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**REPORT OF THE WORKING GROUP ON THE HARMONIZATION
OF WORKING METHODS OF TREATY BODIES**

Geneva, 27 to 28 November 2006

Introduction

1. The working group on the harmonization of working methods of treaty bodies which met from 27 to 28 November at the Office of the High Commissioner for Human Rights in Geneva was convened pursuant to a recommendation of the fifth inter-Committee meeting (ICM) which met from 19 to 21 June 2006. In that recommendation, the inter-Committee meeting noted the various proposals for harmonizing the working methods of the treaty bodies, including those contained in paragraph 20 of the concept paper on the High Commissioner's proposal for a unified standing treaty body. It recommended that a working group be established, consisting of seven members, one designated by each committee, to discuss those ideas and other possibilities, including the proposals put forward by the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Rights of the Child (CRC) and the Committee on the Elimination of Discrimination against Women (CEDAW) and to report to the sixth inter-Committee meeting in 2007. The following representatives of treaty bodies participated in the meeting: Ms. Hanna Beate Schöpp-Schilling, (CEDAW); Ms. Felice Gaer (Committee against Torture); Mr. Francisco Alba, (Committee on Migrant Workers); Mr. Abdelfattah Amor (HRC); Mr. Raghavan Vasudevan Pillai (CERD); Mr. Jakob Doek (CRC) and Ms. Maria Virginia Bras Gomes (Committee on Economic, Social and Cultural Rights).

2. The working group was opened by Ms. Jane Connors, Senior Human Rights Officer of the Office of the High Commissioner for Human Rights. Ms. Maria Virginia Bras Gomes was elected as chairperson/rapporteur. Ms. Louise Arbour, High Commissioner for Human Rights met with the working group on 27 November.

Treaty body proposals for harmonizing the working methods of the treaty bodies

3. Participants outlined the proposals of their respective committees adopted in light of the High Commissioner's proposal for the creation of a unified standing treaty body, and the concept paper elaborating that proposal ((HRI/MC/2006/2). Representatives of the Committees on the Elimination of Discrimination against Women (CEDAW), Elimination of Racial Discrimination (CERD), the Rights of the Child (CRC), the Human Rights Committee (HRC) and the Committee against Torture (CAT) introduced the formal positions of their respective committees in this regard.

4. CEDAW's statement, 'Towards a harmonized and integrated human rights treaty bodies system,' acknowledged the serious challenges facing treaty bodies, but indicated that the Committee was opposed to the establishment of a unified standing treaty body. It instead proposed the creation of a harmonized and integrated treaty bodies system in which all committees would retain their specificity, while the visibility, accessibility and effectiveness of the treaty bodies would be enhanced. The Committee further suggested harmonization of treaty body working methods, harmonization of rules of procedure and working methods with respect to individual communications and inquiry procedures and implementation of the guidelines on the common core document. It recommended that the chairpersons of human rights treaty bodies meet twice per year and that steps be taken to ensure an effective relationship between the treaty bodies and the Human Rights Council.

5. CERD proposed the establishment of a single body to deal with individual complaints which could complement other proposals to improve and harmonize the methods of work of the treaty bodies. It suggested that such a body would reinforce the effectiveness, coherence, visibility and accessibility of the United Nations human rights treaty body system, particularly in light of the limited acceptance by States of existing communications procedures, and the limited use of these procedures, as well as the fact that the majority of complaints originate from a small number of countries. It also noted that the proposal was particularly pertinent in light of the fact that there might be a large number of petitions in the future as the procedures become better known, and new petitions procedures are adopted and accepted. CERD considered that this proposal could be implemented without amendment of the existing treaties, and could be achieved through the formulation of an Optional Protocol to the relevant treaties, which would be procedural and imply no new substantive obligations for States.

6. CRC agreed that the current system faced challenges, but did not consider the creation of a unified standing treaty body to be the solution, emphasizing that more targeted and specific activities were required to harmonize the working methods of treaty bodies. It underlined the importance of joint activities amongst the treaty

bodies, such as joint general comments, joint discussions and joint consideration of reports. It considered that a coordinating body or management bureau of representatives of treaty bodies was required which would focus on the harmonization of working methods, including of the communications procedures, and the streamlining of reporting guidelines and the provision of guidance to encourage increased reporting by States parties, including smaller States with limited capacity. The proposal noted that the coordinating body should therefore be mandated to undertake specific action related to harmonization of working methods. CRC also considered that cooperation with the Human Rights Council was important, particularly in relation to universal periodic review.

7. The HRC was of the view that the creation of a unified standing treaty body would raise legal and political problems that could not be solved in the short- or medium-term. There was also a risk that a unified standing treaty body would not necessarily move human rights protection forward. The HRC considered that coordination among treaty bodies was critical, as was a harmonized approach. To this end, it proposed that the annual inter-Committee meeting and meeting of chairpersons (ICM/MC) be replaced by a single coordinating body composed of representatives of the various treaty bodies which would be responsible for the effective oversight of working methods, including the procedures for considering States parties' reports, general comments, individual communications and follow-up, and the approach to common issues such as reservations. The body could also address overlap and repetition in the reports of States parties, as well as in the questions posed by the various treaty bodies. The body could have a fixed agenda, relating to such matters as report scheduling and procedures for review, as well as the possibility of taking up emerging issues. The coordinating body, whose activities and impact would be evaluated after four years of operation, could also be responsible for managing the relationship between the treaty bodies and the Human Rights Council to encourage flow of information and avoid overlap and duplication.

8. CAT was of the view that in light of the challenges confronting the current treaty body system, change and reform could benefit the system, including through the introduction of new means of coordination aimed at strengthening compliance with the norms of the treaties. Its preliminary view was that a single body or several bodies mandated to monitor the implementation of the obligations established in each human rights treaty could be feasible in certain circumstances and offer certain advantages in optimal circumstances. It cautioned that any process of reform of the treaty body system should bring about improved implementation of substantive obligations and enhance, rather than weaken, the level of protection afforded to rights holders, as well as intensify, rather than dilute the level of scrutiny of implementation of obligations provided by the existing treaty bodies. It underscored the importance of safeguarding the specificity of each treaty, and that this not be diminished in any reformed body. Expressing its eagerness to promote interim and alternate improvements of the current system, CAT encouraged the exchange of ideas and experimentation, perhaps in the context of the inter-Committee meeting, beginning with individual complaints. With respect to the proposal from CERD, CAT proposed that treaty bodies with complaints competence should nominate individuals from their committees who would participate in single or joint meetings which would take up hypothetical or real communications in order to test whether there is essential

congruence in the norms to which petitioners address themselves, or if there are diverse approaches to them jurisprudentially or institutionally varying among the committees. This could alert OHCHR and States parties to the feasibility, as well as any unanticipated normative, evidentiary, administrative or procedural obstacles to be overcome before embarking on the reform proposed by CERD. CAT suggested other areas where experimentation could begin, including on the issue of interim measures and findings of fact, the adequacy of general comments as a guide to normative judgements, follow-up activities relating to concluding observations and views, and gender perspectives or other approaches that may not have been mainstreamed by the treaty bodies, bearing in mind their significance in the review of communications. CAT also emphasized the importance of enhancing the capacity of OHCHR to support the treaty bodies, and suggested that one way to test the amount of staffing and other resources required for a unified petitions body is to conduct an experimental review of communications.

9. As the newest treaty body, the CMW had limited experience, but its representative indicated that the Committee had concerns that the existing specificity of approach would be lost in the context of a unified standing treaty body. It saw a need for coordination amongst the treaty bodies, in particular with respect to the work of country rapporteurs across committees. It considered that there was a need to upgrade the inter-Committee meeting and to provide it with a broader mandate to develop concrete proposals. The representative regretted that no State party had accepted the Committee's communications competence.

10. The CESCR had not developed a formal position in response to the High Commissioner's proposal or the concept paper, regarding both as bold steps that have given rise to a far reaching discussion within and outside the treaty body system. The latter had provided a clear indication of the difficulties confronting the system and the need for further harmonization and coordination, but not standardization. The Committee considered that there was a need for treaty bodies to have a formal relationship with the Human Rights Council.

11. In the discussion of all the proposals, participants noted that all agreed that there was a necessity for harmonization and coordination, but the means of achieving these objectives were unclear and needed to be further discussed. There was also a necessity for a comprehensive review of the working methods of treaty bodies, as well as an exploration of the possibility of harmonization of the rules of procedure of treaty bodies, guidelines on reporting and the feasibility of joint general comments. The representative of CEDAW also suggested that the report on the working methods of treaty bodies compiled by the OHCHR should be carefully analyzed for potential harmonization of working methods. She noted that new issues had arisen since the adoption of the Committee's statement including the Secretary-General's decision to transfer responsibility for supporting CEDAW to OHCHR and the recommendations of the report of the Secretary-General's High-Level Panel on UN System-Wide Coherence in the Areas of Development, Humanitarian Assistance and the Environment ('Delivering as One') which needed to be taken into account.

12. A number of participants were supportive of the CRC proposal to create a body with the task of strengthening coordination and harmonization amongst the treaty bodies. Such a body could develop concrete proposals to be submitted to treaty bodies

on the process of review, including in the pre-session and with respect to follow-up. Some were of the view that such a body, which would be made up of representatives of up to two members of each of the treaty bodies and could be entitled 'the treaty bodies working methods group', could replace the ICM/CM or convene as an independent body. It was suggested that it should have a general mandate of coordination and harmonization, although this mandate could be flexible. The general view was that although this group could express opinions on substantive issues, this body's mandate should be limited to making proposals on coordination and harmonization of working methods, including report scheduling, procedures relating to consideration of reports or States parties in the absence of a report and petitions, and follow-up to these competencies. The body should have input from treaty bodies through their chairpersons and could meet several times a year, perhaps taking account of the timetable of the Human Rights Council. Some suggested that this body could have the power to make decisions with respect to working methods while others considered it should have recommendatory powers only. Continuity in membership of the body was also regarded as important, and it was suggested that each treaty body nominate two or three representatives who could serve on the body for a period of up to four years.

13. Some participants were unclear as to why the treaty bodies working methods group should replace the ICM/CM, why it could not supplement the ICM/CM, and why the functions suggested for the body could not be integrated into a reorganized ICM/CM. In this context it was noted that the weakness of the ICM/CM stemmed from the fact that it met only once a year and had a very full agenda. In addition, there was no continuity of membership and it had no decision-making power as this remained in the individual treaty bodies. The concrete example of the process leading to the acceptance of the harmonized guidelines on reporting under the international human rights treaties including guidelines for a common core document and treaty specific documents by the fifth ICM and eighteenth CM was cited as an example of a situation where representatives of the Committees had not been mandated to make decisions by their Committees. It was noted by some participants that these weaknesses could be overcome, in particular by providing the ICM/CM with decision-making power. It was suggested that a broader representation from the treaty bodies, such as three members and the chairperson, and a second meeting every year would strengthen the ICM. Some participants were also of the opinion that some harmonization and coordination activities and procedures could be undertaken by the Secretariat. It was also suggested that the treaty bodies working methods group could be an outgrowth of the current working group. In any event, it was recalled that the mandate of the current working group was to report to the ICM/CM during 2007, so if the creation of a treaty bodies working methods group were to be proposed by the current working group, it would not meet until after the ICM/CM. In respect of the guidelines, information was sought on whether treaty bodies had begun to examine their treaty specific reporting guidelines in light of the harmonized reporting guidelines as requested by these meetings, whether timeframes had been set for the completion of this process and whether a mechanism had been set up to oversee this process. Information was also requested on OHCHR's dissemination strategy for the guidelines.

14. Whether or not the treaty bodies working methods group replaced or supplemented the ICM/CM, it was necessary for its role, membership, periodicity of meetings, mandate and powers to be clearly defined, so that States parties and treaty bodies could be clear on its functions. It was also suggested that the notion of the working methods group could be agreed in principle and its tasks determined at a later stage. The working methods group could be instituted for an experimental period of four years, after which its functioning and impact could be assessed. It was also noted that the Secretariat could take on a greater role in coordination, including with regard to scheduling of the consideration of reports in light of the calendar of all the treaty bodies.

15. Concerns were expressed with regard to CERD's proposal of a unified body for complaints, particularly by the representatives of HRC and CEDAW, with the former being of the view that the proposal did not take account of the factual situation relating to complaints. Detailed statistical information provided on the existing procedures indicated that the vast majority of complaints were directed to the HRC, and the representative of the HRC suggested that were a single body for complaints to be envisaged, the HRC could be invested with competence for all complaints. It was noted that the legal obstacles confronting the creation of a unified standing treaty body were also applicable to this proposal, and that there were many politically sensitive issues relating to the proposal which could lead to parallel complaints mechanisms. The point was also made that the creation of such a body might be incompatible with the provisions of the various treaties. In this context, it was noted that CERD's suggested formulation of a procedural protocol investing competence for complaints in the proposed unified body was not straightforward, and could lead to dramatic changes thereby threatening the notion of the progressive development of international law. At the same time, the HRC recognized that harmonization of working methods in relation to communications was important, including with regard to such issues as interim measures. The treaty bodies working methods group, or a sub-group of this body, could address harmonization functions in relation to communications on procedural, but not substantive matters.

16. The representative of CEDAW noted that CEDAW had not considered the CERD proposal, but expressed her personal view that the CERD proposal did not respond to the challenges it sought to address. She suggested that the low visibility of the communications procedures resulted from lack of dissemination of information about these procedures and emphasized the responsibility of OHCHR and other actors, such as United Nations entities, national human rights institutions, and NGOs for making the system well-known and visible. She was of the view that divergent interpretations of similar provisions were not necessarily negative, and that innovation was to be welcomed. Her personal view was that if a single body for complaints were to be created, it would be too early for CEDAW in view of the small number of cases it had considered. Discussion of these cases by CEDAW had allowed the Committee to acquire a collective understanding of the rights and provisions under the Convention and of its Optional Protocol.

17. The CRC representative indicated that in his view the key to human rights protection was the strengthening of national remedies, and requested examples of divergent legal interpretation across the treaty bodies. He considered that the Petitions Team of OHCHR had a central role in the management of petitions, and suggested the

creation of a human rights petitions task force composed of representatives of the relevant treaty bodies, which could deal with routing and admissibility issues. He also saw the long-term value of the creation of a unified petitions body, with specialized chambers. He noted that the fact that communications came predominantly from countries with a high degree of human rights consciousness raised the question of how that consciousness could be created in other countries. The CESCR representative was of the opinion that divergent interpretations of similar provisions do not foster a consistent and coherent understanding of the protection and promotion of human rights. She also drew a distinction between divergent and innovative interpretation noting that the latter may result in a step forward without jeopardizing a coherent approach.

18. The representative of CAT indicated that the Committee considered consistency and avoidance of divergence in legal interpretation to be crucial. The CAT proposal of experimentation with a joint body for the consideration of complaints could test whether there was any real risk of divergence and explore the reasons for the relatively low number of communications, which might be related to forum shopping and the availability of regional procedures. Decisions on petitions provided a significant contribution to the progressive development of international law and it was essential to experiment in order to provide optimum conditions in this context. The representative of CERD expressed support for the creation of a body which could discuss the disposal of communications. He said it was important to look to the future in which there could be universal acceptance of the communications procedures relating to seven human rights treaties in which case he considered that there would be a need for a permanent body to deal with individual complaints. He recommended that a separate working group be established to consider the CERD proposal further.

19. Participants noted that there were many ideas put forward for harmonization of working methods in paragraph 20 of the concept paper, many of which were contained in the proposal by CEDAW which sought to harmonize working methods, without threatening the autonomy and specialization of the individual treaty bodies and their functions. A number of areas were highlighted as requiring further investigation. These included the possibility of cross-indexing concluding observations and general comments by theme; an examination of the relationship, if any, between treaty bodies, and the Human Rights Council and the gender architecture of the United Nations; harmonization of the rules of procedure relating to petitions and inquiries; cooperation of treaty bodies with special procedures mandate holders; cooperation of treaty bodies with national human rights institutions and non-governmental organizations; ways in which to integrate gender into the work of the human rights treaty bodies; and the preparation of focused reports.

20. There was broad support for harmonization of working methods and streamlining of reporting guidelines, as proposed in paragraph 20, but some participants doubted whether this would affect the level of ratification. It was noted that a ratification drive was required, in addition to capacity building activities. Further harmonization was necessary with respect to terminology and consolidated reporting. Most considered that convening simultaneous treaty body sessions did not encourage coordination and interaction or provide opportunities for members to observe or participate in sessions of other treaty bodies, as sessions were too loaded to

allow for members to absent themselves to attend other committees. The challenges presented to conference and translation services when treaty bodies met simultaneously was also highlighted. The idea of joint reviews or scheduling of the reports of States parties was regarded as presenting difficulties, but there was broad support for facilitation of cooperation between the country rapporteurs or members of different committees dealing with the same State party, as valuable information could be shared, and consistent concluding observations formulated. In spite of practical difficulties in arriving at consensus, joint general comments on issues of common concern to all treaty bodies could be valuable, as could joint thematic working groups. Further consideration could be given to targeted periodic reports, which could respond to specific guidelines or tailored lists of issues and concluding observations. Consideration could also be given to the adoption by treaty bodies of consistent criteria relating to when States parties were taken up in the absence of a report, as well as visits to States parties prior to the examination of their reports.

21. The working group agreed to meet again early in 2007 in order to elaborate on certain issues and to finalize its report to the inter-Committee meeting while not precluding other discussions in the future. It also put forward the following preliminary points of agreement.

Preliminary points of agreement

22. The working group saw value in the establishment of a treaty bodies task force to strengthen the coordination and harmonization of the working methods of the treaty bodies. The treaty bodies task force could have a sufficient mandate to develop detailed proposals on working methods in consultation with and for the consideration of the treaty bodies. The treaty bodies task force could replace or supplement the ICM/CM, which could also be strengthened by a broader representation and increased number of meetings and be given a certain decision making capacity.

23. The treaty bodies task force could be mandated, inter alia, to develop concrete proposals to be submitted to treaty bodies on the process of review of States parties' reports, including reporting guidelines, the procedures of the pre-session working group, lists of issues and follow-up to consideration of reports. Proposals could also relate to the procedures relating to committees taking up the situation of a State party in the absence of a report, and procedures relating to the adoption of general comments. The agenda of the task force could contain certain fixed elements, but be flexible to allow for discussion of emerging procedural issues. The task force could consider the formation of a sub-group to, in the first instance, address procedural aspects of communications, including admissibility and routing to the most appropriate committee.

24. The task force could also explore proposals for cooperation between treaty bodies and the Human Rights Council, particularly with regard to universal periodic review.

25. The treaty bodies task force could be convened on an experimental basis, composed of up to two members of each committee, who would serve for a period of two to four years. It could meet three times per year, first in the early part of the year

in order to develop a framework/agenda of concrete proposals and recommendations which could be taken back to the committees and discussed at a second meeting in April/May, followed by a third meeting in the Fall for the finalization of decisions. The task force could be implemented on an experimental basis and an evaluation of its operation and any added-value could be undertaken after four years.

26. The working group recommended the establishment of a small group to examine the substantive elements of a proposal for the creation of a unified body for communications.

27. The working group recommended that the Secretariat analyze concluding observations, general comments and views adopted in relation to communications in order to determine whether there are areas of divergence or inconsistency within or across treaty bodies.

28. The working group recommended that the Secretariat analyze the working methods of treaty bodies in relation to reporting, communications and inquiries in order to determine whether there is scope for harmonization. Particular attention could be given to practices with regard to consideration of the human rights situation in States parties in the absence of reports, follow-up procedures and activities, interim measures and follow-up to views, practices with regard to NHRIs, NGOs, UN entities, and other parts of the human rights protection framework such as special procedures mandate holders.

29. The working group recommended that OHCHR develop and implement a wide dissemination strategy with regard to the guidelines for the common core document. It called on treaty bodies to consider drawing attention to these guidelines in their concluding observations, as was done by the CESCR already in its November session through a stand-alone paragraph. It also recommended that treaty bodies review their reporting guidelines in relation to the common core document with a view to adopting streamlined harmonized guidelines in 2007 or 2008.

30. The working group further recommended that OHCHR develop and implement a dissemination strategy in relation to communications procedures.

31. The working group recommended an evaluation of actual needs for the strengthening of the human and financial resources in OHCHR dedicated to supporting human rights treaty bodies, as well as the strengthening of conference services in this context.

32. The working group recommended that OHCHR convene working groups of representatives of each treaty body to consider thematic issues of relevance to all treaty bodies, in particular integration of gender perspectives, including with respect to cooperation with existing and emerging gender architecture in the United Nations. It also recommended that OHCHR facilitate interaction among treaty body country rapporteurs dealing with the same States parties in order to optimize constructive dialogue. The working group further recommended that consideration be given to the formation of joint working groups to consider draft general comments when appropriate and further harmonization of terminology.

33. The working group recommended that it reconvene early in 2007 to discuss issues set out in paragraph 20 of the Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body (HRI/MC/2006/2) and HRI/MC/2006/4 (Report on the Working Methods of the Human Rights Treaty Bodies relating to the State Party Reporting Process) and in these preliminary recommendations, which had not been explored in sufficient depth during its first meeting.
