHCHR technical cooperation program aims to assist countries in building capacity to promote and protect human rights, including in the area of ratification and incorporation. Technical cooperation should be offered at the point of ratification, and as part of a program to support the development of sustainable structures at the national level for effective implementation of human rights treaties. The program should be designed to nurture an organizational capacity within government which can withstand staff changes and loss of institutional memory through, for example, the provision of technological advice and support to relevant government departments so that they are able to use databases which facilitate the continual collection, collation and updating of information relevant to the state's treaty obligations.[35] Technical assistance programs for ratification should also include training for the domestic constituency which has a role to play in the treaty process as well – notably NGOs, national human rights institutions, judges/lawyers, members of parliament and the media. As technical cooperation is provided at the request of governments, it is beholden upon states parties to seek this assistance at the earliest time.

3 Resources

The impetus for the present reform discussions comes, in part, from a review undertaken by the Office of Internal Oversight Services (OIOS), the report of which was published in October 2002.[36] The human rights program of the UN has a long history of under-funding despite pledges by member states to provide adequate resources, the lack of which limits OHCHR's ability to support the work of the treaty bodies in a variety of ways. It is not simply that OHCHR are unable to recruit permanent staff in sufficient numbers to the treaty bodies team - a lack of resources also impacts on the ability of other teams to support this work, such as those providing assistance with information technology or producing publicity materials.

Optional Protocol to the ICCPR; 53 have ratified the Optional Protocol to the Women's Convention; and 53 states have made the declaration under Article 22 of the CAT.

[34] UN Doc. A/56/326. Ratification and implementation of the international human rights treaties is clearly identified by the Secretary-General in his *Roadmap towards the implementation of the Millennium Declaration.*

[35] Databases could be designed to cater for a state's other reporting obligations, such as those emanating from ratification of International Labour Organization Conventions, and under regional treaties, such as the African Charter on Human and Peoples' Rights.

[36] UN Doc. A/57/488, *Management review of the Office of the United Nations High Commissioner for Human Rights*, 21 October 2002.

These shortcomings have been brought sharply into focus by the OIOS report. At the time of the review, OHCHR's overall share of the UN regular budget had been reduced from 1.84% to 1.54%, cut from US$48 million in 1996/97 to US$39 million in 2000/01.[37] Ironically, the decrease coincided with a renewed priority accorded to human rights within the UN system, including through commitments made to the Millennium Declaration. Against this bleak budgetary landscape, a new financial reality is emerging, whereby voluntary contributions to the OHCHR now account for two-thirds of the OHCHR's budget.[38] One consequence is that, having made voluntary donations, many states prefer to earmark their contribution for specific programs and projects. This in turn has implications for the ability of OHCHR to manage core activities.[39]

Although the OIOS review identified areas where resources could be saved, it also emphasized that the divergence between capacity of and demands upon treaty body staff made the fulfilment of the treaty body team's mandate "close to impossible".[40] For example, the caseload of the team dealing with individual complaints doubled from 300 to 600 individual complaints in a two-year period and continues to increase.

By Commission on Human Rights (the Commission) resolution 2002/85, the Secretary-General is requested to report to the sixtieth session of the Commission in 2004 on "measures taken or planned to ensure financing and adequate staff and information resources for the effective operation of the human rights treaty bodies". Amnesty International believes that attempts to guarantee the effective functioning of the treaty bodies will be thwarted unless member states significantly increase their regular funding to the OHCHR.

4 Appointment of treaty body members

The quality of membership of the treaty bodies can be critical to the performance and perception of their work, and is determined by the states parties who nominate and elect the experts.[41] Despite a recommendation from the treaty body chairpersons calling on states

[37] The regular budget of the OHCHR increased by 0.1% for the biennium 2002/03.

[38] See *OHCHR Annual Report 2002: implementation of activities and use of funds*. In 2002, voluntary contributions accounted for 66% of activities with expenditure at US$42.8 million as compared to US$22.1 million from regular contributions.

[39] The top ten pledges for voluntary contributions in 2002, in descending order and in US dollars, were as follows: USA - $7,500,000; UK - $4,994,086 (the final amount received was $7,049,440); European Commission - $4,434,965 (the final amount received was $1,578,913); Norway - $4,123,738; Sweden - $2,539,559; Denmark - $2,070,388 (the final amount received was $3,522,286); Ireland $1,924,551; Belgium - $1,740,124; Netherlands - $1,505,097; and Canada $1,380,714. The top ten donors account for 81% of the OHCHR voluntary contributions.

[40] A proliferation of documentation, a significant portion of which was duplicated material, was identified as one area for streamlining. This formed the basis of a proposal that OHCHR consider consolidated reporting under various treaty obligations into one report as a future option.

[41] The treaties broadly define the experts as persons of "high moral character" possessing "recognized competence in the field of human rights". In the case of the CAT and ICCPR, some experts should have "legal experience", and in relation to the CERD, "acknowledged impartiality".

parties to "[…] refrain from nominating or electing to the treaty bodies persons performing political functions or occupying positions which were not readily reconcilable with the obligations of independent experts under the given treaty", states have continued to put forward candidates who fail to meet the basic criteria of independence, impartiality and expertise.[42]

A study prepared three years ago which reviewed all the curricula vitae of individuals both nominated and elected to treaty bodies over the history of the treaty system found that nearly half of those elected to serve on the treaty bodies were individuals holding government positions.[43] The chairpersons have called on members of the treaty bodies to refrain from participating in any aspect of the consideration of the reports of the states of which they are nationals, or complaints or inquiries concerning those states.[44] This goes some way to preserving independence and impartiality during treaty body meetings. Still, the apparent ease with which some members slip between their functions as treaty body member and government official was starkly demonstrated in 2002, when one member of the Committee on the Elimination of Discrimination against Women headed her government's delegation, presenting the state periodic report, to both the Human Rights Committee and the Committee against Torture. This is an unusual case, but one which nevertheless illustrates the principle that it is not possible for an individual holding a government position to act, or be seen to act, concurrently as an independent member of a body which is itself holding governments to account for their actions.

States parties are to consider geographical balance in the composition of treaty bodies when electing candidates. The General Assembly has adopted resolutions calling for equitable geographical distribution through the establishment of quota systems, such as the system already in use by states parties to the CESCR, and has provided a formula for achieving the balance.[45] Diversity is both desirable and necessary, not least because international treaty bodies should represent different traditions, cultures and legal systems, and work in different languages.

States are also to consider a gender balance of members when nominating treaty body members.[46] So far there has been scant evidence that states have tried to redress the glaring imbalances of the treaty bodies. Currently, for example, the Committee against Torture has one female member out of ten, and there are two female members of the Human Rights Committee out of a total of eighteen members. A better balance between the sexes on the

[42] UN Doc. A/52/507, *Report of Eighth Meeting of the Chairpersons*, 21 October 1997.

[43] *The UN Human Rights Treaty System: Universality at the crossroads*, Anne F Bayefsky. The study found that 51% of those nominated and 48% of those elected, had previously been employed in some capacity by their governments.

[44] UN Doc. A/52/507, *Report of the Eighth Meeting of Persons Chairing the Human Rights Treaty Bodies*, 1997.

[45] UN Doc. A/RES/56/146, 19 December 2001.

[46] For example UN Doc. A/RES/572002, *Effective implementation of international instruments on human rights", including reporting obligations under international instruments on human rights*. UN Doc. A/RES/57/180, *Improvement of the status of women in the United Nations system.*

treaty bodies could also be an essential step towards securing increased attention to gender concerns.

There are some practical steps that states parties can take to ensure that they meet their treaty obligations to appoint independent, impartial candidates with the requisite expertise. They could request OHCHR to develop criteria which clarify standards of independence and impartiality, competence, skills and expertise, against which potential candidates may be measured for suitability. Such criteria should include a proven understanding of and commitment to gender concerns, and exclude appointments of individuals in government employment. In addition, OHCHR could be asked to prepare some specific "profiles" for each treaty body, linked directly to the treaty and outlining the requirements of the membership in much greater detail, such as the types of skills and expertise necessary, and the amount of time required to perform treaty body functions.

The process of nominating treaty body members is one which is often not well publicized at the national level. Yet a transparent process with broad consultation with civil society could ensure that an effective method is devised to attract the best possible candidates, including women. States parties can advertise treaty body vacancies, based on the profiles and criteria, through their own press office, in national newspapers, and in professional and other relevant journals, and request all relevant sectors of civil society to encourage applications of qualified persons. Once nominations have been received, states should ensure that the list of applicants is also made publicly available, including information about their skills and experience. Mechanisms should be put in place whereby civil society and others can provide substantive comments and information about an applicant and their application.

In the final stages of selection, states parties should be rigorous in opposing candidates who do not fulfil the criteria of independence, impartiality and expertise in order to ensure the highest calibre of members on each treaty body. Once selected, OHCHR should post the curricula vitae of all treaty body members on its website.[47]

5 Gender

The need for increased attention to the equal status and human rights of women in human rights activities has gained prominence over the last ten years, including in the outcomes of various global conferences. In relation to the treaty bodies, for example, the World Conference on Human Rights stated that "Treaty monitoring bodies should include the status of women and the human rights of women in their deliberations and findings, making use of gender-specific data. States should be encouraged to supply information on the situation of women *de jure* and *de facto* in their reports".[48] Subsequently, and through the adoption of the

[47] The Committee on the Elimination of Discrimination against Women is the only treaty body which is not serviced by OHCHR in Geneva, but instead by the Division for the Advancement of Women (DAW) in New York. In this document, recommendations directed to OHCHR may also be relevant to the DAW.

[48] *The Vienna Declaration and Program for Action,* 1993.

Beijing Declaration and Platform for Action, states committed themselves to “include gender aspects in reporting under all other human rights conventions and instruments…to ensure the review of the human rights of women”.[49]

To achieve this aim, states must ensure that *all* materials they present to the treaty bodies - core documents, periodic reports, responses to lists of issues, and oral briefings – contain a gender dimension. Data and information should be disaggregated by sex, and the implementation of rights should be assessed with regard to whether women and men are able to benefit equally from the rights provided for under each treaty. In addition, when reporting to the Committee on the Elimination of Discrimination against Women on the implementation of the Women’s Convention, states are also obliged to report on measures taken to implement the Beijing Declaration and Platform for Action and related recommendations arising from the twenty-third special session of the General Assembly, “Women 2000: gender equality, development and peace for the twenty-first century”, held in 2000.[50]

Following a resolution adopted by the Commission on the Status of Women in 1994, the treaty bodies have also been encouraged to consider ways to integrate a gender perspective into their work.[51] While some have had made considerable progress in this regard – for example through the elaboration of general comments relevant to gender – others have done little to embrace gender mainstreaming, despite repeated requests by the political bodies to do so.[52] Recently, for example, the General Assembly called on the treaty bodies “… to monitor more effectively the human rights of women…” and reaffirmed that “…it is the responsibility of all treaty bodies to integrate a gender perspective into their work”.[53]

In 1998, the chairpersons of the treaty bodies strongly endorsed a report containing recommendations for integrating a gender perspective into their work and “called upon each of the committees to take full account of the recommendations contained in the report within the framework of their respective mandates”.[54] The report recommended that the treaty bodies review reporting guidelines and the processes for preparing lists of issues and concluding observations “to ensure that explicit attention is paid, in a systematic manner, to gender

[49] Strategic objective I.1. The Beijing Declaration and Platform for Action was adopted following the Fourth World Conference on Women, held in 1995.
[50] The reporting guidelines of the Committee on the Elimination of Discrimination against Women specifically call on states parties to the Women’s Convention to include such information in their periodic reports. See http://www.un.org/womenwatch/daw/cedaw/guidelines.PDF
[51] Commission on the Status of Women resolution 38/2, 1994.
[52] See for example the Human Rights Committee General Comment No. 28, and the Committee on Economic, Social and Cultural Rights draft general comment on the “equal rights of men and women to the enjoyment of all economic, social and cultural rights”.
[53] UN Doc. A/RES/57/202. See also UN Doc. A/RES/57/189 on “The Girl Child”, which also calls on the treaty bodies to adopt regularly and systematically a gender perspective in the implementation of their mandates and to include in their reports information on the qualitative analysis of violations of the human rights of women and girls.
[54] UN Doc. A/53/432, *Report of the persons chairing the human rights treaty bodies on their tenth meeting,* 25 September 1998.

dimensions in the consideration of states parties' reports".[55] It also recommended that, when requesting data and information with regard to the particular situation of women, this should not be limited to separate "women-specific" sections, but rather that particular rights and measures taken for their implementation "be assessed with regard to women's and men's ability to benefit from the rights, and the particular measures taken for its implementation".[56]

The following year, some treaty body members participated in a workshop on gender integration into the human rights system, organized by OHCHR, DAW and the UN Development Fund for Women (UNIFEM). This resulted in some similar recommendations, and asked the treaty bodies to ensure increased coordination on gender integration in the form of joint meetings, general comments, recommendations and through shared databases.[57] Many of these recommendations have yet to be fully implemented by all the treaty bodies.

The treaty bodies may be aided in their efforts to mainstream gender if they can better engage with organizations working on women's rights issues: understandably, such NGOs direct most energy to meetings of the Committee on the Elimination of Discrimination against Women, but their information could have wider applicability and is much needed among the other treaty bodies. Given the physical distance between the Committee on the Elimination of Discrimination against Women in New York, and the location of the other treaty bodies in Geneva, it is important that special efforts be made by OHCHR to prioritize outreach to those organizations which are otherwise focused on the Committee on the Elimination of Discrimination against Women.

6 The reporting process

The preparation of a periodic report can be a stimulus for a broad, national debate about the human rights situation in the state party concerned. A national constituency which has clearly identified its stake in the treaty system and reporting process can play a critical role before, during and after the consideration of a state party report, and ensure that the work of the treaty bodies has a lasting impact at the domestic level. Civil society, in particular national human rights institutions (NHRIs), parliamentarians, judges and lawyers and NGOs, can use the treaty system in a number of ways to further human rights promotion and protection.

Indeed, the role of independent NHRIs in promoting and ensuring the indivisibility and interdependence of all human rights has continued to receive some attention from the treaty bodies themselves.[58] NHRIs can be instrumental in recommending and facilitating ratification of treaties by the state. They can also monitor the state's fulfilment of

[55] UN Doc. HRI/MC/1998/6.
[56] Ibid.
[57] See http://www.un.org/womenwatch/daw/csw/gi-chapi-ii.pdf
[58] Commission resolution 1992/54, *Principles relating to the status of national institutions*, also known as the Paris Principles, provides guidance on the components necessary for independent and effective NHRIs. Amnesty International refers to NHRIs which have been established in accordance with the Paris Principles in this document.

international human rights treaties under domestic law, including by providing their own, independent reports on compliance with and implementation of treaties and by attending meetings of the treaty bodies. NHRIs can follow-up on concluding observations made by the treaty bodies, by using the concluding observations as the basis for a plan of action, and by galvanizing NGO activity to encourage and monitor their implementation.[59] NHRIs can provide advice to government to assess conformity with the human rights treaties, and to the general public on the treaty system and how to access international mechanisms.[60]

Although three treaty bodies have now elaborated general comments on the role of NHRIs, the full potential of the relationship between all treaty bodies and these institutions has yet to be fully exploited.[61] The treaty body chairpersons recently restated the importance of NHRIs in the reporting process, but have not gone further in articulating how their participation might be facilitated in practice.[62] Working in co-operation with the OHCHR's national human rights institutions unit, the treaty bodies could actively engage NHRIs in the reporting process, for example by alerting them to forthcoming reviews of reports and facilitating an exchange of information about implementation of the treaty at the national level, including setting aside time for NHRIs during their pre-sessional meetings. Any such mechanisms to accommodate NHRIs should be established independently of those created for NGOs.

Parliaments and their members can compliment the role of NHRIs by further encouraging governments to ratify treaties and their protocols, and by ensuring the adoption of legislation which incorporates standards contained in international human rights treaties. Members of parliament can establish mechanisms to hold a public debate on draft reports to treaty bodies and to examine the concluding observations following the review. They are also able to positively influence budgetary allocation in respect of treaty implementation.

The work of the treaty bodies can have significant impact at the national level when judges base their judgements on treaty body jurisprudence. A study of the extent to which this is occurring has been undertaken by the International Law Association, the preliminary conclusions of which have found that although the work of the treaty bodies is becoming better known, including by national courts, the use of their "output" (concluding observations, general comments and views) is still limited as far as the reasoning of national decisions is

[59] For further information, see Amnesty International, *National human rights institutions: Amnesty International's recommendations for effective protection and promotion of human rights*, October 2001 (AI Index: IOR 40/007/2001).

[60] An example of this is the publication by the Northern Ireland Human Rights Commission, published jointly with British Irish Rights Watch in March 2002, entitled *Human Wrongs, Human Rights: A guide to the human rights machinery of the United Nations*. See www.nihrc.org. The position of NHRIs is strengthened if they are mandated to monitor government implementation of international treaties and have an explicit power to follow-up with the state on recommendations and concluding observations.

[61] Committee on Economic, Social and Cultural Rights, General Comment No. 10, Committee on Elimination of Racial Discrimination General Recommendation XVII, Committee on the Rights of the Child, General Comment No.2.

[62] UN Doc. HRI/ICM/2003/5, "*Report of the second inter-committee meeting of the human rights treaty bodies*", 27 June 2003.

concerned.[63] Various suggestions are put forward to explain this, including the limited knowledge of the work of the treaty bodies by courts and lawyers, and their difficulties in accessing international materials. The OHCHR has also identified the need to generate programs of international cooperation and support for the role of the judiciary and the legal profession in the protection of human rights.[64] Joint initiatives between the OHCHR and professional legal bodies to increase awareness and disseminate treaty body jurisprudence can positively affect this situation.

While there is clearly scope for increased engagement by different sectors of civil society in the treaty system, there is also considerable room for greater efforts being made by states parties, treaty bodies and OHCHR to encourage and facilitate civil society contributions to and participation in the system. Although the following recommendations have been formulated from an NGO perspective, their applicability is in fact much wider.

6.1 Increasing awareness about the treaty bodies

At its last session, the Commission adopted a resolution which urges states to disseminate copies of the International Bill of Rights and other human rights instruments as well as reports prepared under the treaties, and "to provide training, education and information [...] on the practical ways in which national and international institutions and procedures may be utilized to ensure the effective implementation of those instruments".[65] All states should implement this resolution.

To support them in this endeavour, there are a number of measures that could be taken by the UN, including through the UN Information Centres (UNICs). Based in 77 countries, these were established in both developing and developed countries so that people all over the world would receive information about the UN. Some 41 UNICs have also created their own national websites, with information available in local languages. However, locating basic materials about the international human rights treaties is extremely difficult on these sites, if it exists at all.

The UNICs can play a vital role in bridging the awareness gap between the general public and the media on the one hand, and the treaty bodies on the other. They can promote information about treaties in relevant national and local languages, through the most appropriate media and in a format suited to the target audience(s). Where relevant, UNICs can supply UN field staff with treaty information for broad distribution, in particular in rural areas. They can also facilitate the participation of civil society in the treaty process, by proactively ensuring that documentation relating to the host country – the core document, states parties

[63] *Interim report on the impact of the work of the United Nations human rights treaty bodies on national courts and tribunals,* International Law Association, New Delhi Conference (2002), Committee on International Human Rights Law and Practice.
[64] UN Doc. E/CN.4/2003/14, *Report of the United Nations High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights*, 26 February 2003.
[65] Commission resolution 2003/62, *Development of public information activities in the field of human rights, including the World Public Information campaign on human rights,* April 2003.

reports, summary records, views on individual complaints, concluding observations – is readily available and accessible. UNICs can also give maximum publicity to forthcoming considerations of a state party report, including through national and local media. To carry out these tasks, UNICs will need support from OHCHR, which is responsible for publishing a range of materials on the treaty bodies, including fact sheets, training and educational material, special issue papers, reference and promotional materials.

The OHCHR also maintains a website which contains treaty body information and provides access to a database of country- and treaty-specific information. The OHCHR webpage promoting the work of the Committee on the Rights of the Child is a good model for dedicated webpages which could be established in the future for each treaty body. The development of individual treaty body webpages could make information about the treaty bodies for those who are less familiar with the treaty system easier to understand and to navigate. The webpages should include documentation relevant to states parties, rules of procedure, reporting guidelines and methods of work. The treaty bodies could use a dedicated webpage to give guidance to NGOs on how to prepare their briefings, when and how briefings should be submitted to the OHCHR, including language preferences, and other relevant information about NGO participation in pre-sessional meetings and attendance at the public review of states parties' reports.

The OHCHR should consider broadcasting live on the web the public sessions of the treaty bodies as a measure to increase awareness of the treaty bodies' work and to enable NGOs to monitor debates without having to be physically present at the UN. OHCHR should also continue to explore effective ways of informing international and national media about the treaty bodies, through tools such as public service announcements and the provision of "packages" which enhance press releases of treaty body meetings with photographs or short video/audio clips.

6.2 Scheduling of reports

The order in which reports are scheduled varies between the treaty bodies, some giving consideration to geographical balance, others according to the chronological order in which reports are received. Many NGOs are reliant on OHCHR for information about forthcoming reviews of their government's periodic reports, yet OHCHR is usually only able to provide this information for two sessions in advance.[66] Due to the frequency of meetings of some treaty bodies, this can pose an immediate practical difficulty for NGOs because it does not provide much notice for planning and carrying out activities, including preparing briefings, lobbying parliament to encourage an open debate on the contents of the government report, and organizing campaigns and media events. As pre-sessional meetings are usually scheduled

[66] Currently, the advance notice provided by the treaty bodies is: Committee on the Rights of the Child – 5 sessions in advance; Committee on Economic, Social and Cultural Rights – 2/3 sessions in advance; Human Rights Committee – 3 sessions in advance; Committee against Torture – 2 sessions in advance; Committee on the Elimination of Racial Discrimination and the Committee on Elimination of Discrimination against Women – 1 session in advance.

for the session before a state party report is considered, it also has direct consequences for the extent to which NGOs are able to contribute information early on in the process.

Normally, treaty bodies do not schedule a review until they have received a report, but this practice is waived when states are considered in the *absence* of a report. There is no reason for treaty bodies to wait until they have a physical report in their hands before scheduling reports, and this could be done either on the basis of periodicity or the deadline established in concluding observations. A centralized, electronic schedule which could be easily updated by all treaty bodies could be the basis for ensuring advance, public notice of reports being considered. This will help NGOs in planning their activities and briefings.

6.3 Attendance at meetings

It is established practice for the treaty bodies to engage with NGOs in the course of the reporting process, although these relationships have evolved disparately and remain uneven. For example, the Committee on the Rights of the Child works closely with the NGO Group for the Convention on the Rights of the Child, which supports the participation of NGOs, particularly national coalitions, in the reporting process.[67] The Committee on Economic, Social and Cultural Rights has ensured that NGOs have an opportunity to present it with oral briefings by writing this provision into its rules of procedure.[68] Relations between other treaty bodies and NGOs have evolved in a more *ad hoc* manner. For example, the Committee against Torture has preferred to hear NGO presentations during times outside of its formal meetings, an approach which is not entirely satisfactory: the meetings do not benefit from UN translation services and there is a risk that treaty body members may not attend the briefings because they fall within their "free" time. Even though the Committee against Torture has recently decided to organize pre-sessional meetings, it is so far reserving these for the consideration of individual complaints.

Pre-sessional meetings are important forums for NGOs because it is at these meetings when the treaty bodies formulate their "list of issues" - the questions that are directed to the state party, asking for information on specific areas and indicating the key concerns likely to be raised during the dialogue.[69] For NGOs wanting to ensure that their concerns are reflected in the process of reviewing the state party report, it is imperative that their information is available at the time of pre-sessional meetings. The establishment of formalized procedures which provide for NGOs presenting their information to the treaty bodies may entice a greater number and broader selection of NGOs to make the investment of their time, expertise and resources in the reporting process.

Particularly in the absence of live webcasts, NGO attendance at the public consideration of a state party report can be crucial. NGOs are well placed to understand the nuances of a government's response to a question, to identify pertinent gaps in the dialogue,

[67] See http://www.crin.org/NGOGroupforCRC
[68] UN Doc. HRI/GEN/3/Rev.1, rule 69(1).
[69] The Committee on the Elimination of Racial Discrimination is the only treaty body which does not prepare lists of issues.

and to gauge how receptive the government is to the recommendations of the treaty body. These elements are not immediately clear from reading press statements or summary records, and can be important to continuing efforts at the national level.

However, while participation is important, the value of NGO contributions is ultimately measured by the use made of these by the treaty bodies. It can be apparent from the dialogue that treaty body members have not read the materials provided to them. The treaty body members sometimes struggle to properly review NGO briefings which arrive late in the process, are very long or written in languages they do not understand. A solution to this predicament would be the adoption of common guidelines for the presentation of NGO contributions, both oral and written. The treaty bodies could develop guidelines on the basis of consultations with both national and international NGOs, and in light of best practice.

6.4 Considering a state party without a report

Increasingly, and as a means of encouraging the submission of long overdue reports, the treaty bodies are following a practice already in regular use by two treaty bodies, the Committee on the Elimination of Racial Discrimination and the Human Rights Committee: considering the situation in a state without a report and, in some instances, without a state party representative either. There have also been some instances where a state party, faced with the prospect of having their country's human rights record scrutinized without a report, have opted to produce one within a very short time. This indicates that the approach is having some positive results.

Yet, the practice has also raised some concerns. Under its rules of procedure and as expressed in General Comment No. 30, the Human Rights Committee is unable to review the situation in a state party, in the absence of either a report or a government representative, in *public.* As a consequence, it is not able to make the concluding observations arising from that consideration public either.[70] This reduces a key aspect of the reporting process – a public dialogue – to a private meeting between treaty body members.

There is a further risk with an approach which is not based on a state party report or a dialogue with government representatives. In some states parties, information from NGOs, media, national human rights institutions and the UN is severely limited. Further, unless there are proactive efforts to secure information from civil society, it might not be forthcoming at all. Both scenarios could have negative consequences for the quality of the treaty bodies' work, including the resultant concluding observations.

The problem posed by states parties who continue to avoid scrutiny by the treaty bodies through a continued failure to produce reports is not easy to solve. An approach which is used by the International Labour Organization to deal with similar situations and which

[70] Gambia was scheduled for consideration during the 75th session of the Human Rights Committee in July 2002. See Amnesty International press release; *Gambia: missed opportunity to promote human rights*; AI Index: AFR 27/002/2002. The concluding observations from that meeting have yet to be made public.

could be imported by the treaty bodies would be for the chairpersons to use some time during their annual meeting to meet with representatives of states parties of particular concern to identify impediments to reporting as well as technical assistance needs if appropriate, and agree a date for the submission and review of a periodic report. This would complement the current practice of listing delinquent states in the treaty bodies' reports the General Assembly each year, the impact of which is unclear.

6.5 Improving concluding observations

The review of a state party report culminates in the formulation of concluding observations, the final outcome of the reporting process. As the benchmark for measuring present compliance and future progress, concluding observations are critical for the state party, for civil society as well as different UN actors seeking to integrate them into country-based initiatives. Concluding observations must therefore accurately identify the failures of the state to comply with the treaty and, on that basis, contain specific and realistic recommendations to improve implementation.

The quality of the concluding observations varies between treaty bodies. A recurring criticism of the concluding observations is that they are too general, identifying in broad terms areas of concern without then linking these to specific legislative or administrative measures to be taken to rectify the situation. They tend to be structured around five sections to cover an introduction, positive aspects, factors impeding implementation, principal areas of concern and recommendations, although it is not always clear why some factors have been classified in one section as opposed to another.

The concluding observations need to identify the shortfall between implementation and the treaty itself, specifying the action the state is to take to act in conformity with the treaty, making detailed suggestions as to how this might be done, and establishing a time-frame to do so. Thus, the current format could be restructured according to a proposal already made, so that concluding observations are written to reflect clearly (a) the legal basis for the recommendation, specifically stating whether the state party is in breach of its obligations (b) the policy recommendation that flows from this analysis (c) any technical assistance that the state party should request in order to fulfil its obligations, and (d) a time-frame for the implementation of priority recommendations.[71]

The role of the OHCHR in assisting treaty body members in this task is critical, and particularly for ensuring that the concluding observations can be used as a tool for other UN partners. Provision should be made so that treaty body staff at OHCHR are able to carry out this function.

Concluding observations which are clear, specific, comprehensive and time-bound can form the basis of future action by civil society, including NGOs, and especially if they are

[71] "Reform of the United Nations Human Rights Treaty Body System Seen from the Developing Country Perspective", Institute for Human Rights, Åbo Akademi University, Heli Niemi and Martin Scheinin, June 2002.

released immediately following the consideration of a state party report, while there is still momentum at the national level. In this regard, the development of a public list-serve, to which anyone may subscribe, is a useful initiative. States are regularly called upon to disseminate widely the concluding observations of the treaty body following a review. This standardized recommendation could be monitored by the treaty bodies by asking states to confirm within a short period of time of the examination where and how they have distributed the concluding observations.

Some NGOs form national coalitions to pool their resources and maximize efforts to encourage the government to comply with concluding observations. Indeed, some governments facilitate this by establishing formal mechanisms to devise strategies for follow-up, comprising civil society and relevant ministries/departments. However, it is not clear how NGOs can most effectively contribute to the follow-up procedures which are being developed by some of the treaty bodies. For example, the Human Rights Committee, which adopted a systematic follow-up procedure in 2001, requests states parties to report back within a specified period on measures taken to implement some priority concluding observations. On the basis of this information, the Human Rights Committee then decides what further action is required, which can include the adjustment to the scheduled date for the submission of the next report. The state responses are made available publicly. The recent Inter-Committee meeting of the treaty bodies recommended that all treaty bodies examine the possibility of introducing procedures to follow up on recommendations.[72] In doing so, consideration should be given to how NGOs can contribute to the process, so that their assessment feeds into the on-going dialogue and follow-up measures.

Concluding observations compiled by country, broken down according to the model provided above to reflect gaps in legislation and policy, and to highlight areas where technical assistance has been recommended or requested, would be a useful tool for NGOs. This information could be used to design national strategies for implementation. As the compilations could have much wider use both externally and within the UN system, for example for use in the development of Common Country Assessments/UN Development Assistance Frameworks, it would be appropriate for OHCHR to develop this tool.

7 Summary of recommendations

7.1 Recommendations for states

States which have not already done so should ratify the international human rights treaties, without entering limiting reservations. States parties which have entered reservations are urged to withdraw them.

States parties should ensure that domestic legislation and the practices of state institutions are in conformity with the provisions of the international human rights treaties to

[72] See UN Doc. HRI/ICM/2003/5, 27 June 2003.

which it is a party. To ensure that implementing legislation is as effective as possible, all ministries charged with preparation of draft legislation for consideration by parliaments should follow the example of those states which have involved civil society in the drafting of such legislation at the earliest possible stage. States parties should also commit themselves to a program of public education, in particular by providing training to all relevant state organs on the provisions of the treaties.

States parties should provide effective remedy to individuals whose rights are violated, including through reparations.

The periodic reports of states parties should meet reporting guidelines and be submitted to the treaty bodies on time. States parties should be present for the consideration of their report by the treaty body concerned.

States parties should disseminate and implement the concluding observations of the treaty bodies, and engage with the treaty bodies to follow-up on the concluding observations.

States should request technical assistance from the OHCHR and UN agencies, as appropriate, to ratify the international human rights treaties and to fulfil their general legal obligations, if they are otherwise unable to do so.

Member states should significantly increase their regular contributions to the OHCHR to ensure that the treaty bodies are able to function effectively and efficiently, and are placed on a firm, financial footing.

States parties should ensure that they nominate and elect individuals to the treaty bodies who fulfil basic criteria of independence, impartiality and expertise. This should disqualify candidates holding government positions. States parties should oppose candidates who do not meet this requirement.

Particular efforts should be made to redress the current gender imbalance on the treaty bodies.

States parties should instigate a transparent and consultative process at the national level to facilitate strong candidates coming forward to fill vacancies.

States parties should ensure that a gender perspective is integrated to all reports prepared for treaty bodies. Data and information should be disaggregated by sex, and the implementation of rights should be assessed with regard to whether women and men are able to benefit equally from the rights provided for under each treaty. Reports on implementation of the Women's Convention should include implementation of the Beijing Declaration and Platform for Action and the recommendations on this adopted by the twenty-third special session of the General Assembly.

The preparation of a report to the treaty bodies, and implementation of concluding observations, should be used by states parties as an opportunity to encourage broad, public debate.

7.2 Recommendations for treaty bodies

The treaty bodies should examine ways in which they can more effectively and routinely monitor gender aspects in their work, including throughout the reporting process. In this respect, they should implement the recommendations of the 1998 DAW study and the 1999 workshop on gender mainstreaming. In addition, the treaty bodies should give priority to encouraging NGOs working on the rights of women and of girls to provide them with information as it pertains to their mandates.

The work of the treaty bodies could be enhanced by greater engagement of civil society, including independent NHRIs. The treaty bodies should consider practical ways for encouraging the contribution and participation of NHRIs in the reporting process.

The treaty bodies should also consider practical measures for facilitating NGO contributions to and participation in the reporting process, in particular by scheduling reports in advance and, following consultations with NGOs and on the basis of best practice, adopting common guidelines for NGO contributions and participation.

As regards overdue reports, the treaty body chairpersons should consider devoting part of their annual meeting to holding discussions with representatives of states parties of special concern, to identify impediments to reporting as well as technical assistance needs if appropriate, and to agree a date for the submission and consideration of reports.

The treaty bodies should write their concluding observations to reflect clearly (a) the legal basis for the recommendation (b) the policy recommendation that flows from this analysis (c) any technical assistance that the state party should request, and (d) a time-frame for the implementation of priority recommendations. They should be supported by their secretariat in this task. Procedures for following-up to concluding observations should include requesting states parties to confirm where, when and how they have disseminated the concluding observations. Consideration should be given to how NGOs can contribute to the follow-up procedure.

7.3 Recommendations for OHCHR

OHCHR should play a major role in stimulating efforts to achieve universal ratification. Technical assistance programs for ratification should be offered at the point of ratification and designed to support the development of sustainable structures at the national level. These programs should also include training for civil society.

OHCHR should develop criteria clarifying standards of independence, impartiality, competence, skills and expertise of treaty body memers for use by states parties. The curricula vitae of all treaty body members should be posted on the OHCHR website.

The role of civil society in the treaty system should inform programs of OHCHR. For example, the technical co-operation programs of the OHCHR to support the development of NHRIs should ensure that those institutions are empowered to monitor government implementation of international treaties and follow-up of concluding observations. Similarly,

joint initiatives between the OHCHR and professional legal bodies should raise awareness about and disseminate treaty body jurisprudence.

OHCHR can support the work of UNICs in promoting information about international human rights treaties at the national level. OHCHR should develop dedicated webpages for each treaty body, which include a section providing guidance to NGOs on how to participate in the process. OHCHR should also consider webcasts for live coverage of public sessions of the treaty bodies.

Other practical tools for NGOs that OHCHR could develop include a public schedule of forthcoming reports for several sessions in advance, and an updated compilation of concluding observations by country which highlight legislative and policy gaps, and include existing recommendations and requests for technical assistance.

8 Conclusion

Time will tell whether new models for reports will in fact induce states parties to present their long-overdue reports and, if so, whether the treaty system itself can withstand the volume of reports without further, more radical solutions for reform.

In the meantime, there is much that can be done to fortify the treaty system without waiting for the outcome of the current reform discussions - states can ratify the international human rights treaties and withdraw limiting reservations, they can place the treaty bodies on a stable financial base and implement the concluding observations of the treaty bodies. Amnesty International calls for the implementation of the recommendations contained in this paper, as some immediate and practical steps towards strengthening the treaty system overall.