

TREATY BODY MONITOR

International Service for Human Rights



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HUMAN RIGHTS COMMITTEE

93RD SESSION

PRESENTATION BY THE COMMITTEE RAPPOREUR ON FOLLOW-UP

23 JULY 2008

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Presentation of report of the rapporteur on
follow-up

The report of the rapporteur for follow-up to concluding observations was presented by Sir Nigel Rodley on 23 July 2008.¹ The report details when the last report of each State was considered, information requested and when it was due, when the information was received and the action taken, recommended actions, and the date when the next report is due. There were a large number of States included in the report² and it was noted by some members of the Committee that perhaps the report should only detail those whose reports are overdue. This, it was suggested, would shorten the report and reduce the workload of the rapporteur.

The report was very detailed and laid out each country situation clearly. Of particular interest was the number of States who had been requested to provide further information who had either not replied or had provided only partial replies. This matter was discussed during the interactive dialogue. Also discussed was the more complicated situation in Kosovo as the country is not going to be functioning under the United Nations Mission in Kosovo (UNMIK) for much longer.

State situations and recommendations

Equatorial Guinea

Sir Rodley highlighted that Equatorial Guinea had failed to submit its initial report and had been considered in the absence of a report in 2003. After the Special Rapporteur met with the State Party on several occasions

¹ CCPR/C/93R.1, 15 July 2008

² Brazil (October 2009), Paraguay (October 2008), Democratic Republic of Congo (April 2009), Hong Kong (2010), Central African Republic (August 2010), United States of America (August 2010), Bosnia and Herzegovina (Nov 2010), Honduras (October 2010), Republic of Korea (Nov 2010), Ukraine (Nov 2011), Barbados (March 2011), Chile (March 2012), Madagascar (March 2011), Grenada (Dec 2008), Czech Republic (August 2011), Sudan (July 2010), Zambia (July 2011), Georgia (Nov 2011), Libyan Arab Jamahiriya (October 2010), Austria ((October 2012), Algeria (Nov 2011), Tunisia (March 2012), Botswana (March 2012), The Former Yugoslav Republic of Macedonia (April 2012), Panama (March 2012).

and provided written reminders, information from the State is still outstanding. Sir Rodley recommended that the Committee declare the State to be in breach of its obligation to cooperate with the Committee, under Part IV of the Covenant.

Grenada

Grenada has also failed to submit its initial report, due in 2005, and has been considered in the absence of a report. Sir Rodley stated that the Committee has requested the submission of the initial report and replies to the list of issues. The information and report are due in December 2008.

Gambia

Gambia was considered in the absence of a report in July 2002. Sir Rodley stipulated that no information has been received despite several reminders being sent and a request for a meeting with a representative for the State. It was recommended that the Committee declare the State to be in breach of its obligations under Part IV of the Covenant.

Many of the States listed in the report have outstanding requests for information. In these instances Sir Rodley recommended that Suriname, Sri Lanka and Mali should be informed that all additional information requested be included in their overdue periodic reports, and for these to be submitted promptly.

Sir Rodley also suggested that reminders should be sent to States which are not yet due to submit a periodic report but have not responded to requests for information. Sir Rodley recommended that these States be reviewed during the 94th³ and 95th⁴ sessions of the Committee, if the information is not provided within the timeframe allocated.

Interactive Dialogue

There was quite a lengthy dialogue as members raised concerns or offered suggestions on how the follow-up procedure operates.

In addressing Kosovo Ms Chanet noted the difficulties that could arise with reports submitted from the State, as UNMIK are due to leave and there is no clear indication of who the contact person will be in the future. Mr Lallah affirmed that the Committee should not lose sight of changing events.

Turning to Gambia and Equatorial Guinea, Ms Chanet noted that the concluding observations produced by the Committee had not been published and that the responses had been expected in 2002. She queried if the Committee should ask for another report and then consider the situation in the countries. She reiterated Sir Rodley's point that the States had already been considered in the absence of a report and that it should be made clear to the State that this will be done again. Her approach seemed to highlight a reticence in declaring the State in breach of its obligations, which appeared to echo throughout the members of the Committee. This is contrary to the recommendations of the rapporteur in his report. During the ongoing dialogue the Chair asked what modalities exist for the Committee to declare States to be in breach of their obligations.

Relating to Ms Chanet's concerns on the changing situation in Kosovo, Sir Rodley stated that during his recent meeting with UNMIK, a human rights officer not attached to UNMIK was in attendance. Although Sir Rodley stipulated the officer was not attached to UNMIK, it was not made clear under whose authority the officer was positioned. He agreed that the Committee should not lose contact with Kosovo during the

³ Yemen, Democratic Republic of Congo, Bosnia and Herzegovina, Honduras.

⁴ Namibia, Hong Kong (China), United States of America, Kosovo (Serbia), Republic of Korea, Ukraine.

transition period. In responding to her concerns of the non-cooperation of certain States, he agreed that a further request could be made for outstanding reports and then consideration done in the absence of a report if one is not provided.

Ms Majodina asked what role NHRIs and NGOs play in follow-up to concluding observations. She noted that in Germany the NHRI gives training in human rights and has conducted seminars on concluding observations to various ministries. She acknowledged that this is just one example of the role NHRIs can play in the promotion and protection of human rights within a State.

Sir Rodley was very interested in Ms Majodina's comments on NHRIs. He asked the Secretariat to check if it is mandated that the rapporteur, after one or two failed reminders, could contact the NHRI to encourage the State Party to cooperate. He stressed that this was not thoroughly thought through, but it was clear this form of contact could not be facilitated through NGOs. He did, however, stress the importance of the role of NGOs in formulating questions to responses from the State Party. Sir Rodley recommended that perhaps a working paper outlining how this process would function could be produced for the Committee and incorporated within the review of reporting guidelines

Procedural Matters

Mr Amor suggested that the detail and content of the report should be reduced. Currently the report details every request made by the Special Rapporteur for meetings and for further information to a State Party, including dates. The report also includes States whose deadline for submission of information has not yet expired. Mr Amor felt that these States should not be included in the report. Mr O'Flaherty, on the other hand, welcomed the report as it stands. He suggested that no abbreviations be made as the detailed information on each country is essential for many actors, including OHCHR, those involved in capacity-building, civil society and researchers attempting to ascertain the effectiveness of the work of the Committee. He also suggested that information provided by a State should be shared between the country rapporteur and the rapporteur on follow-up. Mr Johnson suggested that the report would offer a more detailed overview of the reporting status of all States if those who had filed on time were included in the report.

Sir Rodley noted that he wasn't overly concerned about the discussion on the content of the report. He suggested that perhaps one line per State would be sufficient to highlight essential information. He agreed that including States who have made a response would give an overall view of the status of States party to the Covenant..

Ms Chanet expressed concerns as to the number of States who send only partial responses to requests for information, or no information at all. She wondered if it would be viable for the rapporteur on follow-up to be contacted by task force members when preparing a list of issues. Following this procedure would enable the task force to have current information on the status of a State under the Covenant, thereby enabling a more current list of issues. This point was also supported by Mr Amor who believed it would be a useful approach; however Mr Lallah noted that whilst this was a good idea the major call on time that this would place on the rapporteur would be extensive. Mr O'Flaherty underlined the onerous nature of such a relationship but suggested that the reports of the rapporteur be made available to the task forces. Ms Chanet also required greater clarification as to how State Parties respond to follow up in the intervening period between the submissions of reports. Sir Rodley agreed that utilizing the follow up dimension, whilst drawing the list of issues, could be useful for the task force and requested the Secretariat to consider this.

Ms Motoc felt that links between the rapporteur on follow-up and the media should be created. She said that if the media were to have a more precise idea of what is happening in each country they would be able to communicate country situations more accurately.

In response Sir Rodley noted that more involvement with the press ‘was not a bad idea’ and was a means of broadening the issues within the press. He certainly felt that it would be a good way to disseminate information on States under follow-up review.

Mr O’Flaherty observed that the discussion that had taken place on follow-up could prove useful in the revision of reporting guidelines that are currently under way within the Committee. He felt that it was important that all stages of the process were addressed during the process.

Mr Lallah asked when the decision was to be taken on States found in violation of Article 14, which details the rights to due process and fair trial. He stated that there existed a perennial problem as to when and how States failing to fulfill their obligations were taken to task. Furthermore, recommendations had been made by the rapporteur on follow-up and the Committee should make a definitive decision now and make that decision public. Sir Rodley said it would be desirable for the Committee to adopt the report as it stands, and then for the Committee to communicate the recommendations included.

The report of the rapporteur on follow-up was adopted, with the Chair noting that obligations under Part IV of the Covenant⁵ had been addressed due to the formal adoption. Furthermore the Committee is to endorse the statements made by the rapporteur.

Last revised and updated: 10 September 2008.

⁵Part IV of the Covenant details the obligations of the Committee in enacting its duties and the acceptance by States party to the Covenant to the decisions of the Committee. Available at <http://www2.ohchr.org/english/law/ccpr.htm#part4>

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