

HUMAN RIGHTS TREATIES DIVISION

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MESSAGE FROM IBRAHIM SALAMA

Director of the Human Rights Treaties Division

WITH THE ESTABLISHMENT OF A TENTH COMMITTEE, TREATY BODIES ENTER THE DOUBLE DIGIT AGE



Ms. Kyung-wha Kang, Deputy High Commissioner, Mr. Michael O'Flaherty Vice-Chairperson of the Human Rights Committee, Ms. Silvia Pimentel, Chairperson of CEDAW, during the Treaty Body consultation in Dublin on 10 - 11 November 2011. © Mary Crook

It has been told often time that the challenges faced by the TB system are a consequence of its own success. There is no doubt, the entry into force of the Convention for the protection of all persons from enforced disappearances last December 2010 and the start of the work of the 10th treaty body now in November 2011 marks a turning point in the development of the treaty body system. This system has become increasingly complex in terms of the work undertaken and consequently also more demanding on resources.

In this regard, the work of the new Committee on Enforced Disappearances is expected to provide an example of both this complexity and the demands in resources. The Convention for the protection of all persons from enforced disappearances is unique in many aspects. In particular it provides for a unique combination of measures aimed at preventing enforced disappearances and redressing them when they do occur. In addition to reporting by States parties, and the optional communications procedure, the Committee is mandated to take urgent action in order to seek clarification of a disappeared person's whereabouts, undertake visits upon receipt of information that a State party is seriously violating the provisions of the Convention and bring widespread or systematic disappearances to the attention of the General Assembly.



Treaty Body consultation in Dublin on 10-11 November 2011. © OHCHR

This and other aspects of the work of treaty bodies are being addressed in the on-going process of consultation among stakeholders on the ways of strengthening the Treaty Body system. This process aims at reflecting how treaty bodies can be further strengthened to cope with their increasing workloads and to enhance their impact at national level. In this regard many major events occurred since the last Newsletter:

In the context of the 66th session of the General Assembly, the High Commissioner for Human Rights, Navi Pillay, delivered a statement during a treaty body strengthening event held in New York on 24 October. In her statement the High Commissioner provided an update on the strengthening of the treaty body system, called for increased resourcing that matches objective workloads and she also sought further suggestions of States parties on the outcome of this process.

On 24 and 25 October 2011, the Centre of Human Rights Education of the University of Teacher Education in Lucerne, Switzerland, hosted an academic consultation on the strengthening of the treaty body system. Participants to this forum discussed among others the monitoring functions of treaty bodies, alternatives to standard treaty body reporting procedures, and treaty body individual communications procedures.

Furthermore OHCHR facilitated on Saturday 29 October a consultation on the strengthening of the individual communications (petitions) procedures under the treaty bodies with expert from bodies having such an operational mandate. The consultation was also stimulated by NGO submissions which were provided in advance.

Two years after the first consultation in Dublin, an important meeting was held in the same city on 10 and 11 November 2011, whose main objective was to offer an opportunity to sum-up the most essential recommendations stemming so far from the previous consultations. Seven of the ten Chairpersons of treaty bodies participated along with representatives of the key consultations that took place since

the fall of 2009. Finally, over a dozen entities of the United Nations organized their own consultation on 28 November in order to look at ways to strengthen their support to all treaty bodies. It was clear to all that country level support can be potentially increased by involving more systematically the key actors that are the UN Resident Coordinators and the UN Country Teams. Such support should also be undertaken in light of the two other key human rights protection mechanisms: the Special Procedures and the Universal Periodic Review (UPR)

While not pre-empting the outcome of the treaty body strengthening process, it will never take away the crucial need for significant resources. At present, only one third of States parties comply in a timely manner with their reporting obligations and, even at this poor level of compliance, the treaty bodies are faced with serious structural difficulties to address the current workload. In 2011, an average of 250 reports was pending consideration by the treaty bodies. The relatively new Committee on the Rights of Persons with Disabilities (CRPD) experiences currently such backlog of reports that if its meeting time is not significantly increased (the GA is in the process of granting one more meeting week per year to this committee), a State submitting its report will have to wait seven to eight years before being considered! Other treaty bodies experience chronic backlogs of between two to four years, which is threatening seriously their human rights protection work and questioning their mandates.

In order to provide the treaty bodies with sufficient meeting time to undertake their work in considering State party reports efficiently and effectively, the Secretary-General has put forward two proposals in his current report to the General Assembly (A/66/344) as follows: (a) an interim biennial calendar reflecting temporary increases in meeting time, sufficient to enable the treaty bodies to eliminate the backlog of reports actually pending examination; or (b) a permanent biennial fixed calendar, which allocates meeting time according to the number of States parties and the number of reports due. It should be noted that the two options are mutually compatible.

The growth of the treaty body system has never been reflected through commensurate resources for each treaty body. Reviews of staffing or financial needs only take place in an ad hoc manner upon the adoption of a decision to request additional meeting time, or when a treaty passes a milestone for expansion. Apart from these triggering events (in which the estimated requirements are rarely fully approved), there has been no comprehensive review of the workload and resourcing of the treaty bodies. The Secretary-General requires such a review; will States agree to engage in this urgent management process?

The start of the work of the 10th human rights treaty body is evidence of the success of the system, and we are happy to see during consultations that recently took place stakeholders at various levels realise the need to match the growth the system with the equivalent provision of adequate resources. ■



M. Emmanuel Decaux, Président du Comité des Disparitions Forcées © UN
Photo/Jean-Marc Ferré

Les attentes du nouveau Comité sur les disparitions forcées

«Nous espérons tous que les Etats parties seront les premiers partenaires de la Convention et nous aideront à innover.»

Interview avec M. Emmanuel Decaux, Président du nouveau Comité des Disparitions Forcées

1. Quelles sont les répercussions de l'entrée en vigueur de la Convention internationale pour la protection de toutes les personnes contre les disparitions forcées ? Pourquoi cette Convention est-elle si importante ?

L'entrée en vigueur de la Convention, le 23 décembre 2010, a été un moment historique, mais ce n'est qu'une étape dans un long, j'allais dire un trop long, processus. Un tel événement nous fait mesurer l'écart qui existe entre le temps des Etats et le temps des individus, à commencer par celui des victimes...

La Déclaration sur la protection de toutes les personnes contre les disparitions forcées a été adoptée par l'Assemblée générale le 18 décembre 1992. Il a donc fallu 25 ans pour aboutir à l'adoption de la nouvelle Convention internationale pour la protection de toutes les personnes contre les disparitions forcées, ouverte à la signature à Paris le 6 février 2007. La complexité et l'importance du traité expliquent sans doute ces délais trop longs, mais une nouvelle volonté politique devrait permettre de passer à la vitesse supérieure. J'espère que le 5ème anniversaire de l'ouverture du traité, qui sera marqué le 6 février 2012, sera l'occasion d'une mobilisation forte, à l'initiative des Etats pionniers, comme l'Argentine et la France.

Avec l'entrée en vigueur de la Convention, nous disposons d'un instrument juridique contraignant pour les Etats parties, ce qui donne une base juridique très solide au mandat du nouveau Comité. Vous me permettez de rendre hommage à la mémoire de l'ambassadeur Bernard Kessedjian qui, en tant que représentant permanent de la France, a présidé avec brio et efficacité le groupe de travail qui a rédigé ce traité plein de virtualités et d'innovations. C'est un traité très moderne, certains disent « sophistiqué », bénéficiant de l'expérience des autres

organes conventionnels, avec des dispositions classiques, en matière de rapports ou de communications individuelles, mais aussi des pouvoirs exceptionnels. Ainsi le Comité peut demander à faire une visite d'urgence dans un Etat partie (article 33) et peut même saisir l'Assemblée Générale (article 34). Le défi pour nous est d'utiliser sciemment ces nouvelles dispositions et nous assurer que nous disposerons des moyens pratiques pour les mener à bien dans les meilleurs délais. Il faut notamment qu'un budget provisionnel soit prévu pour organiser des visites sur le terrain, en cas d'urgence, ou pour convoquer une session extraordinaire du Comité avant de saisir l'Assemblée générale. Je ne m'imagine pas qu'en cas de crise, le Comité doive attendre un an une autorisation budgétaire pour mettre en œuvre une mesure de réaction rapide.

D'un côté la Convention ne vaut que pour les Etats parties qui sont au nombre de 30, et nous espérons que les 60 signataires vont la ratifier très vite à leur tour, en acceptant les dispositions facultatives, mais aussi adapter leur droit interne aux dispositions de la Convention qui est un instrument très complet à la charnière entre droit international pénal et droit international des droits de l'homme. Au-delà de ce premier objectif, la Convention doit obtenir le plus rapidement possible une masse critique et devenir un instrument quasi-universel, conformément à sa vocation. En l'état, nous ne sommes pleinement compétents qu'à l'égard des Etats parties qui constituent un premier cercle d'Etats particulièrement engagés, qui se doivent à ce titre d'être exemplaires, et nous ne sommes compétents que pour le futur, en vertu de l'article 35. Autrement dit, la Convention a d'abord un rôle préventif, c'est une « assurance pour l'avenir », ce qui devrait rassurer les Etats et les encourager à ratifier, même s'ils n'ont pas de problèmes en matière de disparitions forcées.

D'un autre côté, pour les Etats non-parties, le Groupe de travail sur les disparitions forcées du Conseil des Droits de l'Homme reste compétent et nous comptons

travailler étroitement avec lui dans le respect de nos responsabilités respectives. L'essentiel me semble être de faire passer un message clair à toutes les parties prenantes pour renforcer la lutte contre les disparitions forcées. Nous avons un effort de pédagogie à faire, avec l'aide du secrétariat, pour rendre plus lisibles les mécanismes dont disposent les victimes, notamment en matière de « formulaires », alors que nous (le Comité et le Groupe de travail) dépendons de deux divisions distinctes du Haut-Commissariat. Au-delà des détails techniques, nos rôles à l'évidence sont complémentaires et non concurrents. Nous avons décidé, à la suite d'une première réunion conjointe très fructueuse, de nous rencontrer tous les ans pour coopérer étroitement. Nous devons être les deux branches d'une tenaille pour être efficace. Je me réjouis de l'invitation faite par l'Assemblée générale au président-rapporteur du Groupe de travail et au président du CED de venir ensemble à New York présenter un premier bilan, l'an prochain.

2. *Qu'attendez-vous des Etats parties pour la mise en œuvre des dispositions de la Convention?*

Les Etats ont une première obligation conventionnelle qui est de présenter un rapport dans un délai de deux ans après l'entrée en vigueur, la formule anglaise « within two years » est peut-être plus explicite, soit avant le 23 décembre 2012, s'agissant des premiers Etats parties. J'espère que ces Etats n'attendront pas le dernier moment, et que dès notre session de novembre 2012, nous pourrons commencer ce travail concret. Le Comité va préciser de son côté lors de sa deuxième session, en mars 2012, des directives pratiques sur la présentation des rapports. Nous souhaitons que l'exercice soit mené de la manière la plus transparente et efficace possible, en associant toutes les parties prenantes. Cela implique que le Comité dispose du temps nécessaire à ces concertations approfondies et nous avons besoin à tout le moins d'une journée de travail – sans compter les réunions informelles en marge des séances du Comité – pour chacun des rapports, ce qui veut dire 20 jours par an pour 20 rapports. Autrement dit, dès 2013, le Comité aura besoin de sessions plus longues. Il serait désastreux que pour des raisons logistiques et financières indépendantes de notre volonté, nous prenions dès le départ, du retard dans l'examen des rapports, d'autant que là aussi la Convention nous permet d'innover pour simplifier et rendre plus efficace le dialogue avec les Etats.

Au-delà de cet aspect formel mais essentiel, d'un calendrier serré, il est important que les Etats tirent toutes les conséquences de la Convention en droit interne, ce qui implique une double incrimination, soit d'« une » disparition forcée comme crime spécifique (article 4), en tant que tel, soit d'une « pratique généralisée ou systématique de la disparition forcée » comme crime contre l'humanité (article 5). Il y a également de nombreuses mesures de procédure pénale à prendre, mais aussi des mesures préventives, en matière de formation ou de contrôle, ou des dispositions relevant du

droit civil, à propos du statut des personnes disparues ou de la situation dramatique des enfants (article 25). Il faudra multiplier les séminaires, notamment dans le cadre régional, pour sensibiliser les Etats et faciliter leur travail. Le Groupe de travail avait commencé un exercice de droit comparé dans le domaine pénal, il serait utile de disposer d'une « loi-type » ou de plusieurs modèles de loi d'adaptation, selon les espaces juridiques, pour faciliter une ratification rapide mais surtout efficace.

Pour le reste, nous espérons tous que les Etats parties seront les premiers partenaires de la Convention et nous aideront à innover. La Convention vise des visites sur le terrain, en cas d'urgence, mais pourquoi ne pas imaginer - ce n'est qu'une idée personnelle - des visites sur place, dans un tout autre contexte, à l'invitation d'un Etat ? De même dans chacun des systèmes régionaux, les Etats parties devraient faciliter la coopération entre les instances régionales et le CED. Je pense bien sûr au système interaméricain qui est en pointe, avec sa propre convention de 1994 dont l'expérience sera très précieuse pour nous. Je dois dire que je vois beaucoup moins bien l'intérêt d'initiatives en cours au sein de l'Assemblée parlementaire du Conseil de l'Europe pour lancer un instrument européen, alors que les Etats européens devraient en priorité ratifier et renforcer l'instrument universel. A cet égard l'exercice mené par le Comité des ministres du Conseil de l'Europe en matière d'impunité, m'a semblé en retrait par rapport aux standards internationaux, au risque de revenir sur des acquis consignés dans notre Convention. La plus grande vigilance s'impose donc à chacun, au nom même de l'impératif de cohérence et d'efficacité du droit universel.

3. *Pouvez-vous expliquer ce qu'est le Comité des Disparitions Forcées et quelles tâches vous proposez vous d'accomplir dans les premières années de son fonctionnement ?*

Le Comité, c'est d'abord dix experts indépendants, venus de tous les horizons. Contrairement aux exigences expresses de la Convention, il n'y a qu'une femme parmi nous, notre collègue albanaise, mais nous ne pouvons que le regretter en espérant des progrès futurs vers une « répartition équilibrée entre hommes et femmes au sein du Comité » (article 26). Cela étant, j'ai été frappé par la diversité des expériences réunies et surtout l'implication personnelle forte de tous les membres au sein du Comité. Le nombre de 10 est peut-être un chiffre idéal pour développer une véritable collégialité. C'est en tout cas dans cet esprit que nos premiers travaux ont été menés à bien, avec un sens de la responsabilité collective, et un climat d'amitié entre experts venus des quatre coins du monde qui ne se connaissaient pas, mais qui sont chacun fortement engagés dans leur mission. Le moment des engagements solennels a été un temps fort, même si c'est avec beaucoup de pudeur qu'il a été vécu. J'ai proposé à mes collègues qui l'ont accepté avec chaleur qu'au début de chaque session, nous ayons une minute de silence à la



Comité des disparitions forcées. Au fond, de gauche à droite: M. Enoch Mulembe (Zambie), M. Rainer Huhle (Allemagne), M. Alvaro Garcé García y Santos (Uruguay), M. Mamadou Badio Camara (Sénégal), M. Mohammed Al-Obaidi (Irak), Ms. Suela Janina (Albanie); devant, de gauche à droite : M. Luciano Hazan (Argentine), M. Juan José López Ortega (Espagne), M. Emmanuel Decaux, (France), M. Kimio Yakushiji (Japon) © UN Photo/Jean-Marc Ferré

mémoire des victimes de disparitions forcées et des défenseurs des droits de l'homme, pour rendre une tradition de la Sous-commission des droits de l'homme. Cela montrera que notre devoir d'indépendance et d'impartialité, auquel chacun de nous est particulièrement attaché, ne se traduit pas par l'indifférence ou la neutralité. Pour reprendre une formule du Conseil des droits de l'homme visant la procédure de plainte, notre mandat doit être « *victims-oriented and conducted in a timely manner* » (§.86).

Sur le plan concret, notre premier objectif a été de mettre le Comité en ordre de marche. Cela voulait dire adopter un règlement intérieur, dès la première session, même si c'était un gros travail technique car le diable se cache dans les détails. Nous avons adopté une version provisoire qui sera bien sûr revue et adaptée en fonction de l'expérience. Mais l'essentiel était d'avoir des règles pour fonctionner efficacement et, j'insiste, rapidement, dès le premier jour. Il fallait notamment prévoir un système de veille et de réaction rapide entre nos sessions. Je souhaite consulter le plus largement possible le bureau et l'ensemble du Comité et nous avons des échanges électroniques assez fréquents, mais en même temps le processus de large concertation ne doit pas freiner la prise de décision urgente quand c'est nécessaire. C'est pourquoi nous avons désigné en notre sein un rapporteur général, avec un adjoint et un suppléant, pour qu'à tout moment, un membre du Comité soit en charge des mesures à prendre entre les sessions, dans trois domaines, la procédure d'urgence de l'article 30, les

mesures conservatoires de l'article 31 et les mesures de protection des personnes particulièrement nécessaires dans ce domaine, comme l'ont souligné les ONG. Pour des raisons de confidentialité, nous avons décidé que c'est le président qui signerait ces demandes, sans que le nom du rapporteur n'apparaisse.

Notre deuxième objectif a été de faciliter la bonne application de la Convention en envisageant des directives pratiques en matière de présentation des rapports et en préparant un « mode d'emploi » de la procédure des communications individuelles. Le règlement intérieur doit en effet trouver son prolongement dans des directives concrètes, mais aussi dans l'information et la documentation diffusées au sein des Nations Unies, notamment sur le site du Haut Commissariat. Nous avons également lancé une réflexion plus large sur l'interprétation de la Convention, qui pourra, le moment venu, déboucher sur des observations générales. Nous

bénéficiions de l'acquis du Groupe de travail, mais nous sommes chargés en propre de l'application et l'interprétation de la Convention, ce qui implique de préciser la définition des crimes visés par la Convention - en évitant la confusion avec les travaux récents sur les « *missing persons* » - ou la définition des « victimes directes ». La prise en compte des acteurs non-étatiques par la Convention, avec une formulation elliptique qui résulte d'un compromis diplomatique, devra être étudiée, tout comme la prise en compte de groupes vulnérables, comme les femmes et les enfants. Autant de piste de réflexion, à lancer dès maintenant pour susciter les contributions des parties prenantes, avant d'organiser des discussions générales. Mais à terme, le Comité devra donner une interprétation autorisée de l'ensemble des dispositions de la Convention, à la lumière de sa propre expérience en matière de rapports ou de communications.

A ce stade, je crois que nous avons bien utilisé les quatre jours de notre première session. Nous avons inauguré une bonne pratique en organisant une réunion informelle avec les Etats – et pas seulement les Etats-parties - ainsi qu'une réunion avec les ONG, en plus de l'événement parallèle qui a été organisé par la Coalition des ONG. Nous comptons bien poursuivre ces contacts, tout comme la concertation avec les différents mécanismes et organes des Nations Unies, aussi bien le groupe de travail que les organes conventionnel. Enfin, tous ensemble et chacun de notre côté, nous nous considérons comme des « ambassadeurs » de la

Convention afin de la faire connaître dans nos pays et nos régions et de contribuer à la ratification universelle.

4. Dans la perspective du processus de renforcement des organes de traités et en tant que 10e organe de traités, quelles sont vos vues sur la question de l'harmonisation et de la coordination des méthodes de travail entre les comités ?

Nous venons seulement d'être associés au processus en cours et n'avons pas eu de discussion au sein du CED sur ce point, même si chacun de nous a bien sûr son opinion personnelle. Ma propre position est sans doute influencée par mon expérience des réformes de 2000 et de 2006 que j'ai vécues – j'allais dire mal vécues – comme membre de la Sous-commission. Quand on pense à tout ce que l'on doit à la Sous-Commission, à commencer par le premier projet de Convention sur les disparitions forcées préparé par Louis Joinet, les travaux sur les situations d'exception, les principes sur l'impunité, sur la réparation des violations massives des droits de l'homme, mais aussi plus récemment sur la responsabilité des entreprises transnationales en matière de droits de l'homme, sur l'extrême pauvreté et les droits de l'homme, sur la justice militaire, etc., on ne peut que regretter le gâchis qu'a constitué la disparition programmée de la Sous-Commission. Autrement dit, je ne suis pas sûr que le mot « rationalisation » soit à lui seul un signe de progrès. C'est pourquoi je me réjouis de l'approche prudente mise en œuvre, qui contraste avec l'espèce de big bang qui a contribué au flottement des esprits dans les années 2000 et qui a détourné les efforts des violations des droits de l'homme, pour concentrer les énergies sur des réformes stériles quand elles ne se sont pas avérées contre-productives.

A ce stade, en tant que président du CED, je ne peux que souhaiter participer pleinement et de manière constructive aux réflexions en cours, avec un double objectif. D'abord contribuer à la simplification et à l'harmonisation des mécanismes tout en évitant une banalisation des virtualités qui font l'originalité de notre Convention ; ensuite consolider la place du Comité qui se trouve soumis à une hypothèque sans doute plus théorique que réelle avec l'article 27 de la Convention qui impose un bilan dans un délai de 4 ou 5 ans. J'espère que d'ici-là, le Comité saura faire ses preuves et démontrer l'importance d'un organe spécifique visant les disparitions forcées à travers le monde entier. Si le Statut de Rome prévoit un volet répressif en matière de crimes contre l'humanité, la Convention occupe tout un espace intermédiaire en matière de coopération, de prévention et d'incrimination qui comble de nombreuses lacunes du droit international. Comme rapporteur spécial de la Sous-Commission sur l'application universelle des traités internationaux relatifs aux droits de l'homme j'avais parlé de conventions orphelines pour désigner les traités qui n'ont pas un mécanisme de suivi spécifique, un organe conventionnel spécialisé. Aussi importants soient-ils, ces

traités sont vite négligés et oubliés. Le Comité de disparitions forcées doit avoir un rôle de vigilance et alerte, à la manière d'un radar, mais aussi engager les Etats dans un dialogue constructif et une coopération permanente.

5. M. Decaux, vous venez d'être élu premier Président du nouveau Comité des Disparitions Forcées, qu'est-ce que cela signifie pour vous ?

C'est toujours embarrassant de parler de soi, mais je ne peux cacher mon émotion devant les nouvelles responsabilités qui m'incombent. Pour avoir récemment connu la solitude du coureur de fond, comme rapporteur du mécanisme de Moscou de la dimension humaine de l'OSCE, j'apprécie d'autant plus de siéger dans un organe collégial, avec des liens étroits et amicaux déjà très forts, comme cela était déjà le cas pour le groupe de travail des communications auquel j'ai appartenu pendant près de 8 ans. Je dois dire que mon expérience au sein d'organes d'experts indépendants des Nations Unies à vocation généraliste, comme « think tank » m'a sans doute préparé à cette fonction difficile, sans que rien ne soit écrit à l'avance. J'ai ainsi eu la chance de participer à la conférence organisée par la Commission Nationale Consultative des droits de l'homme et la Commission Internationale de Justice à Genève en 1992, sous le titre « Oui à la justice, non à l'impunité ». Vingt ans après, c'est un honneur et un devoir de continuer dans la voie ainsi tracée et ma pensée va à tous les défenseurs des droits de l'homme qui ont participé inlassablement à ce combat pacifique, et pour ne citer que mes prédécesseurs à la Sous-Commission, à Nicole Questiaux et à Louis Joinet qui m'ont appris la diplomatie du possible.

La mission du Comité des disparitions forcées comporte évidemment un poids moral très fort, ce n'est pas un organe bureaucratique ou une sinécure confortable. Dans mon discours d'ouverture de la première session du Comité, j'ai évoqué une visite récente sur les lieux de la trop fameuse ESMA (Ecole Supérieure de Mécanique) de Buenos Aires transformée en musée du souvenir. J'ai vu une photo truquée des deux religieuses françaises assassinées, un des rares « témoignages » qui reste de leur passage dans ces lieux. Au-delà d'un sentiment profond d'horreur et de vide, j'ai également été frappé par le fait que, à l'invitation des militaires argentins, la Commission interaméricaine des droits de l'homme avait visité les lieux remaniés à la hâte et n'avait rien su, rien vu... Quelle leçon pour des experts indépendants que nous sommes ! Je crois que ce « malaise » profond qui habite chacun des membres du Comité, au-delà des grands discours et des grandes phrases, nous impose un impératif de rigueur juridique et d'efficacité pratique. Le temps ne nous appartient pas, nous devons agir avec patience mais aussi avec impatience, pour atteindre des résultats. La Convention est placée sous notre sauvegarde collective, avec l'aide de toutes les parties prenantes, notamment les Etats et les ONG, nous devons en faire une réalité dynamique, un instrument effectif et efficace. ■

The expectations of the new Committee on Enforced Disappearances

"We all hope that the State parties will be the first partners of the Convention and will help us innovate."

Interview with Mr. Emmanuel Decaux, Chair of the new Committee on Enforced Disappearances

What are the implications of the entry into force of the International Convention for the protection of all persons from Enforced Disappearances? Why is this convention so important?



The [Committee on Enforced Disappearances](#) and the [Working Group on Enforced or Involuntary Disappearances](#): back from left to right: Mr. Enoch Mulembe (Zambia), Mr. Olivier de Frouville (France), Mr. Rainer Huhle (Germany), Mr. Alvaro Garce Garcia y Santos (Uruguay), Mr. Mamadou Badio Camara (Senegal), Mr. Mohammed Al-Obaidi (Iraq), Ms. Suela Janina (Albania), Mr. Jeremy Sarkin (South Africa); front from left to right: Mr. Luciano Hazan (Argentina), Mr. Juan José Lopez Ortega (Spain), Mr. Ariel Dulitzky (Argentina), Ms. Jasminka Dzumbur (Bosnia and Herzegovina), Mr. Osman El Hajjé (Lebanon), Mr. Emmanuel Decaux, (France), Mr. Kimio Yakushiji (Japan) © UN Photo/Jean-Marc Ferré

The entry into force of the Convention, on 23 December 2010, was a historic moment, but this is only one step in a long, I would say too long, process. Such an event gives us the opportunity to measure the gap between States' feeling of time and the way individuals experience time, starting with the victims.

The Declaration for the protection of all persons from Enforced Disappearances was adopted by the

General Assembly on 18 December 1992. 25 years passed by before adopting the new International Convention for the protection of all persons from Enforced Disappearances, opened for signature in Paris on 6 February 2007. The complexity and importance of this treaty may explain the long delays, but a new political determination will accelerate the process. I hope that the fifth anniversary of the opening of the treaty, which will be marked on 6 February 2012, will provide an opportunity for States to show strong commitment to the initiative of pioneering States such as Argentina and France.

With the entry into force of the Convention, we have an instrument, which is legally binding for State Parties and thus provides for a very strong legal basis for the mandate of the new Committee. Let me pay tribute to the memory of Ambassador Bernard Kessedjian who, as the Permanent Representative of France, chaired the working group brilliantly and effectively. The working group drafted this treaty full of potentialities and innovation. It is a very modern treaty some say a "sophisticated" one, benefiting from the experience of other treaties. It includes classical treaty provisions, concerning reporting requirements and individual complaints, as well as emergency powers. Thus, the Committee may request an emergency visit to a State Party (Article 33) and can even bring the matter to the attention of the General Assembly (Article 34). The challenge for us is to adequately use these new provisions and ensure that we have the practical means to apply them as soon as possible. An interim budget has to be provided in order to organize field visits, in case of emergency, or to convene a special session of the Committee prior to applying to the General Assembly. I cannot imagine in a crisis situation, the Committee waiting one year for a budget authorization in order to implement a rapid response measure.



The [Association of Parents of Disappeared Persons \(APDP\)](#) is an association comprised of the families of the victims of enforced disappearances whom collectively campaign in order to seek justice and to get information on the whereabouts of their missing family member. This artwork was created on the International Day of the Disappeared, 30th August 2009 as part of the annual events organized by the APDP. A local artist, Malik Sajad sat amidst the family members who were holding photographs of their loved ones whom had been subjected to enforced disappearances and he spontaneously and poignantly painted the portraits as seen on the canvas. *Artworks Exhibition organized by victims of torture and UNVFVT (Geneva, Palais des Nations, 27 June 2011)* © OHCHR/Danielle Kirby

Otherwise, the Convention applies at this stage only to 30 State parties, but we hope that the 60 other signatory States will ratify it quickly, accepting the optional provisions, and also conforming their domestic laws to the provisions of the Convention. The latter is a comprehensive tool at the interface between international criminal law and international human rights law. Beyond this first objective, the Convention shall be ratified as soon as possible by a vast majority of States and become an almost universal instrument, according to its vocation. As it stands now, it would appear, we are fully competent only with regard to particularly committed State parties, which must consequently be exemplary, and we are only competent with regard to future situations according to article 35. In other words, the Convention has primarily a preventive role, it is an

"insurance for the future", which should reassure and encourage States to ratify, even if they do not experience problems with enforced disappearances at present.

However, it is important to note that even for non-State Parties, the Working Group on Enforced Disappearances of the Human Rights Council is competent and we intend to work closely with it in accordance with our respective responsibilities. The main point seems to be to convey a clear message to all stakeholders to strengthen the fight against enforced disappearances. We have a pedagogical effort to do, with the assistance of the secretariat in order to make the mechanisms available to victims more understandable, particularly regarding "forms", while we (the Committee and the Working Group) remain dependent on two separate divisions of the Office of the High Commissioner for Human Rights. Beyond the technical details, our roles are clearly complementary and not competing. We decided, after a first very successful joint meeting, to meet every year in order to work closely together. We must be the two arms of a pincer movement in order to be effective. I welcome the invitation by the General Assembly to the Chairman-Rapporteur of the Working Group and to the President of the CED to meet in New York with a view to present a first assessment next year.

2. *What do you expect from State parties in order to implement the provisions of the Convention?*

The States' first treaty obligation is to submit a report "within two years" after the entry into force, meaning prior to 23 December 2012, for the first State parties. I hope that these States will not wait until the last moment, and that from our meeting in November 2012 onwards, we can start the real work. The Committee will elaborate practical guidelines on reporting at its second session in March 2012. We want the exercise to be conducted in the most transparent and efficient manner, involving all stakeholders. This requires from the Committee finding sufficient time for these extensive consultations, and we need at least one day of work - not including informal meetings on the sidelines of the Committee's meetings - for each of the reports, which means 20 days per year for 20 reports. In other words, in 2013, the Committee will require longer sessions. It would be disastrous, if for logistical and financial reasons beyond our control, we were forced to lag behind already from the very start in reviewing the reports, especially as the Convention also allows us to innovate in order to simplify and make the dialogue with States more effective.

Beyond this formal but essential aspect of a tight schedule, it is important that States incorporate fully the provisions of the Convention in their domestic law. Doing

so would require criminalizing the practice of enforced disappearances twice: considering forced disappearance as a specific crime (Article 4) as such, and as a "widespread or systematic practice of enforced disappearance" as a crime against humanity (Article 5). There are other several steps of a criminal procedure nature that need to be taken, but also preventive measures, such as training and proper oversight, or the introduction of the relevant civil law provisions concerning, for example, the status of missing persons or the plight of children of those disappeared (article 25). There is a need to organize more capacity building seminars particularly in the regions of the world, with a view to raise awareness among States and facilitate their work. The Working group on enforced disappearances did already some work reviewing criminal law matters from a comparative law perspective. It would be useful to have a "law model" or several law models, flexible enough to adapt to different legal environments that can facilitate a speedy ratification but also an effective implementation of the Convention at the domestic level.

Generally, we all hope that the State parties will be the first partners of the Convention and will help us innovate. The Convention provides for field visits, in case of emergency, but why not, imagine - it's just a personal idea - on-site visits, in another context, at the invitation of a State? Also in each of the regional systems, State parties should facilitate cooperation between the regional authorities and the CED. I have in mind the Inter-American system which is at the forefront with its own 1994 Convention and whose experience will be invaluable for us. I must say, that I can hardly see the point in the on going initiative in the Parliamentary Assembly of the Council of Europe intended to launch a European instrument, whereas the European States should first and foremost ratify and strengthen the already existing universal instrument. In this connection the exercise done recently by the Committee of Ministers of the Council of Europe on issues of impunity appeared obsolete compared to international standards, risking even to become a setback as compared to the achievements of our Convention. Greatest vigilance is therefore required from everyone, in the name of the imperative of consistency and efficiency of the universal legal standards.

3. What is the Committee on Enforced Disappearances and what tasks do you intend to accomplish in the first years of its operation?

First, the Committee is made up of ten independent experts from all four corners of the world. Contrary to the express requirements of the Convention, there is only one woman among us, our Albanian colleague, but we can only regret it and hope for future progress towards a "balanced gender representation"

(article 26). However, I was struck by the diversity of experiences which are brought together, and especially the strong personal involvement of all members on the Committee. 10 members may be an ideal figure to develop true collegiality. In any case, it is in this spirit that our first work was completed, with a sense of collective responsibility, and a climate of friendship between experts from around the world who did not know each other, but were all strongly committed to their mission. The moment of solemn commitments was a highlight, although a certain caution prevailed. My colleagues accepted my proposal of observing a minute of silence at the beginning of each session in memory of victims of enforced disappearances and human rights activists, in order to pay tribute to a tradition of the Sub-Commission on the Promotion and Protection of Human Rights of the Commission on Human Rights (the predecessor of the present Human Rights Council). This shows that our duty of independence and impartiality, to which each of us is particularly wedded, is not translated by indifference or neutrality. To use a formula of the Human Rights Council referring to the complaints procedure, our mandate has to be "victim-oriented and conducted in a timely manner" (§ 86).

In concrete terms, our first objective was to start the Committee's work. This meant adopting rules of procedure, as of the first session, even if it was a lot of technical work, since the devil is in the details. We adopted a draft which will be reviewed and well adapted according to our experience. But the main idea was to have rules which work effectively and, I repeat, quickly, from day one. Thus, a system for monitoring and rapid reaction in between our sessions had to be provided. I want to consult as widely as possible with the office and the whole Committee and to have frequent email exchange, but at the same time the broad consultation process should not stop us from taking urgent decisions when necessary. That's why we elected a General Rapporteur, with an assistant and a substitute, so that a Committee member is in charge of the actions at any time in between the sessions, with regard to three areas: the emergency procedure under article 30, the stabilization measures under article 31 and the protective measures for persons, particularly needed in this area, as rightly pointed out by NGOs. For confidentiality reasons, we decided that the Chair of the Committee would sign such requests to States parties without mentioning the rapporteur's name.

Our second objective was to facilitate the proper implementation of the Convention by considering practical guidelines for reporting and preparing a "manual" for the individual complaints procedure. The rules of procedure should indeed be elaborated in concrete guidelines, but also in the information and documents distributed within the United Nations, including on the website of the Office of the High Commissioner for Human Rights. We also started

reflecting on the interpretation of the Convention, which may in time lead to General Comments. We benefit from the achievements of the existing Working Group on enforced disappearances, but we ourselves members of the CED are the only responsible for the application and interpretation of the Convention, which means that we have to clarify the definition of crimes covered by the Convention - by avoiding confusion with the recent work on "missing persons" - or the definition of "direct victims". The inclusion of non-state actors in the Convention through an elliptical formulation is the result of a diplomatic compromise, which should be studied, as well as the inclusion of vulnerable groups such as women and children. Following these lines of thought, we have to seek contributions from stakeholders, before holding general discussions. But ultimately, the Committee will give an authoritative interpretation of all provisions of the Convention, in light of its own experience with regard to reporting and complaints.

At this point, I believe that we made the most out of the four days of our first session. We have initiated a good practice by organizing an informal meeting with States - not only State parties - as well as a meeting with NGOs, in addition to the side event that was organized by the NGO Coalition. We intend to continue these contacts, as well as the consultation with the various mechanisms and United Nations bodies, both the Working Group on enforced disappearances and the treaty bodies. Finally, all forces united and everyone on our side, we consider ourselves as "ambassadors" of the Convention in order to make it known in our countries and regions and contribute to its universal ratification.

4. *In the context of the Treaty Body Strengthening process, and CED being the 10th treaty body, what are your views on the issue of harmonization and coordination of the working methods among the Committees?*

We have recently started to be involved in the current process and have not had a discussion in the CED on this point, even if each of us has his own opinion. My own position is probably influenced by my experience of the reforms of 2000 and 2006- I would say bad experiences - as a member of the Sub-Commission. When we think of all that we owe to the Sub-Commission, starting with the first draft Convention on Enforced Disappearances prepared by Louis Joinet, the work on emergency situations, the principles on impunity, the issue of reparations for widespread human rights violations, but also more recently on the responsibility of transnational corporations for human rights, on extreme poverty and human rights, military justice and so on. We can only regret the mess that has been caused by the scheduled suppression of the Sub-Commission. In other words, I'm not sure that the word "rationalization" is itself a sign of progress. This is why I welcome the



Louis Joinet has worked on the first draft [Convention on Enforced Disappearances](#). © UN Photo

implementation of a cautious approach, which contrasts with the sort of big bang which contributed to the floating spirits in the 2000s and diverted the efforts from the fight against violations of human rights and instead focus on sterile reforms, whereas these have proved to be counterproductive.

At this stage, as the President of the CED, I can only wish to participate fully and constructively in the on going discussions with a dual purpose. Firstly, I would like to contribute to the simplification and harmonization of the mechanisms while avoiding to trivialize potentialities that represent the originality of our Convention, and then I would like to consolidate the position of the Committee which is subject to an obstacle, which may be more theoretical than real under article 27 of the Convention which requires the Committee going through an assessment of its work within 4 or 5 years. I hope that by then the Committee will have proven itself and demonstrated the importance of a specific body against enforced disappearances taking place around the world. The Rome Statute of the International Criminal Court provides for a repressive framework concerning crimes against humanity, whereas the Convention covers an intermediate space concerning cooperation, prevention and criminalization that fills many gaps in international law. During my tenure as the Special Rapporteur of the Sub-Commission on the issue of the universal implementation of international human rights conventions, I spoke about conventions which have been abandoned, meaning treaties that do not have a specific monitoring mechanism, a specific treaty body. As important as they may be, these treaties are soon neglected and forgotten. The Committee on enforced disappearances should have a vigilance and warning role, like radar, but also engage the States in a constructive dialogue and continuous cooperation.

5. *Mr. Decaux, you have just been elected the first President of the new Committee on Enforced Disappearances, what does this mean to you?*

It's always embarrassing to talk about oneself, but I cannot hide my emotions when thinking of the new responsibilities that lie on me. Having recently experienced the loneliness of the long distance runner, as the Rapporteur of the Human Dimension Mechanism of the OSCE in Moscow, I appreciate even more to sit in a collegiate body, with already very strong close and friendly relations, as it was the case for the Working Group on communications of the Commission on Human Rights to which I belonged for nearly 8 years. I must say that my experience in non-specialized bodies of independent experts of the United Nations, as a "think tank" has probably prepared me for these difficult duties, without wanting to make any predictions. I had the chance to participate in the international academic conference organized by the French National Consultative Commission on Human Rights (CNCDDH) and the International Commission of Jurists (CIJ) in Geneva in November 1992, entitled "Yes to justice, no to impunity." Twenty years later, it is an honor and a duty for me to continue the path laid out and thus my thoughts go to all human rights defenders who participated tirelessly in this peaceful struggle, and to name only but two of them, my predecessors at the Sub-Commission - Nicole Questiaux and Louis Joinet who taught me the diplomacy of the feasible.

The mission of the Committee on Enforced Disappearances obviously has a strong moral force, and does not represent a bureaucratic body or a comfortable sinecure. In my opening speech at the first session, I mentioned a recent visit to the scene of the notorious ESMA (Superior School for Mechanics) in Buenos Aires which has been turned into a memorial museum. I saw a falsified photograph of two killed French nuns, one of the only "evidences" that remain of their presence in those places. Beyond a deep sense of horror and emptiness, I was also struck by the fact that, at the invitation of the Argentine military, the Inter-American Commission on Human Rights visited the places in a hurry and concluded that they "knew nothing and saw nothing" ... What a lesson for the independent experts that we are supposed to be! I believe that this "malaise" which is deeply felt by each member of the Committee, beyond the rhetoric and fine phrases, imposes legal rigor and effectiveness. Time is not on our side, we must act with patience but also with impatience in order to achieve results. The Convention has to be safeguarded collectively, and with the help of all stakeholders, including governments and NGOs, we need to make it a dynamic, effective and efficient instrument. ■

TO READ AND LEARN MORE

Click on [Committee on Enforced Disappearances](#) and [Working Group on Enforced or Involuntary Disappearances](#)

Miscellaneous

TREATY BODY'S CASE LAW ON INDIVIDUAL COMMUNICATIONS: CEDAW'S SELECTED CASE

CEDAW jurisprudence: new important jurisprudence dealing with women's reproductive rights.

In its *Views of 17 October 2011 on case No. 22/2009 (T.P.F. v. Peru)*, the Committee on the Elimination of Discrimination against Women considered a case brought on behalf of L.C., a minor and victim of sexual abuse who suffered serious spinal injuries as a result of a failed suicide attempt. The case related to the refusal by the hospital to perform a therapeutic abortion and its decision to delay a necessary spinal operation because of the possible harm to the foetus. As a result L.C. was left paralyzed from the neck down. In its Views the Committee considers "that, owing to her condition as a pregnant woman, L.C. did not have access to an effective and accessible procedure allowing her to establish her entitlement to the medical services that her physical and mental condition required. Those services included both the spinal surgery and the therapeutic abortion. This is even more serious considering that she was a minor and a victim of sexual abuse. The suicide attempt is a demonstration of the amount of mental suffering she had experienced as a result of the abuse. The Committee therefore considers that the facts as described constitute a violation of the rights of L.C. under article 12 of the Convention. The Committee also considers that the facts reveal a violation of article 5 of the Convention, as the decision to postpone the surgery due to the pregnancy was influenced by the stereotype that protection of the foetus should prevail over the health of the mother." In its Views, the Committee also addresses the lack of an appropriate legal framework and the failure of the State party to protect women's reproductive rights and establish legislation to recognize abortion on the grounds of sexual abuse and rape. ■

TO READ AND LEARN MORE

For the full text of the Committee's Views and its recommendations to the State party, please see: <http://www2.ohchr.org/english/law/jurisprudence.htm>

A guide to practice on reservations has been adopted by the International Law Commission and submitted to the UN General Assembly

The International Law Commission has recently adopted its Guide to Practice on Reservations to Treaties at its sixty-third session held in July-August 2011, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/66/10, para. 75). The report will appear in the Yearbook of the International Law Commission, 2011, vol. II, Part Two. In its report, the ILC has recommended the UN General Assembly to disseminate the Guide widely.

Moreover the ILC also recognizing the difficulties involved in the formulation of reservations and their interpretation has decided to propose to the UN General Assembly to consider establishing a "reservations assistance mechanism to help States and international bodies in the implementation of legal rules applicable to reservations" (para. 73, A/66/10).

Contents of the Guide

The Guide includes a section on the right of UN treaty bodies to assess the permissibility of reservations.

The ILC recognizes that a treaty body may for the purpose of discharging its functions assess the permissibility of reservations formulated by a State or an international organization, and that States parties or those organizations are required to *give due consideration* to such assessments.

The ILC decision to provide explicitly in its Guide about the right of treaty bodies to assess the permissibility of the reservations represents an interesting development specially having in mind

the fact that initially ILC had reservations with regard to how the practice developed in this regard. The main questions discussed between the Commission and the treaty bodies since 1993 was whether the treaty bodies had the right to assess the permissibility of a reservation and what the consequences if such would be – i.e. would the State be bound by the treaty without the benefit of its reservation or not. This issue was particularly acute for those treaty bodies dealing with individual complaints since they could not be expected to give effect to a reservation found to be incompatible with the object and purposes of the treaty.

The ILC had initially favoured limiting the treaty bodies' role to asking States to remove the reservations, rather than assess their impermissibility.

Interpreting the existing treaties and practice, the ILC comes to the conclusion that as a general rule, when a State party has made an invalid reservation, it is bound by the treaty without the benefit of the reservation (para 4.5.3 of the Guide). As for treaty bodies, the ILC states that "If a treaty monitoring body expresses the view that a reservation is invalid and the reserving State or international organization intends not to be bound by the treaty without the benefit of the reservation, it should express its intention to that effect within a period of twelve months from the date at which the treaty monitoring body made its assessment" (para 4.5.4).

In its conclusions, the ILC considers *inter alia* that monitoring bodies should explain to the author of a reservation the reasons for their concerns about the reservation and, where appropriate, request any clarification that they deem useful. They should also encourage the withdrawal of reservations, the reconsideration of the need for a reservation or the gradual reduction of the scope of a reservation through partial withdrawals.

The Guide to practice on reservations strengthens the legal regime of the work of treaty monitoring bodies, and their competence to give authoritative interpretation of the reservations to the relevant human rights treaties.



[The Work of the International Law Commission, 7th ed., vol. 1, 2007](#)

ABSTRACT OF THE GUIDE:

[...]

3.1.5.7 Reservations to treaty provisions concerning dispute settlement or the monitoring of the implementation of the treaty

A reservation to a treaty provision concerning dispute settlement or the monitoring of the implementation of the treaty is not, in itself, incompatible with the object and purpose of the treaty, unless:

(i) the reservation purports to exclude or modify the legal effect of a provision of the treaty essential to its *raison d'être*; or

(ii) the reservation has the effect of excluding the reserving State or international organization from a dispute settlement or treaty implementation monitoring mechanism with respect to a treaty provision that it has previously accepted, if the very purpose of the treaty is to put such a mechanism into effect.

3.2 Assessment of the permissibility of reservations

The following may assess, within their respective competences, the permissibility of reservations to a treaty formulated by a State or an international organization:

- contracting States or contracting organizations;
- dispute settlement bodies;
- treaty monitoring bodies.

3.2.1 Competence of the treaty monitoring bodies to assess the permissibility of reservations

1. A treaty monitoring body may, for the purpose of discharging the functions entrusted to it, assess the permissibility of reservations formulated by a State or an international organization.

2. The assessment made by such a body in the exercise of this competence has no greater legal effect than that of the act which contains it.

3.2.2 Specification of the competence of treaty monitoring bodies to assess the permissibility of reservations

When providing bodies with the competence to monitor the application of treaties, States or international organizations should specify, where appropriate, the nature and the limits of the competence of such bodies to assess the permissibility of reservations.

3.2.3 Consideration of the assessments of treaty monitoring bodies

States and international organizations that have formulated reservations to a treaty establishing a treaty monitoring body shall give consideration to that body's assessment of the permissibility of the reservations.

3.2.4 Bodies competent to assess the permissibility of reservations in the event of the establishment of a treaty monitoring body

When a treaty establishes a treaty monitoring body, the competence of that body is without prejudice to the competence of the contracting States or contracting organizations to assess the permissibility of reservations to that treaty, or to that of dispute settlement bodies competent to interpret or apply the treaty.

3.2.5 Competence of dispute settlement bodies to assess the permissibility of reservations

When a dispute settlement body is competent to adopt decisions binding upon the parties to a dispute, and the assessment of the permissibility of a reservation is necessary for the discharge of such competence by that body, such assessment is, as an element of the decision, legally binding upon the parties.

3.3 Consequences of the non-permissibility of a reservation

3.3.1 Irrelevance of distinction among the grounds for non-permissibility

A reservation formulated notwithstanding a prohibition arising from the provisions of the treaty or notwithstanding its incompatibility with the object and purpose of the treaty is impermissible, without there being any need to distinguish between the consequences of these grounds for non-permissibility.

3.3.2 Non-permissibility of reservations and international responsibility

The formulation of an impermissible reservation produces its consequences pursuant to the law of treaties and does not engage the international responsibility of the State or international organization which has formulated it.

3.3.3 Absence of effect of individual acceptance of a reservation on the permissibility of the reservation

Acceptance of an impermissible reservation by a contracting State or by a contracting organization shall not affect the impermissibility of the reservation.

[...]

4.5.3 Status of the author of an invalid reservation in relation to the treaty

1. The status of the author of an invalid reservation in relation to a treaty depends on the intention expressed by the reserving State or international organization on whether it intends to be bound by the treaty without the benefit of the reservation or whether it considers that it is not bound by the treaty.

2. Unless the author of the invalid reservation has expressed a contrary intention or such an intention is otherwise established, it is considered a contracting State or a contracting organization without the benefit of the reservation.

3. Notwithstanding paragraphs 1 and 2, the author of the invalid reservation may express at any time its intention not to be bound by the treaty without the benefit of the reservation.

4. If a treaty monitoring body expresses the view that a reservation is invalid and the reserving State or international organization intends not to be bound by the treaty without the benefit of the reservation, it should express its intention to that effect within a period of twelve months from the date at which the treaty monitoring body made its assessment.

Recommendation contained in the Annex on the reservations assistance mechanism

“The International Law Commission,

Having completed the preparation of the Guide to Practice on Reservations to Treaties,

Aware of the difficulties faced by States in the formulation, interpretation, assessment of the permissibility, and implementation of reservations and objections thereto,

Attaching great importance to the principle that States shall settle their international disputes by peaceful means,

Considering that the adoption of the Guide to Practice could be supplemented by the establishment of flexible mechanisms to assist States in the implementation of the legal rules applicable to reservations,

Suggests that the General Assembly:

1. Consider establishing a reservations assistance mechanism, which could take the form described in the annex to this recommendation;

2. Consider establishing within its Sixth Committee an ‘observatory’ on reservations to treaties, and also recommend that States consider establishing similar ‘observatories’ at the regional and sub-regional levels.

Annex

(i) The reservations and objections to reservations assistance mechanism could consist of a limited number of experts, selected on the basis of their technical competence and their practical experience in public international law and, specifically, treaty law.

(ii) The mechanism could meet, as needed, to consider problems related to reservations, or objections to and acceptances of reservations, that would be submitted to it.

(iii) The mechanism could make proposals to requesting States in order to settle differences of view concerning reservations. States that have such differences could undertake to accept proposals for their resolution as compulsory.

(iv) The mechanism could also provide a State with technical assistance in formulating reservations to a treaty or objections to reservations formulated by other States.

(v) In making its proposals, the mechanism should take into account the provisions on reservations contained in the 1969, 1978 and 1986 Vienna Conventions on the Law of Treaties and the guidelines contained in the Guide to Practice.”

The full text of the ILC report is available on: <http://www.un.org/law/ilc/>

For the full text of the Guide, please see:

http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/1_8_2011.pdf ■

The human rights of children of incarcerated parents (in the footsteps of a Day of General Discussion organized by CRC)



Documentation from NGO on Day of General Discussion on the Rights of the Child of incarcerated parents, Geneva, 30 September 2011:© OHCHR/Danielle Kirby

The CRC held a Day of General Discussion on 30 September 2011.

This year's event focused on the rights of children of incarcerated parents. It aimed at providing States and other actors with guidance on their obligations to promote and protect the rights of children of incarcerated parents. It held two workshops: on babies and children living with or visiting a parent in prison, and on children left "outside" when their parent was incarcerated.

The event focused specifically on the criminal justice system, and due to time restraints, the issues relating to children whose parents were in other similar situations, such as immigration detention, were not part of the scope of the discussion.

Within that thematic area of focus, the Day of General Discussion considered:

(i) the impact on children of a parent's involvement with all stages of the criminal justice process, including arrest, investigation, pre-trial measures (including pre-trial detention and other restrictions), trial and sentencing, imprisonment, release and reintegration into the family and community, and potentially coping with the death of a parent when the death penalty is implemented; and,

(ii) the impact that parental imprisonment has on different areas of the child's life and rights: this may

benefit from considering the impacts under the 'clusters' of Articles used in States parties' reports.

The event was attended by over 250 representatives from States, civil society, other United Nations agencies, programmes and funds, prison services and law enforcement.

Participants and the Committee concluded that children of incarcerated parents were still too often forgotten. It recommended non-custodial sentencing for parents. In the opinion of the participants and the Committee there was a need for reconciliation between the interest of the State and the best interest of the child. The Committee has decided to adopt a General Comment in this regard in the near future. ■



Day of General Discussion on the Rights of the Child of incarcerated parents, Geneva, 30 September 2011:© OHCHR/Danielle Kirby

TO READ AND LEARN MORE

Information about *The human rights of children of incarcerated parents* including Written Submissions for the 2011 CRC DGD:

http://www2.ohchr.org/english/bodies/crc/discussion2011_submissions.htm

**THE HUMAN RIGHTS OF
MIGRANT WORKERS IN AN
IRREGULAR SITUATION AND
MEMBERS OF THEIR FAMILIES
(IN THE FOOTSTEPS OF A DAY
OF GENERAL DISCUSSION
ORGANIZED BY CMW)**

The CMW organized a Day of General Discussion on 19 September 2011.

This year's event focused on the human rights of migrants workers in irregular situation. Its main objective was to encourage States parties to promote and protect the rights of migrant workers in irregular situation as provided for under the UN Convention on the Rights of Migrant workers, and encourage States who have not done so to ratify or accede to the Convention.

During the day of general discussion, participants discussed presentations made by migration specialists on the Convention rights of irregular migrants, other complementary international standards, and the practical application and challenges faced in the protection of those rights. Participants included representatives from NGOs, academia, as well as from one State party (Argentina) and one non-State party (Costa Rica), the latter explaining that State party's hesitations to ratify the Convention.

The discussions at the event were organized in three working groups:

- the first one dealt with the criminalization and detention of irregular migrants,
- the second discussed issues related to the protection of migrant workers in irregular situation and restrictions on their economic and social rights;
- whereas in the third group participants gave suggestions on how to enhance international cooperation in protecting the human rights of migrant workers in an irregular situation.

At the end of the discussions, participants and the Committee concluded that most of the rights of irregular migrants under the Convention were already protected under other international human rights treaties, sometimes even to a greater extent, and that the barriers to ratification of the Convention therefore seemed to be of a political rather than legal nature. ■

TO READ AND LEARN MORE

Information about *the human rights of migrants workers in irregular situation and members of their families* including Written Submissions

<http://www2.ohchr.org/english/bodies/cmw/dgd19092011.htm>

CEDAW Oral Report to the UN General Assembly



Ms. Silvia Pimentel, Chairperson of CEDAW during 11th Inter Committee meeting on 29 June 2010 © OHCHR/Danielle Kirby

The Chairperson of the Committee on the Elimination of Discrimination Against Women, Ms. Silvia Pimentel, addressed the UN General Assembly Third Committee on 10 October 2011, and presented an oral report on the work of the Committee. In her Statement, the Chair noted, among other issues, that the Convention was only seven States short of universal ratification; she encouraged the remaining non-States parties to ratify or accede to the Convention expeditiously.

Ms. Silvia Pimentel then gave an overview of the status of reporting under the Convention and noted the limited resources available to the secretariat to meet the increased reporting to the Committee. Regarding the recent activities of the Committee she highlighted a number of General recommendations currently under development, including one in conjunction with the Committee on the Rights of the Child, and referred to cooperation with other human rights treaty bodies, special procedures of the Human Rights Council as well as UN Women and other partners. The Chairperson also expressed support for the process launched by the High Commissioner on the strengthening of the treaty body system. Thereafter, the Chairperson had an interactive dialogue with delegations – the first for CEDAW – during which six delegations took the floor.

All delegations taking the floor expressed appreciation for the important work CEDAW has been done and thanked the Chair for her report to the General Assembly. Issues raised during the interactive dialogue included primarily issues regarding working methods and coordination with other partners, notably UN Women. In this regard, delegations were interested in ways to address the backlog of reports, including the possibility of having two chambers working simultaneously, building upon the previous experience of other Committees such as the Committee on the Right of the Child in this regard. ■

CRC Oral Report to the UN General Assembly



Mr. Jean Zermatten, Chairperson of CRC at the informal technical Consultation of Sion (12-13 May 2011) with Ms. Navi Pillay, High Commissioner © OHCHR/Danielle Kirby

The Chairperson of the Committee on the Rights of the Child, Mr. Jean Zermatten, presented his oral report to the Third Committee of the UN General Assembly on 10 October 2011. Outlining the challenges faced by the Committee related to the increased workload and very broad mandate, the Chair highlighted the new global challenges which affect the implementation of the rights of the child (focus on public security, economic crisis, migration, malnutrition, political turmoil).

The Chair also provided information on reporting and the ratification status for the three treaties which the Committee monitors the implementation of Convention.

He presented the request of the Committee to the GA to approve its decision to work in parallel chambers once a year on a permanent basis. He also called upon States to ratify the CRC and its Optional protocols and urged adoption of the Optional Protocol on a complaints procedure. The Chair further provided information on the work of the Committee carried out during the last year. Finally, the Chair expressed support for the process of consultation launched by the High Commissioner for Human rights with a view to strengthening the Treaty Body system.

In conclusion, the Chairperson asked that the possibility of an interactive dialogue for the CRC Chairperson be considered, to allow an exchange of views with States, beginning in 2012. ■

CAT & SPT: JOINT ORAL REPORTS TO THE UN GENERAL ASSEMBLY

1. Committee against Torture

Mr. Claudio Grossman, Chairperson of the Committee against Torture (CAT) presented his oral report to the Third Committee on 18 October 2011. He highlighted key developments and activities



Mr. Claudio Grossman, Chairperson of the Committee against Torture, Geneva in May 2010 © OHCHR/Danielle Kirby

under the Convention against Torture during the past year, namely:

a) the examination of initial and periodic reports submitted to CAT (article 19 of the Convention) and the issuance of concluding observations to States parties,

b) the consideration of individual complaints under article 22 of the Convention, including the issuance of interim measures of protection in certain cases, and c) its activities under the confidential inquiry procedure for systematic practice of torture under article 20 of the Convention. He expressed concern at non-reporting by States parties and explained the Committee's innovative optional reporting procedure (list of issues prior reporting) aiming at assisting States parties to fulfil their reporting obligations.

Mr. Grossman noted the chronic lack of resources which was hampering the work of the treaty body system as a whole. He explained how additional resources granted last year to CAT had allowed the number of reports considered each session to increase from 6 to 9 reports with a similar increase for communications. He declared that the Committee had speed up work on general comments and hoped to adopt a comment next year on States parties' obligations under article 14 (remedies). He urged the 85 states who have yet to accept the individual communications procedure to do so and also called for full compliance with article 14 regarding full remedies for victims of torture. He urged States to withdraw their reservations on article 20.

Mr. Grossman concluded that, despite the prohibition of torture, torture remains a persistent problem, with lack of enforcement, poor detention standards, and rendition. He said these failures should strengthen our resolve to achieve the goals of the Convention and at the same time we should not lose the

human dimension of torture, that it affects the lives of real people on a daily basis.

2. Subcommittee on Prevention of Torture

For his side Mr. Malcolm Evans,

Chairperson of the Subcommittee on Prevention of Torture (SPT) also presented his oral report to the Third Committee on the same day 18 October 2011. He explained the



Mr. Malcolm Evans, Chairperson of SPT, during the 13th session February 2011 © OHCHR/Danielle Kirby

new approach adopted by the SPT in its fourth annual report. It provides a factual summary of key developments and activities under the Optional Protocol to the Convention against Torture (OPCAT) during the past year, namely: a) three country visits (Bolivia, Lebanon and Liberia) and the first follow-up visit to Paraguay; b) advice and assistance provided by the SPT to States parties in the establishment of national preventive mechanisms (NPMs) and engagement with NPMs in the furtherance of their work; c) cooperation with other international, regional and national bodies and agencies engaged in activities related to torture prevention. It also breaks a new ground by referring to key substantive developments such as issues arising from SPT field visits (overcrowding and pre-trial detention, prison self-governance systems and reprisals). It also sets out the thinking of the SPT in relation to the establishment of NPMs through the issuance of guidelines on NPMs as well as on the concept of prevention of torture. Finally it presents the SPT proposed plan of work and highlights its challenges, in particular with the increased membership of the SPT in 2011 (which moved from 10 to 25 members).

While calling for an increase of human and financial resources, Mr. Evans explained that the SPT was seeking to lay new foundations by reordering and refocusing its own work and working methods and with increased focus on partnerships (such as with the Committee against Torture and the Special Rapporteur on Torture, other regional and international bodies, NPMs and States parties). Mr. Evans called on States to contribute to the Special Fund provided for in the OPCAT to assist fund recommendations of the SPT

made after a visit to a State party and education programmes of NPMs

3. Interactive dialogue of both chairs with UN Member States delegations



Mr. Claudio Grossman, Chairperson of CAT, Mr. Ronald McCallum, Chairperson of CRPD, Ms. Mary McCallum, his wife and Mr. Malcolm Evans, Chairperson of SPT, during an Artworks Exhibition organized by victims of torture and UNVFVT (Geneva, Palais des Nations, 27 June 2011) © OHCHR/Danielle Kirby

In the ensuing interactive dialogue, nine delegations took the floor (Brazil, Chile, the Czech Republic, Denmark, Liechtenstein, Norway, Panama, Pakistan, and the European Union). They expressed support for the work of the treaty bodies, and asked questions related to *inter alia* how the various United Nations mechanisms on torture coordinated their work with each other and other bodies. Many States expressed interest in and support for the optional reporting procedure under CAT and how the increase in membership of the SPT had enhanced its capacity to do its work.

Responding, both Chairs explained the value of the outcome of other UN human rights mechanisms in their daily work as well as the role of civil society. The Chair of CAT highlighted the resource challenges which undermined the optional reporting procedure.

The Chair of SPT similarly noted that the SPT could not undertake the number of visits it is required to make with the resources available while explaining that the SPT was refocusing its work (for instance via different types of field visits) and improving its methods of work (via the creation of task forces on NPMs and medical issues and the building up of lessons-learned as well as training).

One should highlight the fact that this year, for the second time (the first time was in 2009), the CAT and SPT Chairs and the Special Rapporteur on Torture addressed jointly the UNGA and insisted on their mutual cooperation. Several delegations explicitly expressed their support for such a joint presentation and interactive dialogue. ■

HUMAN RIGHT COMMITTEE AMENDS RULES OF PROCEDURE ON NON-REPORTING STATES AND IMPROVES COLLABORATION WITH NGOS

1. Non-reporting States

The 103rd session of the Human Rights Committee (HRCtee) took place in Geneva, between 17 October and 4 November 2011. One of the highlights of the session was the HRCtee's amendment to its rules of procedure (rule 70) relating to the examination of country situations in the absence of a report (Review procedure). From 2012, the examination of such country situations will take place in public rather than in closed session and the resulting concluding observations will also be issued as public documents (they were previously only sent to the State party). This decision resulted *inter alia* from a desire to treat all States parties (reporting and non-reporting) equally.

While the Review Procedure has been on-going for many years, in October 2010 the HRCtee started examining one State per session in the absence of a report and at the next session in New York (March 2013) it will examine 2 such States.

The decision to have examinations of non-reporting States in public rather than in closed sessions as well as the decision to examine at least one non-reporting State per session strengthens this Review Procedure, and encourages non-reporting States to report (or at least engage with the HRCtee).

2. Participation by NGOs

The Human Rights Committee decided for the first time to provide NHRIs/NGOs with formal meeting time (with interpretation) of one half hour per State party, prior to the examination of the State in question. Given the success of this new engagement with NHRIs/NGOs, the HRCtee decided that it should continue with this practice. ■

THE SUBCOMMITTEE ON PREVENTION OF TORTURE VISITED BRAZIL



The Subcommittee on Prevention of Torture visited Brazil from 19 to 30 September 2011. © OHCHR

Regarding the establishment of a national mechanism for the prevention of torture (NPM), which is an obligation of Brazil under the Optional Protocol to the Convention against Torture (OPCAT), the delegation was happy to learn on the last day of the mission, that a draft law for the creation of the Brazilian NPM had been signed by the President and to be sent to the parliament on the same day.

The final report on the visit, containing the SPT's observations and recommendations, will be transmitted in confidence to the Brazilian authorities. In accordance with OPCAT article 16, Brazil can request the subsequent publication of the SPT report.

The Subcommittee on Prevention of Torture (SPT) carried out its first visit to Brazil from 19 to 30 September 2011. This was the Subcommittee's thirteenth visit since its establishment in 2007.¹ Brazil is the largest country ever visited by the SPT, not only in terms of its size but also in terms of its prison population, which is estimated to be around half a million inmates. During the twelve-day long visit, the SPT visited prisons, police stations, juvenile detention centres and other places of detention in the states of Goiás, Sao Paulo, Rio de Janeiro and Espírito Santo, in addition to holding high-level meetings in the capital, Brasilia.

In total, the SPT visited nine penitentiary institutions, four police stations, 10 facilities for children and adolescents in conflict with the law, and two psychiatric establishments. The SPT also held over 30 meetings with federal and state authorities, as well as with members of civil society organizations.

The SPT delegation to Brazil was headed by Mr. Wilder Tayler-Souto and composed of 4 other SPT members. The mission was supported by both staff of OHCHR and of the United Nations system in Brazil. ■

TO READ AND LEARN MORE

For more information on the work of the Subcommittee on Prevention of Torture, please see:

<http://www2.ohchr.org/english/bodies/cat/opcat/index.htm>

For the end of mission press release, please see:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11457&LangID=E>

¹ Since its establishment in 2007, the SPT has visited, in chronological order: Mauritius, the Maldives, Sweden, Benin, Mexico, Paraguay, Honduras, Cambodia, Lebanon, Bolivia, Liberia and Ukraine.

Current developments

TREATY BODIES STRENGTHENING PROCESS: ACADEMIC CONSULTATION IN LUZERN

In the context of the Treaty Body strengthening process, the Centre of Human Rights Education of the University of Teacher Education in Lucerne, Switzerland, hosted an academic consultation on 24 and 25 October 2011. Representatives of OHCHR participated as observers.

The detailed agenda included, *inter alia*:

- The monitoring function of treaty bodies;
- Alternatives to standard treaty body reporting procedures;
- Treaty body individual communications procedures; and
- Monitoring and implementation: where does the role of the treaty bodies end and how do treaty bodies fit within the larger human rights structure? ■



Academic Consultation in Luzern (October 2011) © Centre of Human Rights Education of the University of Teacher Education in Lucerne



From Left to Right: Mr. Thomas Kirchschräger, Mr. Peter Kirchschräger and Mr. Michael Addo at the Academic Consultation in Luzern (October 2011) © Centre of Human Rights Education of the University of Teacher Education in Lucerne

TO READ AND LEARN MORE

A report of the meeting, including a summary of its discussion and recommendations, is available on the treaty body strengthening web page of OHCHR:

<http://www2.ohchr.org/english/bodies/HRTD/index.htm>

DUBLIN II WRAP-UP MEETING ON TREATY BODY STRENGTHENING PROCESS

In November 2009, the treaty body strengthening process was launched in Dublin with the adoption of a Statement which was endorsed by many treaty body experts and paved the way for the consultations that followed. Two years later, a meeting was organized on 10 and 11 November 2011 by the University of Nottingham in Dublin gathering the participants of the previous seven consultations held on this process, namely Dublin I, Marrakesh, Poznan, Seoul, Sion, Pretoria and Luzern. The wrap-up meeting was attended by Chairpersons of seven treaty bodies namely CESCR, CERD, CEDAW, CAT, CMW, CRPD, and the SPT respectively. Other participants included a few treaty body members, representatives of the Irish Ministry of Foreign Affairs, and representatives of National Human Rights institutions and non-governmental organizations.



Deputy High Commissioner, Ms. Kyung-wha Kang with OHCHR colleagues at Treaty Body consultation in Dublin on 10-11 November 2011. © OHCHR

The meeting was structured as a drafting exercise where participants discussed the draft outcome document prepared by the University of Nottingham which had been circulated in advance for comments. Each segment of the meeting was chaired by a member of one of the participating Committees.



Treaty Body consultation in Dublin on 10-11 November 2011, Mr Ibrahim Salama, Director, Mr Michael O'Flaherty, member of Human Rights Committee. © OHCHR

The outcome document is built around two main sections:

1. General measures for treaty body strengthening including membership, harmonisation of treaty body procedures, promoting knowledge of the treaty body system, reprisals and resources; and;

2. Treaty body functions, namely the State reporting process, individual communications, follow-up to concluding observations and Views, and General Comments.

Each item discussed in the document contains recommendations addressed to treaty bodies, States and OHCHR respectively. The document was endorsed unanimously following a number of amendments made to the original text during the drafting process.

The recommendations endorsed include:

a) A proposed time limit of two non-renewable terms for treaty body membership, without prejudice of the existing mandates of treaty body members;

b) The establishment of a formal consultative and transparent national selection process involving National Human Rights Institutions, and civil society actors to consider possible nominations of candidates to the treaty bodies and make recommendations to governments;



Treaty Body consultation in Dublin on 10-11 November 2011. © Mary Crock

c) Enhancing the role of the UPR process as a vehicle through which States can be encouraged to give increased attention to treaty body outputs;

d) And the need for States to adequately fund the treaty body system and to include in their reports to the Committees an estimate in costs of all the proposals therein contained. ■



Workshop on treaty bodies reporting process in Honduras © OHCHR

WORKSHOPS ON TREATY BODIES REPORTING PROCESS IN HONDURAS

From 24 to 27 October 2011, the OHCHR Field Presence in Honduras (Human Rights Adviser's Office) and the OHCHR Headquarters in Geneva (Human Rights Treaties Division) conducted a series of workshops on the treaty bodies reporting process, which included sessions focused on State officials, NGOs and UN Staff (UNCT). The workshops were organized in response to the announcement made by the Ministry of Justice and Human Rights, informing that Honduras had initiated the preparation process of the initial report to the Committee on the Elimination of Racial Discrimination, pending since 2004. The aim of the workshops was to strengthen the capacity of different stakeholders in order to ensure timely reporting to the human rights treaty bodies and to encourage a wide range of human rights actors to submit contributions to the UN human rights committees. The workshops also stressed the importance of ensuring greater participation of civil society organizations in the follow-up to the treaty bodies' concluding observations.

The workshop was attended by 17 State Officials, representing several Ministries of the government of Honduras. The workshop was closed by Mrs. Lolys Salas, the Vice Minister of State for Justice and Human Rights, and Mr. José Eguren - the UNDP country representative. Both stressed the importance of the treaty bodies reporting process as a central pillar in the State's efforts towards strengthening human rights

protection in Honduras. Mrs. Salas announced that Honduras was preparing to submit its initial report to the Committee on the Elimination of Racial Discrimination before the end of 2011. ■

SEVEN COUNTRIES OF THE WESTERN BALKAN REGION REFLECT ON STRATEGIES TO FOLLOW-UP ON RECOMMENDATIONS OF THE TREATY BODIES, SPECIAL PROCEDURES AND UPR

Discussions on ways to coordinate the implementation of the recommendations of un human rights mechanisms

The OHCHR organized a workshop for countries of the Western Balkans region on strengthening national implementation of recommendations adopted by Treaty Bodies, Special Procedures and UPR of the Human Rights Mechanisms in Belgrade from 29 November to 1 December 2011. The workshop was aimed at strengthening the capacity of States, National Human Rights Institutions and civil society organizations with regard to the implementation of the recommendations of the treaty bodies, special procedures and UPR recommendations. It was attended by approximately 50 participants from Albania, Bosnia and Herzegovina, Croatia, Montenegro, the former Yugoslav Republic of Macedonia and Turkey, as well as UN system partners in these countries. Two additional workshops will be organized by the end of March of 2012 for twelve countries from the Central Asia and Eastern Europe region. ■



Workshop for countries of the Western Balkans region on strengthening national implementation of recommendations adopted by Treaty Bodies, Special Procedures and UPR of the Human Rights Mechanisms in Belgrade from 29 November to 1 December 2011. © OHCHR

TRAINING WORKSHOP ON TREATY REPORTING IN SOUTH AFRICA

The OHCHR Regional Office for Southern Africa in Pretoria, together with the Department of International Relations and Cooperation and the Department of Women, Children and Persons with Disabilities (Ministries) of the government of Republic of South Africa, organized a training workshop on reporting to the UN human rights treaty bodies from 16 to 18 November 2011 in Pretoria, South Africa. The training was designed to assist Government officials in mastering the reporting techniques in order to enable South Africa to meet its reporting obligations.

The training workshop focused in particular on the drafting of the Common Core Document, periodic reports to the Committee on the Rights of the Child under the Convention and initial reports under its Optional Protocols, as well as initial reports to the Committee on the Rights of Persons with Disabilities. It also included a segment on the implementation of the Convention on the Rights of Persons with Disabilities as well as a specific segment on follow-up to the Universal Periodic Review for South Africa.

Staff members at both the UN Department of Economic and Social Affairs in New York and OHCHR in Geneva conducted the three-day training workshop.

The workshop was opened by Mr. Pitso D. Montwedi, the Chief Director for Human Rights and Humanitarian Affairs of the Department of International Relations and Cooperation and it was attended by 68 Government officials from several ministries as well as by staff members of the National Human Rights Commission of South Africa. ■

LAUNCH OF FIRST CALL FOR APPLICATIONS TO THE OPCAT SPECIAL FUND 2011-2012

The first call for applications to the Special Fund to help finance the implementation of recommendations made by the Subcommittee on Prevention of Torture (SPT) after a visit to a State party, as well as education programmes of national preventive mechanisms (NPMs), for the period 2011-2012, was launched in November 2011.

For this application period, four thematic priorities were established:

- Notifications of fundamental rights to detainees in a language which they can understand;
- Improving recreational and/or vocational activities for juveniles in detention;
- Basic training programmes for detention personnel (with the inclusion of a focus on health care);
- and any other specific recommendation in the visit reports that details a pressing and compelling need.

Only recommendations made in visit reports that have been made public at the request of the State party could form the basis of an application. Applicants were entitled to request grants of up to US\$ 20,000, for project applications implemented between 1 January 2012 and 31 December 2012. ■

NEW PUBLICATION: "DEPRIVATION OF LIBERTY" AS PER ARTICLE 4 OF OPCAT: THE SCOPE' (HRIC, BRISTOL UNIVERSITY)



Academic opinion on the scope of the notion of "Deprivation of liberty" as per Article 4 of OPCAT

The Human Rights Implementation Centre at the Bristol University has prepared an opinion on "the scope of the notion of deprivation of liberty" as per Article 4 of OPCAT" in which the authors examine some challenges in the interpretation of this provision.

At issue is the question of knowing what is meant by "places of deprivation of liberty", under Article 4 of OPCAT since the texts in different official UN languages may lead to ambiguous interpretations. In particular whereas the Spanish text of the Optional Protocol text uses the terms "forma de detención o encarcelamiento o de custodia" which translated literally means 'form of detention or imprisonment or custody', the Russian text which uses the term "pod strazhej" seems to indicate only imprisonment "under armed guard".

At issue is the polemic raised in Kazakhstan as that country has started discussions on the adoption of national implementation legislation. Having taken the Russian text as the basis, the ambiguity of the term is whether places subject to visits by the SPT would also cover orphanages, psychiatric institution and other similar care homes where people may be held against their will, but which are not usually under armed guard, or not.

The Bristol Implementation Centre favours the Spanish interpretation which could cover any possible places of deprivation of liberty. The Centre proposes in cases of continuing ambiguity that the SPT seek an official advice from the UN Office of legal affairs. ■

TO READ AND LEARN MORE

The document is available for viewing at:
<http://www.bris.ac.uk/law/research/centres-themes/hric/hricdocs/deprivationofliberty.doc>

NEW RATIFICATIONS AND SIGNATURES

OCTOBER – NOVEMBER – DECEMBER 2011

UNITED NATIONS TREATY COLLECTION	
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DATABASES <hr/> MTDSG Status of Treaties Depository Notifications Certified True Copies Opening for Signature UN Journal Photographs Reference-Links Titles and Recent Texts UNTS UNTS Database Cumulative Indexes MS MS Database Automated Subscription Services	Wednesday, 14 December 2011 11:39:22 <hr/> Introduction UN LOI Historical Information INDEX Full-text Search <hr/> CHAPTER IV : Human Rights 1. Convention on the Prevention and Punishment of the Crime of Genocide. Paris, 9 December 1948 2. International Convention on the Elimination of All Forms of Racial Discrimination. New York, 7 March 1966 2.a. Amendment to article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination. New York, 15 January 1992 3. International Covenant on Economic, Social and Cultural Rights. New York, 16 December 1966 3.a. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. New York, 10 December 2008 4. International Covenant on Civil and Political Rights. New York, 16 December 1966 5. Optional Protocol to the International Covenant on Civil and Political Rights. New York, 16 December 1966 6. Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity. New York, 26 November 1968 7. International Convention on the Suppression and Punishment of the Crime of Apartheid. New York, 30 November 1973 8. Convention on the Elimination of All Forms of Discrimination against Women. New York, 18 December 1979 8.a. Amendment to article 20, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women. New York, 22 December 1995 8.b. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. New York, 6 October 1999 9. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. New York, 10 December 1984 9.a. Amendments to articles 17 (7) and 18 (5) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. New York, 8 September 1992 9.b. Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. New York, 18 December 2002

CRPD

- Ratification by **Cape Verde**, (10 October 2011)
- Accession by **Indonesia**, (30 November 2011)
- Accession by **Myanmar** (7 December 2011)

OP-CRPD

- Accession by **Uruguay**, (28 October 2011)

CRC-OPSC

- Accession by **Guinea** (16 November 2011)

OP-CESCR

- Ratification by **Argentina** (24 October 2011)
- Signature by **Venezuela**, (4 October 2011)

OP-CEDAW

- Accession by **Cape Verde**, (10 October 2011)

CMW

- Signature by **Venezuela**, (4 October 2011)

- *For information on the status of ratification and signature of UN member states of UN human rights treaties and other international treaties, as well as reservations and declarations, please see:*
<http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>
- *An overview of the ratification status by UN member states is accessible on:*
<http://www2.ohchr.org/english/bodies/treaty/docs/HRChart.xls> ■

KINDLY NOTE THAT ANY DOCUMENT AND/OR CORRESPONDENCE FOR OHCHR SHOULD BE SENT TO REGISTRY@OHCHR.ORG

NEW STATE PARTY REPORTS RECEIVED OCTOBER – NOVEMBER – DECEMBER 2011

		AFRICA	
	Cameroon	<u>CEDAW</u>	Fourth to fifth periodic report CEDAW/C/CMR/4-5 received on 1 December 2011
	Central African Republic	<u>CRC</u>	Second periodic report CRC/C/CAF/2 received on 13 December 2011
	Gambia	<u>CRC</u>	Second to third periodic report CRC/C/GMB/2-3 received on 28 October 2011
	Gabon	<u>CESCR</u>	Initial report E/C.12/GAB/1 received on 26 October 2011
	Ghana	<u>CCPR</u>	Initial report CCPR/C/GHA/1 received on 3 October 2011
	Rwanda	<u>CMW</u>	Initial report CMW/C/RWA/1 received on 21 October 2011
	Seychelles	<u>CEDAW</u>	First to fifth periodic report CEDAW/C/SYC/1-5 received on 12 October 2011
	Sierra Leone	<u>CEDAW</u>	Sixth periodic report CEDAW/C/SLE/6 received on 24 November 2011
		NORTH AFRICA AND MIDDLE EAST	
	Iraq	<u>CEDAW</u>	Fourth to sixth periodic report CEDAW/C/IRQ/4-6 received on 23 November 2011
	Qatar	<u>CEDAW</u>	Initial report CEDAW/C/QAT/1 received on 24 November 2011
		EUROPE, NORTH AMERICA AND CENTRAL ASIA	

NEW STATE PARTY REPORTS RECEIVED OCTOBER – NOVEMBER – DECEMBER 2011

	Azerbaijan	CMW	Second periodic report CMW/C/AZE/2 received on 26 October 2011
	Belarus	Common Core Document	HRI/CORE/BLR/2011 received on 15 December 2011
	Croatia	CRPD	Initial report CRPD/HRV/1 received on 26 October 2011
	Czech Republic	CCPR	Third periodic report CCPR/C/CZE/3 received on 12 October 2011
	Denmark	CRPD	Initial report CRPD/DNK/1 received on 24 August 2011
	Germany	CRPD	Initial report CRPD/C/DEU/1 received on 19 September 2011
	Greece	CRC - OPSC	Initial report CRC/C/OPSC/GRC/1 received on 5 December 2011
	Finland	CERD	Twentieth to twenty-second periodic report CERD/C/FIN/20-22 received on 9 November 2011
	Kazakhstan	CRC	Fourth report CRC/C/KAZ/4 received on 9 November 2011
		CEDAW	Third to fourth periodic report CEDAW/C/KAZ/3-4 received on 5 October 2011
	Moldova (Republic of)	Common Core Document	HRI/CORE/MDA/2011 received on 15 September 2011
	Romania	CESCR	Third to fifth periodic report E/C.12/ROU/3-5 received on 15 November 2011
		Common Core Document	HRI/CORE/ROU/2011 received on 13 October 2011
	Switzerland	CRC - OPSC	Initial report CRC/C/OPSC/CHE/1 received on 16 December 2011

NEW STATE PARTY REPORTS RECEIVED OCTOBER – NOVEMBER – DECEMBER 2011

	Turkmenistan	CRPD	Initial report CRPD/C/TKM/1 received on 5 December 2011
	United Kingdom of Great Britain and Northern Ireland	CRPD	Initial report CRPD/C/GBR/1 received on 2 November 2011
		Common Core Document	HRI/CORE/GBR/2011 received on 24 November 2011
		LATIN AMERICA AND THE CARIBBEAN	
	Bolivia	CMW	Second periodic report CMW/C/BOL/2 received on 18 October 2011
	Colombia	CMW	Second periodic report CMW/C/COL/2 received on 18 October 2011
	Dominican Republic	CERD	Thirteenth to Fourteenth periodic report CERD/C/DOM/13-14 received on 17 November 2011
		CRPD	Initial report CRPD/C/DOM/1 received on 5 December 2011
	Ecuador	CRPD	Initial report CRPD/C/ECU/1 received on 8 September 2011
	Jamaica	CRC	Third to Fourth report CRC/C/JAM/3-4 received on 19.12.2011
		CERD	Sixteenth to Seventeenth periodic report CERD/C/JAM/16-17 received on 16. December 2011
		ASIA AND THE PACIFIC	
	Cambodia	CRC - OPAC	Initial and Second periodic report CRC/C/OPAC/KHM/1-2 received on 25 October 2011
	Singapore	CRC - OPAC	Initial report CRC/C/OPAC/SGP/1 received on 13 December 2011

ENGAGE WITH THE HUMAN RIGHTS TREATIES DIVISION!

YOU CAN BE OF CRUCIAL ASSISTANCE TO TREATY-BODIES

<ul style="list-style-type: none"> - <i>By raising awareness with country-based constituencies about upcoming considerations of reports by treaty body</i> - <i>By encouraging relevant partners to provide information to relevant treaty bodies</i> - <i>By facilitating and encouraging implementation of treaty body recommendations</i> 	Committee	Committee's Secretary
	Committee on Enforced Disappearances (CED) , ced@ohchr.org	Mr. Simon Walker swalker@ohchr.org
	Human Rights Committee (HRCttee) , ccpr@ohchr.org	Ms. Kate Fox kfox@ohchr.org
	Committee on Economic, Social and Cultural Rights (CESCR) , cescr@ohchr.org	Ms. Maja Andrijasevic-Boko mandrijasevic-boko@ohchr.org
	Committee on the Elimination of Racial Discrimination (CERD) , cerd@ohchr.org	Ms. Gabriella Habtom ghabtom@ohchr.org
	Committee on the Elimination of Discrimination Against Women (CEDAW) , cedaw@ohchr.org	Mr. Bradford Smith bsmith@ohchr.org
	Committee against Torture (CAT) , cat@ohchr.org	Mr. Joao Nataf jnataf@ohchr.org
	Committee on the Rights of the Child (CRC) , crc@ohchr.org	Ms. Allegra Franchetti afranchetti@ohchr.org
	Committee on Migrant Workers (CMW) , cmw@ohchr.org	Mr. Jakob Schneider jschneider@ohchr.org
Committee on the Rights of Persons with Disabilities (CRPD) , crpd@ohchr.org	Mr. Jorge Araya jaraya@ohchr.org	
Subcommittee on Prevention of Torture (SPT) , opcat@ohchr.org	Mr. Patrice Gillibert pgillibert@ohchr.org	

HRTD NEWSLETTER

- ❖ ... Is issued on a quarterly basis since 2008 with a view to provide more in-depth and specific information on the work of the treaty bodies, including interviews, analysis of decisions, activities and reports from OHCHR field presences, etc.
- ❖ ... Is available at the treaty bodies' webpage on OHCHR website:
http://www2.ohchr.org/english/bodies/treaty/newsletter_treaty_bodies.htm
- ❖ ... Can be accessed by OHCHR staff on OHCHR Intranet, together with more information on the work of the Human Rights Treaties Division, at:
<http://intranet.ohchr.org/Offices/Geneva/HumanRightsTreatiesDivision/Pages/HRCTDpage.aspx>
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- ❖ ... NEW LINK on website on the Treaty bodies strengthening:
<http://www2.ohchr.org/English/bodies/HRTD/index.htm>

USEFUL TOOLS AND LINKS

- ❖ ... Treaty bodies mailing-list: Regular e-mail notification of treaty body recommendations. To subscribe, go to:
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- ❖ ... Universal Human Rights Index: A user-friendly search engine with access to all recommendations of treaty bodies, special procedures and soon the Universal Periodic Review (UPR): <http://www.universalhumanrightsindex.org>
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