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# Proceedings of Treaty Bodies Workshop

21-22 August 2003  
Kupandole, Lalitpur

Resource Centre



Organised by  
Informal Sector Service Centre (INSEC)  
Kalanki, Syuchatar, Nepal  
Asian Forum for Human Rights and Development (FORUM ASIA)  
Bangkok, Thailand

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## **Coordinator**

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**Informal Sector Service Centre (INSEC)**  
**Asian Forum for Human Rights and Development (FORUM ASIA)**

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## Preface

The global body for peace and human rights has significant role on the protection and promotion of human rights in the world. It does not only generate the international instruments on human rights and other issues but also set up the mechanisms for the enforcement of the conventions. Provision of Treaty Bodies lies under core documents of human rights i.e. International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, International Convention on the Elimination of the All Forms of Discrimination against Women, International Convention on the Rights of the Child, International Convention on the Elimination of All Forms of Racial Discrimination and International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Nepal is also a state party.

Nepal is undergoing through the severe conditions of human rights violations due to the armed conflict. Nature of killings, abductions, arrest and disappearances show the current situation of human rights pushing at the verge in the country. On the one hand, the country is under the critical situation and on the other; the government of Nepal has not fulfilled its reporting liability to the international level. Non-governmental organisations and civil society organisations are not so proactive on submitting the alternative or shadow reports beside one or two treaties. On this background, INSEC organised the programme to discuss intensively on the process, procedures, mechanisms and the whole United Nations Treaty System hoping that the gap of reporting liability will be covered.

This proceedings is of the National Workshop on Treaty Bodies, which was held on 21-22 August 2003 at Kuponhole, Lalitpur. The workshop was organised for the first time in Nepal that different people from different backgrounds participated discussing on the need and use of treaty bodies in Nepal. More importantly, participants practically exercised "1503" complaint procedures under charter body mechanism.

The workshop, the result of joint collaboration of Forum Asia and INSEC, gathered more than 55 participants from selective ministries, National Human Rights commission, various human rights organisations, district bars, advocates, individuals and representatives of the academic, international organisations and the donor communities.

We are very much encouraged by the outcomes of the workshop and the active participation of the participants from different backgrounds. I would like to thank FORUM ASIA for making our work to be real and the participants, resource persons, paper contributors, the working team of Treaty Monitoring Centre at INSEC and the entire human rights community of Nepal who always inspired us to continue our effort.

**Subodh Raj Pyakurel**  
Chairperson



## Acknowledgement

Movements of human rights were developed as a result of envisioning the need of building humanitarian laws. The movements *en route* to developing the laws to address the pangs of the war victims no sooner enticed the world concerns raising issues at the apex. So, the issues did not only come to be of a national, they also crossed the boundaries and noticed in the international arena as issues to debate on invariably raising more questions than answers. Such questions basically problem-based, were also raised for remedies in a workshop on Human Rights Treaty Bodies jointly organised by INSEC and FORUM ASIA in Kupandol, Lalitpur on 21-22 August 2003. Organising the workshop has been rewarding experiences where common interest led to endless discussions about differing conceptions of human rights and treaty bodies' issues in Nepali context. Many people helped us constructively either as participants, observers or resource persons, which inspired us to gain a real purchase of our work. Here, we would like to express our gratitude for their cooperation.

We would like to thank FORUM ASIA, a regional human rights organisation for providing the financial support for this workshop.

We would like to record a note of appreciation to the Chairperson of INSEC Mr. Subodh Raj Pyakurel, Senior Consultant Mr. Hamid Ansari, Directors Mr. Bijaya Gautam, Mr. Padma Khatiwada and Mr. Jagadish Dahal for their critical observations and suggestions, which did much to deepen the sustained process of revision that followed the workshop. We are very much thankful to them for providing us with much needed comments on style, substance and facts. We specially thank the resource persons for their presentations in the workshop in spite of their overpiled schedules. We are particularly grateful to Mr. Upendra Poudel, Mr. Kamdev Khanal, Mr. Shailesh Sharma, Mr. Prakash Bhattarai, Mr. Yuvraj Bhurtel and Mr. Sita Ram Lamsal for their cooperation.

A special vote of thanks goes to Mr. Bal Krishna Kattel who painstakingly involved in reporting the workshop, compiling the reports and documents in the form of proceedings and editing them to give the shape it stands.

Last but not the least, we want to express our sincere gratitude to the participants who enthusiastically involved in discussion on the topics of the workshop to make the work happen. Our gratitude goes by the same token to all the human rights activists who are working for human dignity from the level best where they are most useful.

**Ranjana Thapa**  
Coordinator

## Executive Summary

**Informal Sector Service Centre (INSEC)** and **Asian Forum for Human Rights and Development (FORUM ASIA)**, a regional human rights organization Asia, jointly organised a **National Workshop on Treaty Bodies** at Hotel Himalaya, Kupandol, Lalitpur, Nepal. **Former Justice of the Supreme Court Mr. Laxman Prasad Aryal** inaugurated the workshop. The Chairperson of INSEC **Mr. Subodh Raj Pyakurel** chaired the session.

**Mr. Sushil Raj Pyakurel, Honorable Member of National Human Rights Commission** shed lights on the importance of the treaty bodies adding that the treaty bodies should address the activities of the non-state actors.

Addressing the session, chief guest **Mr. Laxman Prasad Aryal** remarked that human rights make an individual a complete human being. Any power that undermines the basic rights of people promotes the rebellion outcome, which could draw the prospect of the nation to the end. Human rights are global issues. They should not be defined only as the national or regional issues and neither it be narrowed to the national boundaries as well. Briefing the objectives of the workshop, **Mr. Padma Khatiwada, Director (Planning, Research and Development)** of INSEC hoped that the workshop would come out with concrete outcomes that would be much benefited to the participants. **Mr. Rasid Kang**, a representative from **FORUM ASIA** shared his experience gained while dealing with the UN from a close distance. He was supportive to the NGOs of Nepal for their noteworthy activities being carried out under the provisions of UN and its obligations.

**Mr. Sindhu Nath Pyakurel, President of Nepal Bar Association** added, the issues that the workshop would be discussing leave a significant mark in the history of developing countries like Nepal. He asked all the participants from the level best to make the UN more democratic, which would contribute for the free access of the third world nations with their intervening role to sabotage the monopoly of a few countries over the majority. **Mr. Krishna Jung Rayamajhi**, former justice of the Supreme Court expressed that the UN was founded on the innumerable corpses and tears of the war victims. It was therefore the importance of the UN was envisioned to protect the people from war crimes and relieve them from the pains and agonies. Concluding the session, **Mr. Subodh Raj Pyakurel** from the chair asked the participating organizations to be a part of the **Human Rights Treaty Monitoring Coordination Committee (HRTTMCC)** to voice collectively the pangs of the nation and incorporate it in the shadow reports, which undoubtedly makes the report bulky, and more relevant. He unveiled the truism that human rights prevail over inhuman wrongs. Any conspiracy against people's will is always short lived.

The workshop, participated in by more than 55 participants from different government offices and NGOs, started immediately after the inaugural session. The participants broadly discussed on the UN Treaty Body mechanisms focusing on the major obstacles while submitting the reports and the government's negligence while preparing it. An evaluation of the workshop was done at the end where the participants filled up the forms and suggested to organize such workshops extending duration, which is more important and informative since this sort of workshop is inevitable where ratification of the International Conventions is on the front than the implementation.



## **Background**

The two-day **National Workshop on Treaty Bodies** was jointly organised by INSEC and FORUM-ASIA on **21-22 August 2003** at **Hotel Himalaya, Kupondole, Lalitpur, Nepal**. The workshop brought together the officials of governmental and non-governmental agencies/organizations, right activists, lawyers, media persons and other individuals who are significantly involved in the protection and promotion of human rights to discuss on the use of treaty bodies, process and procedures of reporting under the treaty bodies and the causes of its poor implementation\exercise by the government authority/ies and the NGOs.

As the participants were from different organizations with varied backgrounds and the experiences, there was a substantial discussion on the topic including significance of the treaty bodies, reporting mechanism, reporting process and the way of preparing periodic and shadow reports. Since the participants included from the top levels of the policymaking and the grassroots NGO workers and rights activists, it was envisioned forming a loose network to communicate continuously even after the workshop ends.

## **Objectives of the Workshop**

To meet the primary aim, the underlying objectives of the workshop were

- To aware the participants of the UN treaty bodies
- To provide information to the law professionals, academicians, students, journalists human rights activists on the working modality of the treaty bodies,
- To disseminate knowledge on the complaint system under the four treaties i.e. ICCPR, CEDAW, CAT and CERD.
- To introduce the depth information on the use of treaty bodies such as receiving the state reports, sending the relevant questions, working methods of the six different committees
- To find an alternative approach to implement the better human rights in the country by using the treaty body mechanisms.

## **Expected Outcomes**

Enriched the participants about:

- UN treaty bodies
- Working modalities of the treaty bodies
- Complaint system under the four treaties
- The use of treaty bodies such as receiving the state reports, sending the relevant questions and the working modalities of different six committees

## **Major Outcomes**

- The workshop dwelt upon an intensive discussion on UN Treaty Bodies where the participants came to know on the working methods, mandate and effectiveness of the treaty bodies. They also benefited from the depth knowledge on the complaint procedures under Charter and Treaty Bodies system.
- The workshop also acknowledged that the accountable role of UN to the non-state actors was needed to focus on their activities. Pervasive and constructive role of the UN in the present time when the prospects of human rights are at verge was deemed inevitable for the sovereignty, autonomy and liberty of underdeveloped countries.

## **Evaluation**

Evaluation of the workshop was done from two perspectives. The most significant evaluation was drawn from the participants and the other was from the INSEC employees who were directly involved in the programme and observed side by side.

All the participants gave their feedback in written form filling up evaluation forms. The participants suggested the organizer to continue such workshop extending the time duration in future, where participants got enough time to discuss on the subject matter. Recommendation of holding a refresher or follow up meeting was a point of the participants, since this sort of programme is inevitable in the country like Nepal where ratification of international Conventions is on the front than its implementation.

# The Proceedings

## Inaugural session

**Mr. Padma Khatiwada** Director of INSEC briefed the objectives of the workshop. Welcoming all the participants **Mr. Khatiwada** said that the development of human rights laws has been considered as the major achievement of the UN. The six important conventions ICCPR, ICESCR, CEDAW, CAT, CERD and CRC are the major documents directly related to the fundamental rights of people. So, they are often regarded as the core documents. The UN human rights treaty bodies have provisioned the individual complaint procedures, reporting mechanisms and remedial forms. Nepal has ratified 16 international human rights documents. The Clause 9 of Treaty Act, 1990, has recognized the ratified conventions/covenants as national laws. It is on this ground, this workshop provides knowledge on the promotion and protection of human rights using treaty body mechanism and also gives the behavioural knowledge of “1503” communication procedure. He also expressed a good hope that the workshop would come with a concrete outcome that would be much benefited to the participants. He also made known the participants that the outcomes of the workshop would be reviewed and applied in the forthcoming training cum workshop programme to be held in September 2003.

Addressing the programme, the **chief guest Former Chief Justice of the Supreme Court Mr. Lakshman Prasad Aryal** remarked that the bodies that look into the monitoring of the treaties and implementation of the UN provisions are known as treaty bodies. Human rights make an individual a complete human being and any power that undermines the basic rights of people promotes the rebellion outcome. Violence begins from the violation of human rights. It is from the ground of violation of rights the armed conflict in Nepal is erupted. Humanity sprouts from the human rights. It is also in the period of the state of emergency, the humanity remains with the human beings. Therefore, the rights of people should be protected even in the period of the state of emergency. Human rights are global issues. It should not be defined only as the regional or national issues and neither be it confined in the national boundaries. Any state wants to be sovereign should not be dehumanized. Invasion of big states into the small in the names of superpowers is not desirable. It is against the mandate and provision of international laws. So, any states of “so-called superpowers” are not above the provisions and spirit of laws. He was also of the opinion that Nepal is rated as a country of not submitting periodic reports on time. Provisions of instruments if not implemented mean for nothing even though they are signed at a hurry. After being a state party, the state should respect the provisions and spirit of the international instruments, but this is what Nepal lacks much. Whatever reports are submitted to the UN bodies on the part of Nepal, they are based on the surface facts. He expressed hope that the workshop could generate the sense of self-responsibility and encourage all to undertake their duties effectively.

**Honorable Member of National Human Rights Commission Mr. Sushil Pyakurel** shed light on the overall impact of the global issues basically on the developing countries. Stressing the importance of the treaty bodies, he deemed the treaty bodies as a suitable venue where role of non-state actors could be made more accountable. He was of the opinion that the treaty bodies should also address the activities of the non-state actors.

**Mr. Sindhunath Pyakurel, President of Nepal Bar Association (NBA)**, began by saying that these kinds of issues that the workshop would be discussing seem very significant in the developing countries like Nepal. The most important issue to be discussed in the workshop was how to protect the significance of the least developed countries, which are squeezed in terms of resources in the global order. “After the downfall of USSR, there persisted a problem on power sharing and thus became the international organization less effective. The main concerned of the day is to safeguard the human rights issues in the changing world and this has been a challenge for us.” Dwelling upon the fresh attack on the Iraq by the USA, **Mr. Pyakurel** voiced that the

world wanted to see the pervasive and constructive role of the UN. "The structure of the UN need to be reviewed making it more democratic. It is for the cause, the third state intervention deems to be inevitable to sabotage the monopoly of a few countries over the majority. The UN should be formed stronger so that equal access and equal significance of all countries could be guaranteed kicking aside the certain privilege of certain countries on the ground of power." He also mentioned that the countries like Nepal should take initiation to make UN human rights obligations more effective so that the UN could role more effectively.

**Former Chief Justice of the Supreme Court, Mr. Krishna Jung Rayamajhi** opined that the state, which undermines the prospects and provisions of human rights, would be no more democratic. Being a state party of sixteen international instruments, Nepal has not been active to submit the periodic report of treaties on time. The UN be informed about the human rights challenges of its state parties through the periodic report submitted to the UN. So, the significance of the reports is regarded very high. Highlighting the formation of the UN, he expressed, "The UN was founded on the innumerable corpses and river of tears of war victims. It was therefore, the importance of the UN was envisioned to protect the people from the war crimes and relieve them from the pains and agonies. The UN would not be effective unless the state parties role effectively. It is even to accelerate the UN role, the parties should act actively." Giving a verbal touch to the existing situation of present Nepal, **Mr. Rayamajhi** opined, "Peace does not mean the absence of war. When human beings suffer social injustice, there arises contradictions and disputes and hence builds up conflict to the level of violence. It is only then the prospect of human rights is voiced at the apex to curtail the violence. Therefore, each of us constructive role is inevitable for the formation of healthy society where humanity does not suffer divisions."

**Mr. Rasid Kang**, a representative from **FORUM ASIA**, shared his experience on the occasion applauding in favour of the NGOs of Nepal for their noteworthy activities being carried out under the provisions of UN and its obligations. He wished a success of the workshop expressing that he personally and the **FORUM ASIA** was always ready to support such kind of meaningful and significant activities.

**Mr. Subodh Raj Pyakurel**, the chairperson shared the session that the Nepalese NGOs has formed the HRTMCC to voice collectively the pangs of the nation and incorporate it in the report, which undoubtedly makes the report bulky, and more relevant. Looking at the contemporary world, **Mr. Pyakurel** was of the view that either to form a new government in Iraq or reconstruct the sabotaged Afghanistan, the "big men" are advocating human rights. So, after all, human rights prevail over inhuman wrongs. Conspiracy against people wills is always short lived. He concluded by emphasizing the role of HRTMCC to focus on the primary information for the preparation of shadow reports to submit to the UN, which makes the reports more informative and live.

# **Paper Presentation**

## **Paper 1 Introductory Overview of the UN Treaty Bodies**

- Ranjana Thapa\*

### **1. Introduction**

The concept of human rights is universal. Human rights are inalienable rights of people. Every person entertains it by simply being a human. No one can be discriminated from enjoying human rights because of his/her sex, religion, race, colour, political or other opinion, national or social origin, property, birth or other status (Article 2 of UDHR).

The history of human rights can be traced from the civilization of the world. The notion of human rights can be found in every set of religion and the society i.e. from the Islam to Judaism and to the Buddhism. The orations of the notion of the human rights can be traced to the very dawn of human civilisation and much have been written about human rights through centuries yet one would be still hard to put define the term.

Though the concept of human rights has been dynamically developed in the modern time, it is always placed in the human civilization from the dawn of the civilization in various forms like natural, god gifted, inalienable, civic fundamental and constitutional rights of the people. In a word human rights can be described and the humanitarian rights concerns on the humanity dignity and peace. Human rights are not granted by God or the gift of god or the present of king or the rulers. It has been created by human himself. The evolution of the new theories and discourse of the human rights has helped to the contribution of the modern concepts and theories that made the space and limitation of the human rights field wider and depth.

### **2. Non-Western and Western Perspectives of Human Rights**

Human rights are defined and adopted as per the socio- cultural and political situation of the countries of the globe. The roots of twentieth century the western concept of human rights are traced to the humanist traditions of the Renaissance. The epoch making transformation of medieval Western Europe was accompanied by the founding of a new concept of inalienable rights of the individual independent of the State. The writing of political thinkers like Grotius, Locke, Hobbes, Rousseau and Montesquieu had advanced the theory that atomised individual posses certain inalienable rights in nature but they ceded some of their rights to government in order to establish civil society and to ensure their inherent rights. The notion of natural rights, which fundamentally influences the western conception of human rights, hedged the individual against the state interference. Thus, the western view of human rights derived from individualism and for the efficacy and promotion of such rights the liberal democratic government relies on legal judicial mechanism. The concept of natural rights, which was institutionalised by mid- twentieth century at regional level such as the Council of Europe and at international level, the

\* LL.M



*United Nations. Hence, the UDHR, the EC which were adopted at a time when most third world countries were still under colonial rule.*

The Afro-Asian and Euro-Asian traditional societies have different notion of human rights. Unlike the western perspective, this perspective conceives the notion of human rights and individuals as an integral part of a collective whole, such as the kinship system, the tribe, and the local community. In the non-western traditional societies, the political and civil rights are perceived as essentially communal or group oriented rather than individualistic. Individual rights are of secondary importance in non-western societies.

The non-western perspective on human rights can be divided into traditional non-western perspective and modern non-western perspective of human rights.

### **3. The UN and Human Rights**

The protection and promotion of human rights has been a major preoccupation for the United Nations since 1945, when the Organization's founding nations resolved that the horrors of The Second World War should never be allowed to recur. Respect for human rights and human dignity "is the foundation of freedom, justice and peace in the world", the General Assembly declared three years later in the Universal Declaration of Human Rights. Over the years, a whole network of human rights instruments and mechanisms has been developed to ensure the primacy of human rights and to confront human rights violations wherever they occur. The UN has gradually expanded human rights law to encompass specific standards for women, children, disabled persons, minorities, migrant workers and other vulnerable groups.

The establishment of the United Nations has significantly contributed to the development of the human rights jurisprudence. UN has produced a number of instruments that deal not only with human rights but other cross cutting issues like safer world, peace, justice and humanity. After all the United Nation is central to global efforts to solve problems that challenge humanity.

### **4. Categories of Human Rights Instruments**

The human rights instruments produced by the UN can be classified according to the nature of the instruments. The categories of human rights can be divided as follows:

- General and special
- Global and regional
- Legally binding and others

#### **4.1 General human rights instruments**

General human rights instruments usually comprise a wide range of human rights. Although these instruments are not part of the formal constitutions of international organisations and institutions, they are of a constitutional order in a broader sense and give content to the rule of law in the framework of the UN or of regional structures of international cooperation. The most prominent of these general instruments are:

- The Universal Declaration of Human Rights, 1948
- The International Covenants on Human Rights, 1966
- The European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 etc.



## **4.2 Special human rights instruments**

This category of human rights instruments comprises the special and specific area of human rights. The compilation of general instruments can be classified as special human rights instruments. These kinds of human rights instruments incorporate the special focus of the rights such as rights of women, rights of *dalits*, rights of children etc. Following instruments can be classified under special human rights categories:

- The right of self determination
- War Crimes and crimes against humanity, including genocide
- Humanitarian law

## **4.3 Global and regional human rights instruments**

Other categories of human rights can be drawn as global and regional. Instruments elaborated by organisations of global vocation, such as the UN, ILO, UNESCO fall under the global human rights instruments whereas the instruments generated by regional bodies such as SAARC, League of Arab States falls under the regional human rights instruments. These two instruments are complimentary and interrelated to each other.

## **4.4 Legally binding and other human rights instruments**

Human rights instruments that have legal enforcement value fall under the legally binding category. Any state that ratifies these instruments must implement these treaties in the country. Treaties are legally binding instruments that have implementation provisions. Treaties are the result of solid preparation and that have been widely ratified on the basis of a firm commitment to compliance undertaken by states. Many of these human rights treaties have established supervisory mechanism, including reporting systems that aim to give concrete expression to the accountability of the states parties to these treaties.

## **5. Treaty Bodies**

Currently, there are seven treaty bodies and they are:

- The Committee against Torture
- The Committee on the Elimination of Discrimination against Women
- The Committee on the Rights of the Child
- The Committee on Economic, Social and Cultural Rights
- The Human Rights Committee
- Committee on the Protection of the Rights of All Migrant Workers and Members of their Families

### **5.1 Functions of the Treaty Bodies**

The treaty bodies have two main functions:

- The consideration of initial and periodic reports of states parties on how they are implementing the provisions of the treaty
- The consideration of cases under the individual complaints procedure of the treaty, if such a mechanism exists.

*In addition, some of the treaties provide for*

- Urgent procedures
- The consideration exceptional reports
- Inquiry procedures

The treaty bodies also elaborate international human rights law through the development of general comments.

## **6. Human Rights Committee**

### **6.1 The ICCPR Committee**

The human rights committee is established in 1977 in accordance with Article 28 of the ICCPR consists of 18 members of high moral character and recognized competence in the field of human rights, elected by states parties to the covenant from among their nationals. Members are elected for a four-year term by secret ballot at a meeting of the states parties and serve in their personal capacity. The task of the committee as set out in the Articles 40 to 45 of the Covenant are:

- To study reports on the measures states parties have adopted to give effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights,
- To transmit its reports and such general comments as it may consider appropriate to the state parties
- To perform certain functions with a view to settling disputes among states parties have recognized the competence of the committee to that effect
- When necessary to establish an ad hoc conciliation commissions make an available its good offices to states parties involve in dispute concerning the application of the Covenant with a view friendly solution of the matter on the basis of respect for the Covenant.

### **6.2 The ICESCR Committee**

The Committee is established in 1985 by the ECOSOC Council composed of 18 experts with recognized competence in the field of human rights serving their personal capacity. Its members are elected for a term of four years by the council by secret ballot from a list of persons nominated by states parties to CESC.

The Committee carries out functions relating to the implementation of the Covenant. It examines reports submitted to it by states parties on measures which they have adopted and the progress made in achieving the observance of the rights recognized in the covenant, and assists the ECOSOC Council to fulfil its supervisory functions of a general nature base on its consideration of reports submitted by states parties and the general agencies concerned.

### **6.3 The CEDAW Committee**

The Committee established in 1982 in accordance with Article 17 of the CEDAW, consists of 23 experts of high morel standing and competence in the field covered by the convention. Members are elected by secret ballot from a list of persons nominated by state parties and serve for a term of four years. The Committee meets once a year for two-week period in Vienna or New York.

The basic task of the Committee as set out in article 17of the Convention is to consider the progress made in the implementation of the Convention. The Committee reports on its activities annually to the GA through EcoSoc.

### **6.4 The CAT Committee**

This committee established in 1987 in accordance with Article 17 of the Convention, consists of 10 experts of high moral standing and competence in the field covered by the Convention. Members are elected by secret ballot from a list of persons nominated by state parties. Members are elected for a four-year term by secret ballot at a meeting of states parties and serve in their personal capacity. *The tasks of the committee are:*

- To study reports on measures taken by states parties to give effect to their undertakings under the convention
- To make confidential inquiries, if it decides that this is warranted concerning well founded indications that torture is being systematically practiced in the territory of a state party
- To perform certain functions with a view to settling disputes among states parties concerning the application of the convention, provided that those state parties have recognized the competence of the committee to undertake such functions
- To establish ad hoc conciliation commissions to make its good offices to the state parties concerned with a view to a friendly solution of inter state disputes
- To consider communications from or on behalf of individual subject to the jurisdiction of states parties concerned who claim to be victims of a violation of the provision of the convention provided that those states parties have recognised the competence of the Committee to that effect
- To submit annual reports on its activities to the states parties and to the GA of the UN

### **6.5 The CRC Committee**

The committee consists of 10 experts of high moral standing and competence in the field covered by the Convention. Members are elected by secret ballot from a list of persons nominated by state parties.

### **6.6 The CERD Committee**

The committee established in 1970 in accordance with Article 8 of the CERD consists of 18 experts of high moral standing and competence in the field covered by the Convention. Members are elected by secret ballot from a list of persons nominated by state parties. Members are elected for a four years term by secret ballot at a meeting of the states parties and serve in their personal capacity. The task of the Committee as set out in part II of the Convention are:

- To study reports on measures taken by states parties to give effect to their undertakings under the Convention
- To make confidential inquiries, if it decides that this is warranted concerning well founded indications that torture is being systematically practiced in the territory of a state party
- To perform certain functions with a view to settling disputes among states parties concerning the application of the convention, provided that those state parties have recognized the competence of the committee to undertake such functions
- To establish ad hoc conciliation commissions to make its good offices to the state parties concerned with a view to a friendly solution of inter state disputes
- To receive and consider communication from individuals or groups of individuals within the jurisdiction of states parties which have recognized the competence of the Committee to this effect

The Committee also considers copies of petitions, copies of reports and other information on racial discrimination relation go trust and non self governing territories and to other territories to which GA Resolution 1514 applies transmitted to it by the trusteeship council and by the special committee on Decolonisation.

*The committee met for the first time on 19 January and since that time it has hold two sessions each year and has reported to the GA annually.*

### **References**

1. **www.ohchr.org**
2. **www.un.org**
3. Thapa, Ranjana. 2002. *Individual Complaint Procedures on Human Rights Violations to United Nations*. An unpublished dissertation submitted to LL.M Board, Nepal Law Campus Kathmandu : TU

## **Paper 2**

# **Core Human Rights Instruments' Status of Reporting: Nepal**

-Kabiraj Khanal\*

### **1. Human Rights Treaties, Treaty Bodies and Reporting Status of Nepal: A Brief Introduction**

Human Rights treaties consist of a large number of instruments addressing general and specific human rights. Nepal as a member of the UN is a party to many such HR treaties. The most important conventions with reporting obligations (also called Core Conventions) are discussed here. The Conventions and their Treaty Bodies are given in Table 1.

#### **1.1 Universal Declaration of Human Rights (UDHR)**

The UDHR (1948) has not been signed and ratified by States but it is considered an interpretation of the HR articles in the UN charter. The UDHR could therefore be seen as binding on UN member states. Since the UDHR has no reporting obligations for the States, it will not be discussed further in this paper.

#### **1.2 Convention on the Elimination of Racial Discrimination (Race Convention)/ Committee on the Elimination of Racial Discrimination (CERD)**

The UN General Assembly (GA) adopted the Race Convention in 1965 and came into force in 1969. CERD monitors States compliance with the Convention and consists of 18 members. CERD reports to the GA through the UN Secretary General (SG). The Race Convention spells out States' obligations to eliminate racial discrimination. The Convention establishes procedures to review States' obligations. First, States, which ratify the Convention, must submit periodic reports. Second, the Convention provides for state-to-state complaints. Finally, an individual or group of persons may lodge a complaint with CERD against a State, if the State has agreed to allow individual complaints.

This is the first Convention signed and ratified by Nepal among big six HR conventions. Nepal became the state party on 30 January 1971 and it entered into force from 1<sup>st</sup> March 1971. Following the article 9 of the convention, the initial and 14 periodic Reports have already been submitted. The 15<sup>th</sup> Report was due in the year 2000, and has been submitted in this year. The responsible ministry for the reporting is MLD.

Nepal's status of Reporting to Core HR instruments has been presented in Table 2.

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**Table 1**  
**Core HR Conventions and Treaty Bodies**

S. No.	Covenant	Corresponding Committee	Membership	Meetings	Reporting channel	Remarks
1.	Convention on the Elimination of Racial Discrimination (Race Convention) 1965 (1969)	Committee on the Elimination of Racial Discrimination (CERD)	18	Twice a year	Reports GA through SG	
2.	International Covenant on Civil and Political Rights (ICCPR) 1966 (1976)	Human Rights Committee (HRC)	18	Thrice a year.	Reports GA through SG	
3.	International Covenant on Economic, Social & Cultural Rights (ICESCR) 1966 (1976)	Committee on Economic Social & Cultural Rights (CESCR)	18	Twice a year	Report GA via ECOSOC	
4.	Convention on the Elimination of All Forms of Discrimination Against Women (Women's Convention) 1979 (1981)	Committee on the Elimination of Discrimination Against Women (CEDAW)	23	Once a year	Reports GA Via ECOSOC	
5.	Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention) 1984 (1987)	Committee Against Torture (CAT)	10	Twice a year	Reports GA through SG	
6.	Convention on the Rights of the Child (Children's Convention) 1989 (1990)	Committee on the Rights of the Child (CRC)	10	Three sessions a year	Reports GA via ECOSOC	

Source : International Human Rights Law Group, 1998.

- Note: - 1. All committee members serve in their personal capacity and are chosen to provide for a diverse Representation of legal systems and geographical areas on each committee. The members are not paid.  
2. All these treaty bodies are serviced by OHCHR except CEDAW, which is serviced by DAW.



**Table 2**  
**Reporting to Core Human Rights Instruments**  
**Status of Nepal, Aug 2003.**

	Name of the Covenant	Accession	Entry into force	Initial Report		Periodic Reports		Responsible Agency for Reporting	Remarks
				Due date	Submission date	Due date	Submission Date		
1	International Convention on the Elimination of All Forms of Racial Discrimination (Race convention)	30 Jan. 1971	01 March 1971	27 Feb. 1972	-	Every 2 years	April 2003	MLD	15 <sup>th</sup> submitted (due March. 00)
2	International Covenant on Civil & Political Rights (ICCPR)	13 May 1991	13 Aug. 1991	12 Aug. 1992	30 March 1994	Whenever HRC requests	-	MOHA	2 <sup>nd</sup> Periodic due 1997
3	International Covenant on Economic, Social & Cultural Rights (ICESCR)	14 May 1991	13 Aug. 1991	29 June 1993	25 Oct. 1999	30 June 2006	-	Cab. Sec.	-
4	Convention on the Elimination of All Forms of Discrimination Against Women	22 April 1991	22 May 1991	22 May 1992	May 1997	Every 4 years (96,00)	May 002 2 <sup>nd</sup> & 3 <sup>rd</sup> combined	MWCSW	Revised Report being sent in 003
5	International Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (Torture Convention) 1984 (1987)	14 May 1991	13 June 1991	12 June 1992	06 Oct. 1993	Every 4 years	Due (2 <sup>nd</sup> & 3 <sup>rd</sup> )	MOHA	4 <sup>th</sup> being prepared
6	Convention on the Rights of the Child	14 Sept. 1990	14 Oct. 1990	13 Oct. 1992	10 April 1995	Every 5 years (97,02)	Feb. 2003	MWCSW	2 <sup>nd</sup> & 3 <sup>rd</sup> Combined

Source: MOFA, MLJPA,

### **1.3 International Covenant on Civil and Political Rights (ICCPR)/Human Rights Committee (HRC)**

The GA adopted the ICCPR in 1966 and it came into force in 1976. The HRC consists of 18 members who typically meet three times a year. Each session is preceded by a one-week working group session. The rights to life and freedom from torture are some of the most important civil rights, while the right to vote is an example of political right. Member states are expected to implement these rights.

Nepal became the state party to ICCPR on 13 May 1991, and it came into practice from 13 Aug. 1991. The initial Report was due on 12 Aug. 1992; however, it was submitted on 30 March 1994. Since the periodic Report has to be submitted whenever the HRC requests to the state party, Nepal was requested to submit its report in 1997. No such Report has been submitted so far. The responsibility of reporting has been trusted to the Home Ministry.

#### **1.3.1 First Optional Protocol to the ICCPR**

This is a separate human rights treaty requiring separate ratification, which then authorizes the HRC to receive and consider communications from individuals claiming to be the victim of abuse at the hands of States Parties. For individuals to use this procedure, their government must have ratified the first Optional Protocol.

#### **1.3.2 Second Optional Protocol to the ICCPR**

This Protocol allows governments to formally abolish the use of the death penalty. Nepal has not ratified the first and second optional protocol to the ICCPR.

### **1.4 International Covenant on Economic Social and Cultural Rights (ICESCR) /Committee on Economic Social and Cultural Rights (CESCR)**

The ICESCR was adopted by the GA in 1966 and entered into force in 1976. Unlike other committees, which were established by the corresponding treaty, the CESCR was established by ECOSOC in 1985, but now functions exactly as the other treaty bodies. The CESCR convenes twice a year for three-week sessions. The Committee consists of 18 members. The primary function of the CESCR is to monitor the implementation of the ICESCR by States Parties. The implementation of this convention often requires resources, which Nepal lacks. However, state parties have the obligation to prioritize vulnerable groups & to take steps to the maximum of its available resources to realize all the rights covered by the Covenant. Pursuing the Article 16 of the Covenant, the state parties are obliged to submit Reports on progress made in matters mentioned in the covenant.

Nepal has ratified this Covenant on 14 May 1991. Nepal submitted its initial Report in 1999, (although it was due in 1993). The second periodic report is due in the year 2006. The responsible agency for the reporting is the Cabinet Secretariat.

### **1.5 Convention on the Elimination of All Forms of Discrimination against Women (Women's Convention) /Committee on the Elimination of Discrimination against Women (CEDAW)**

The Women's Convention was adopted by the GA in 1979 and entered into force in 1981. CEDAW is the monitoring body of the Convention. CEDAW consists of 23 experts, who, according to the Convention, meet once a year for two, three-week sessions. The convention is a comprehensive bill of women's rights, demands equality between men and women and engages the state to be responsible for women's rights.

Nepal became the party to the convention on 22 April 1991 and it came into force from 22 May of the same year. The initial Report was submitted 5 years later (than the due time) in 1997. An addendum to the Report was submitted in June 1999. It highlighted the developments that were taken place after the submission of initial Report. The second and third periodic Report (combined) was submitted in May 2002. The pre-session working group (of CEDAW) examined the Report and has raised list of issues and questions. The revised Report (an addendum) is being sent in September this year. The responsible agency for reporting is MWCSW.

### **1.6 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention) / Committee against Torture (CAT)**

The Torture Convention was adopted in 1984 by the GA and entered into force in 1987. CAT consists of 10 experts elected for a term of four years who are eligible for re-election. The CAT meets twice a year and reports to the GA. CAT is authorized to receive reports from governments, engage in confidential on-site inquiries, mediate disputes between States parties and receive individual communications. The Convention prohibits torture anywhere and in any form.

Nepal became the signatory of Torture Convention on 14 May 1991 and it entered into force on 13 June 1991. Following the article 19 of the convention, Nepal was supposed to submit its initial report in 1992, however, it has only submitted its initial report in the year 1993. The 2<sup>nd</sup> and 3<sup>rd</sup> periodic Reports were due in 1996 and in 2000, however, no periodic Reports have been submitted so far. The committee has informed HMG/N that if the 4<sup>th</sup> Report is submitted in the year 2003/04, the 2<sup>nd</sup> and 3<sup>rd</sup> Report will be exempted. The responsible agency for reporting is the Home Ministry. Initial works have been started to prepare the report.

### **1.7 Convention on the Rights of the Child (Children's Convention) / Committee on the Rights of the Child (CRC)**

The GA adopted the Children's Convention in 1989 and it entered into force in 1990. The CRC consists of 10 experts who report to the GA via ECOSOC. The CRC holds three sessions a year for a period of four weeks per session. There is no individual complaint procedure. The CRC has initiated the practice of holding meetings outside of Geneva to facilitate greater awareness about the Children's Convention and dialogue between government, civil society, and the CRC and to foster international cooperation in the field of the rights of the child.

Nepal's accession to the Convention was made on 14 Sept. 1990 and it entered into force from 14 Oct. 1990. The initial Report was due in 1992, however, it was submitted on 10<sup>th</sup> April 1995. The 2<sup>nd</sup> and 3<sup>rd</sup> combined Report is submitted in this year (Feb. 003). The MWCSW looks after the reporting obligation of the treaty.

## **2. Why is Reporting Necessary?**

- First of all, Nepal has reporting obligations to each of these conventions. These provisions must be complied with the terms of the concerned instruments.
- The Reporting exercise provides an excellent opportunity for concerned authorities for self-assessment and honest evaluation of national situation concerning the provisions contained in the particular Convention. It helps to improve the implementation of the same.
- Reporting also helps to establish baseline surveys that assist in gauging progress over time.
- In addition to the relevant UN Committees, the entire international communities who have access to the reports will also have the opportunity to read them.
- The Nepalese people also have the right to know what their government is doing or has reported about the status/implementation of obligations under a particular treaty.

### **3. Problems in Reporting**

From the Table 2 it becomes clear that a huge backlog exists under most of the treaties. The submitted Reports have also attracted serious comments from the relevant committees. However there are a number of reasons behind the poor status of Reporting in Nepal.

- Nepal does not have a policy on treaty reporting obligations. Although a Coordination Committee is formed under the convenorship of MLJPA for Reporting purpose, ad hocism still prevails as a best practice.
- The seriousness to the reporting obligations of the relevant Conventions in the policy level of HMG/N is lacking. In some ministries, no one is made accountable for Reporting.
- Lack of proper documentation in concerned ministries is a serious problem. Although, the MLJPA appears to be relatively in better position, all concerned ministries must improve their documentation in this regard.
- Preparing a Report requires technical skill particularly on how to follow the guidelines, how to collect information, what type of statistics are to be included, how the stakeholders get opportunity to offer their comments and so on. The concerned officers are yet to get proper training.
- A lot of work remains to be done to make the Report 'really a National'. Many times, in the absence of national exercise a report prepared by a consultant is submitted to the treaty body without proper legitimization process.
- Is the preparation of Report a consultant's job? Moreover, is only the legal section of concerned ministries responsible for reporting? These questions must be answered. In my opinion, the implementation side of the ministry must be involved in the preparation of Report.

### **4. Comments of Concerned Treaty Bodies on Nepal's Reporting**

#### **4.1 Race Convention (CERD)**

Conclusion and response to the concern and recommendations made by CERD at its 1427<sup>th</sup> meeting after considering the 14<sup>th</sup> Report of Nepal is given in Annex A. The main comments are:

- The Committee has asked the government to withdraw the reservation on Article 4 and 6 of CERD.
- The Committee has asked the government to effectively monitor the violations of human rights.
- The committee has strongly criticized existing caste-based discrimination, and has asked the government to eliminate it.
- The committee has asked the government to make a declaration on Article 14 of the convention.
- The committee has also shown its interest in safeguarding the human rights of refugees, particularly those of women & children.
- These issues are dealt in the 15<sup>th</sup> Report submitted in the year 2002.

#### **4.2 International Covenant on Civil and Political Rights (ICCPR)**

As mentioned earlier only the initial Report has been submitted by Nepal and the concerned committee (HRC) at its 1359<sup>th</sup> and 1363<sup>rd</sup> meeting held on 17 & 19 October 1994, has mainly adopted the following comments. The full text of the comment is given in Annex B.

- The Report did not follow guidelines and it was also found incomplete. The Report could not provide real HR situation in the country.
- A significant gap exists between constitutional provisions and other legal norms on one hand and their application in practice on the other. Moreover, the status of the Covenant within the domestic legal system is unclear.
- The persistence of caste system, women trafficking, child labour, debt bondage and others constitute clear violations of provisions of the Covenant.



- The Committee has expressed its concern over the discrimination against women in general and particularly in marriage, inheritance, citizenship, divorce, education, and wages and in abortion.
- The Committee has shown concern over the arbitrary executions, enforced disappearances, torture, unlawful detention committed by security and other forces. It has deplored that those violations were not followed by proper judicial enquiry.
- The committee has also shown its concern over the restriction on the right to freedom of expression, information and change of religion.

### **Recommendations**

- The committee has recommended that the legislative reforms must be expedited to ensure the Covenant to be fully incorporated into domestic law.
- The committee has recommended that appropriate measures be taken immediately to address the comments.
- The committee has recommended for accession to the second optional Protocol.
- The committee has also called upon Nepal to prepare its second periodic report in compliance with the guidelines concerned.

### **4.3 International Covenant on Economic, Social and Cultural Rights (ICESCR)**

Over the initial Report submitted by Nepal in 1999, the CESCR has shown concern and has made recommendations. Actually, there are 63 points in comments and recommendations. The full text of concluding observation of the committee is given in Annex C. The main points are:

- The status of Covenant in the domestic law is unclear.
- No illustration of achievements in the field of HR.
- The Committee has shown concern over the extent of poverty, gender inequality, girls trafficking, domestic violence, high rate of unemployment, rehabilitation of Kamaiyas, child labour, high rate of infant, child & maternal mortality, abortion and spreading of HIV/AIDS.
- The Committee has expressed its concern over that Nepal has not ratified ILO conventions No. 29, 81, 87 and 182, Nepal has not acceded refugee convention and its related protocols.

### **Recommendations**

- The Committee has strongly urged Nepal to ensure the Covenant is taken into full account in the formulation & implementation of policies.
- Socio-economic and political rights of people particularly those of most vulnerable groups are fully protected.
- Address the comments made by the Committee and report it in the next periodic Report.
- Disseminate the concluding observations widely among all levels of society and inform the committee on all steps taken in its respect.

### **4.4 Women's Convention (CEDAW)**

Nepal has submitted its initial Report in 1997 and 2<sup>nd</sup> and 3<sup>rd</sup> (combined) periodic Report in the year 2002. In response to the pre-session working group's comment (on 2<sup>nd</sup> & 3<sup>rd</sup> combined report) an addendum is being prepared and will be submitted in September this year. Principal areas of concern and recommendations forwarded by CEDAW on initial Report is given in annex D. The main points are:

- Incorporate provisions of the Convention in domestic laws.
- A definition of discrimination in compliance with Article 1 of the Convention be included in relevant laws.
- Amend discriminatory laws.
- Improve education, gender equality and women's health.
- Take necessary measures to solve the problems of girls trafficking, prostitution, abortion and domestic violence.

- Include sufficient, reliable statistics desegregated by sex.
- Provide more information about rural women.
- Respond to the concerns in the next Report, and disseminate concluding observations widely.

The progress being made in these concerns are mostly included in the 2<sup>nd</sup> & 3<sup>rd</sup> (combined) Report. However, after examining the combined Report the pre-session working group has listed some issues and questions. Some of them are:

- Clarify the relationship between NCDWC and MWCSW.
- Provide more information about National Commission on Women, including its mandate and membership.
- What are the indicators to monitor the implementation of the convention?
- Provide more information about the Legal Aid Act 1997, Act Relating to Land 1964, and National Human Rights Commission.
- Has the bill on domestic violence against women become law?
- What is being done to alter the tradition of son preference and the (low) status of women?
- How is the progress in the areas of controlling prostitution and trafficking? How many cases against trafficking prosecuted?
- Provide more information on participation of women in public life and decision-making, education, employment, health, marriage, family relations, and rural women.
- Any progress in ratifying the Optional Protocol to the Convention?

The full text of the issues & questions is given in Annex E. An addendum is being prepared to respond all these issues, and will be submitted this year.

#### **4.5 Convention against Torture (CAT)**

The initial Report was submitted by Nepal in 1993. No periodic Reports have been submitted. Concluding observations of the CAT are:

- The Report was scant on detail and did not follow the guidelines of the committee.
- Proposed definition of torture (in domestic law) is not as wide as required by the Convention.
- Capacity to collect the relevant data may be lacking.
- Several cases of police maltreatment of prisoners and asylum seekers have been reported by NGOs, but no evidence has been produced of criminal prosecution of such officers.

#### **Recommendations**

- An additional report (answering all the questions raised by CAT) be forwarded to the committee within 12 months. It has to follow the guidelines of the CAT.
- Enact legislation incorporating the definition of torture as contained in the Convention, together with ancillary compensation legislation.
- A vigorous programme of education be undertaken with police officers and border guards.

A copy of the CAT observation is provided in Annex F.

#### **4.6 Child Convention (CRC)**

The CRC Considered the initial Report of Nepal at its 301<sup>st</sup> to 303<sup>rd</sup> meeting held on 29-30 May 1996, and adopted the following principal subjects of concern (in brief). The full text of the concluding observation made by the CRC is given in Annex G.

- Inadequate measures adopted to ensure that national legislation fully confirms with the convention.
- Insufficient measures adopted to ensure the effective implementation of the principle of non-discrimination. The CRC is also concerned at the caste system and traditions of Deuki, Kumari & Devis.



- No Systematic & comprehensive data collection, indicators and monitoring mechanism for all areas covered by the Convention.
- Concern on school dropouts, street children, primary education, child labour, trafficking of children, child prostitution, birth registration and juvenile justice.

#### **Recommendations**

- Undertake adequate legal reform to ensure full conformity of domestic laws with the Convention, particularly with general principles of the Convention.
- Take effective measures to combat discriminatory traditions, attitudes and practices.
- Respond all the issues raised by CRC under the heading of principal subjects of concern.
- Ratify the Refugee Convention of 1951.
- Disseminate the initial Report, the summary records of the discussion and the concluding observations adopted by the Committee among not only the adult members of society but to the children as well.

#### **5. What should be Done?**

- A clear cut instruction to all concerned ministries from the Cabinet to abide by Treaty reporting schedules according to the terms of concerned Treaty.
- Concerned Ministries have to make a timetable to meet the reporting date line of the concerned committees.
- Make Division/Section of the ministry accountable to the Reporting.
- Raise awareness of the ministries about the range of treaties to which the country is a party and the obligations imposed. In this regard, Cabinet Secretariat, MOFA, MLJPA, NHRC and NGOs have to play an important role.
- Strictly follow the guidelines of the concerned committees, and respond to the issues raised by the Committee in previous Reports.
- Provide adequate training to concerned officials (NHRC can play a lead role) on reporting skills.
- Make the Report truly 'a national'. In this regard, in addition to the concerned government. Agencies get input from NGOs and discuss widely with civil society as well.
- Strengthen the data collection procedure, identify the sources and fix the timetable.
- Involve the implementing authorities in preparing the Report.
- Make the reporting works teamwork, and the tradition of hiring outside consultant to prepare the report should be discontinued.
- The follow-up and monitoring of reporting should be done by MLJPA.

## Paper 3

# Significance of Treaty Bodies in the Implementation of Treaties

- Pradeep Shankar Wagle\*

### 1. Introduction

The international human rights law provides horizontal and vertical protection<sup>1</sup> of human rights. The enforcement of international human rights law is carried out normally by treaty bodies, known as the vertical approach of human rights protection, which includes legal, judicial and political processes of investigation of human rights violations and "deliberation" of ideas and issues. The decisions are less effective compared to the horizontal approach, which includes economic and military coercion to act in accordance with international human rights treaties. Still, we face a constant battle as to whether human rights have cross-broader application, as the traditional concept of national sovereignty has become the customary resistance of some authoritarian countries. The concept of national sovereignty is now construed in a way that it no longer affords impunity for the transgression of human rights. Therefore, it no longer serves as a barrier in implementing human rights, as there are some supra-national human rights enforcement mechanisms – "treaty bodies" –, which have become the part of the normal fabric of the international topography.<sup>2</sup>

In principle, the state serves as a key guarantor of human rights, despite the fact that international human rights law prescribes the standard of treatment of individuals by their governments. The state is the foundation for the development of human rights law. Furthermore, it is known as the antithesis of human rights -- one exists to contest the other in a struggle for the domination over society.<sup>3</sup> Human rights norms are codified by states<sup>4</sup> although they are preordained to contain and control state power. The "good" state controls its despotic position by internalizing human rights norms and submitting to their moral preeminence. The "bad" state rejects the authority of human rights norms and carefully guards its sovereignty from popular control. Therefore, the tension between the state and human rights dialogue can be mitigated but not eliminated.

The treaty bodies are the response of this constant battle. They urge that human rights should be internalized in every sphere of governance so as to protect the valid interests of individuals. As soon as a state accepts the responsibilities of the treaties, it must fulfill the duties derived from them. International human rights treaties establish an extended bond of

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<sup>1</sup> These approaches are not universal approaches; however, they are used recurrently by writers see *infra* note 2.

<sup>2</sup> Makau Wa Mutua, Looking Past the Human Rights Committee: An Argument for De-Marginalizing Enforcement, 4 *Buffalo Human Rights Law Review* 211, 1998.

<sup>3</sup> Makau Wa Mutua, Hope and Despair for a New South Africa: The Limits of Rights Discourse, 10 *Harvard Human Rights Journal*, 63, spring 1997, at 68.

<sup>4</sup> The contribution of British Constitutional Documents such as Magna Carta, Petition of Rights (1628) Bills of Rights (1689) did codification of the traditional liberties into constitutional document. Furthermore, the American Declaration of Independence (1776) and the French Declaration (1789) also have contribution in codification of human rights in their respective countries.

relationship of an individual with his/her state and sometimes it extends to the international community. Each treaty provides human rights, which are designed for the individual within the domestic jurisdiction. As a general rule, states do not recognize the violation of human rights in their domestic jurisdiction, and, state sponsored institutions may not legitimately frame questions against the action of the government. Therefore, it is essential to have a supra-national mechanism to monitor obligations as well as the commitments made towards the protection of human rights.

## **2. The Necessity of Establishing Treaty Bodies**

### **2.1 The need of the treaty bodies**

It is practically recognized that rights hold corresponding duties in human rights jurisprudence, but liberals might argue otherwise. The point here is to make clear that international human rights laws provide different duties to the state depending on the nature of the rights. For example, the ICCPR generally provides “traditional negative liberties” whereas the ICESCR provides several positive obligations to the states. There are new and evolving trends in which the traditional classification of rights and state duties have been altered and it is now believed that there must be more obligations assigned to the state, since the state has the duty to satisfy its citizens. The international human rights monitoring mechanism depends on the nature of human rights treaties. There are some essential prerequisites while implementing international human rights. Firstly, the state needs to treat citizens equally, respect their individual dignity and overall *respect* the rights of citizens. Secondly, there should be *institutional mechanisms* of the state to implement the rights and to prevent the direct interference of government. The institutional mechanism needs again to *protect* rights and *prevent* violations. In addition, the state should provide resources to implement some rights, for example, in regards to the right to housing, the government must allocate adequate resources. Resources are needed to ensure most of economic and social rights. Lastly, the state has to *build* a strong human rights culture, which brings changes in the attitudes and behaviors of law enforcement institutions and officials, as well as the general public.

The idea behind international human rights is to establish a relationship between the individual and the state, and to internalize human rights norms and allow them to penetrate and transform into their domestic legal and political culture. The obligation of the state as stated above is to implement international norms in the domestic legal and political order or give legitimacy and enforcement of human rights. Thus, the role of treaty bodies is simply identified as to monitor, encourage compliance with, and enforce human rights norms at the domestic jurisdiction of states, since treatment of the states to its citizens is not only a matter of domestic concern. In addition, they serve as ideas of understanding the rights guaranteed by the respective treaties at the national level.

The question arises as to who monitors the aforesaid obligations of the state? The state itself, or state sponsored institutions? It is understood that the international human rights regime provides a wide range of human rights. Each treaty implies different kinds of obligations. Therefore, the underlying reason for the establishment of treaty bodies is to make the state responsible for respecting human rights, ensure human rights guarantees through institutional mechanisms protect and prevent from abuse and violation, and develop a human rights culture.

## 2.2 The underlying reasons

Most treaties have their own mechanism to monitor in terms of implementation or compliance with treaty provisions. As stated earlier, rights have different natures. Therefore, each committee possesses virtually identical mandates in implementing the rights guaranteed by the treaties. Six treaty bodies monitor compliance of their respective treaties. These are the Human Rights Committee (HRC), the Committee against Torture (CAT), the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee on the Rights of Children (CRC), the Committee on the Elimination of All Forms of Racial Discrimination (CERD), and the Committee on Economic, Social and Cultural Rights (CESCR)<sup>5</sup>.

Two basic underlying principles behind the establishment of the treaty bodies may be identified: a) International human rights law provides a normative framework of human rights which is applicable in national boundaries. "Bad states" generally abuse human rights; therefore, the domestic mechanism for monitoring the performance of human rights against its own government would not be sufficient; b) No state could legitimately interpret international human rights or invoke national laws to justify its action or omission; therefore, all states must depend on international law for the interpretation of human rights.

## 3. Implementing International Treaties on the Domestic Level

### 3.1 Reporting mechanisms

Each of the committees monitors the compliance of human rights through state reporting. Consequently, states have to submit "state reports" on the themes prescribed by the committees. The essential premises to be included in the reporting are: progress, measures and actions taken in order to implement the rights guaranteed by the respective treaties.<sup>6</sup> The ICCPR for example requires all state parties to submit reports to the Committee "on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights."<sup>7</sup> All treaties require an initial report and periodic reports. The Committees generally treat initial reports as a time to establish a "constructive dialogue" with state representatives and allocate more detailed concentration to specific human rights practices in succeeding periodic reports.

Once a state party submits its report, the respective committees review the submission in a public session<sup>8</sup>. The Committees generally invite the government representatives to attend the session, make brief oral presentations, and respond to the Committee's substantive questions on the reports submitted by the state parties. The scope of the Committee's inquiry is not limited only to the submission of a report. Generally, the committees are free to use any information available, including documents provided by non-governmental organizations (shadow reports). However, in practice, this rarely happens. After the open session, the Committees draft comments on the report and on the responses of the state parties to questions being asked by the committees. The committees publish these comments in their annual report.

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<sup>5</sup> The CESCR is different from other treaty bodies because it is not established according to the mandate of the ICESCR.

<sup>6</sup> Different terminologies have been used in different treaties, and these are based on the nature of the rights. Article 40, *the International covenant on civil and political rights* 1966.

<sup>8</sup> This session was held in New York and Geneva.

Although the submission of reports, both initial and periodic is the state's obligation, there is no clear provision regarding the ways of preparing the reports. Therefore, reports are often submitted without complete coverage on the themes. They consist of a mere description of the constitutional and legal provisions and lack substantive questions. Considering these problems, some of the committees have adopted guidelines to assist state parties in complying with reporting obligations.<sup>9</sup> Initial reports include two sections: an introduction describing the general legal framework of the state party, followed by an article-by-article presentation of information on (1) the legislative, administrative, or other measures in effect in regards to each right; (2) restrictions or limitations imposed on the enjoyment of each right; (3) factors or difficulties affecting the enjoyment of each right; and (4) information on progress made in guaranteeing the right. In periodic reports, the committee prepares a list of non-exhaustive issues that it intends to cover during the session and forwards them to state representatives in advance of the meeting. More and more, these lists of issues have focused on factors and difficulties that may be affecting implementation of the Covenant.

Committees have adopted some progressive approaches in order to comply with the human rights guaranteed by the treaties.<sup>10</sup> However, they aim only to build a constructive dialogue through the reporting process and *not* raise any "contentious or inquisitory issues".<sup>11</sup> The Human Rights Committee expressly states that the reporting function "is to assist State parties in fulfilling their obligations under the Covenant, to make available to them the experience the Committee has acquired in its examination of other reports and to discuss with them various issues relating to the enjoyment of the rights enshrined in the Covenant."<sup>12</sup>

### 3.2 General comments

General Comments are "distinct juridical instruments, enabling the committee to announce its interpretation of different provision of the treaty..."<sup>13</sup> Issuing general comments is regarded not as a separate part of the function of the committees, but an integral part of state reporting. It is an authoritative interpretation of the treaties, an "elaboration of the covenant for the human rights movement in general."<sup>14</sup> The committees usually address the general (collective) issues known as general "comments" raised in state reporting, instead of commenting on state reports. This is known as the diplomatic approach for the protection of human rights. The general comments consist of the Committee's experience with reports and promote certain obvious goals such as co-operation between states parties, improvement of reporting, and Covenant implementation. As the Human Rights Committee states:

[T]he purpose of these general comments is to make this experience available for the benefit of all state parties in order to promote their further implementation for the covenant, to draw attention to insufficiencies disclosed by a large number of reports; to

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<sup>9</sup> The Human Rights Committee has issued guidelines for state parties in order to assist in the reporting process.

<sup>10</sup> By the 1990s, the Human Rights Committee took a different track. While considering the state report, the committee can examine relevant information from other sources. Accordingly, the information should relate to the reports to be considered during the committee's session and, if necessary, supplemented by the written information already provided. For detailed information, see Henry Steiner and Philip Alston, *International Human Rights in Context, Law Politics and Morals*, 2nd ed., Oxford University Press, 2000 at 713.

<sup>11</sup> Report of the Human Rights Committee, U.N. GAOR, Hum. Rts. Comm., 35th Sess., Supp. No. 40, at 85, U.N. Doc. A/35/40 (1980).

<sup>12</sup> Work of the Human Rights Committee Under Article 40 of the Covenant on Civil and Political Rights, U.N. GAOR, Hum. Rts. Comm., 48th Sess., Supp. No. 40, Annex X, at 218, U.N. Doc. A/48/40 (1993)

<sup>13</sup> Thomas Buergenthal, The Human Rights Committee, in Stiner and Alston *supra* note page 711

<sup>14</sup> See Steiner and Alston, *supra* note 11 at 733



suggest improvements in the reporting procedures and to stimulate the activities of these states and international organizations in the promotion and Protection of human rights..."<sup>15</sup>

General comments are broadly divided into two parts. The first part includes reporting obligations and procedures. The second part includes the interpretation of particular articles and substantive rights. Most of the comments from the concerned committees have analyzed the individual articles of the treaties and gave an authoritative interpretation of the provisions. General comments No. 6 relating right to life, General Comments No. 14 regarding conventional weapons, General Comments No. 17 regarding right to privacy, General Comment No. 18 on non-discrimination and General Comment No. 29 regarding emergency and derogation of human rights give an authoritative interpretation and guidance to states in implementing the ICCPR. Similarly, General Comment No. 3 of the ECOSOC provides an interpretation of the nature of the ICESCR. As there is no direct sanction for the non-compliance of the general comments and observations made by the committees, the committees only express their regret on the omission of factual information in state reports. Sometimes they go further and point out that the reports have failed to address certain issues in detail. Additionally, the committees guide the states for future reporting.

### 3.3 Individual complaints

The Committee's other major function is to consider written "communications" from individuals under the concerned treaties and in some cases under the Optional Protocols.<sup>16</sup> Usually, the committees hear complaints about systematic violations – the consistent pattern in practice or the practice of recurrent phenomenon. They serve as a quasi-judicial in interpreting the treaty in these cases. They act as an arbiter of contentious disputes between individuals and states. It also provides victims of human rights violations an international forum for relief where domestic remedies are unavailable or insufficient.<sup>17</sup>

There is no fundamental distinction in *modus operandi* between the committees in hearing individual communications. Some treaties have optional protocols, which enable individuals to have access to the committees to seek remedies on systematic violation of human rights. This creates a "double standard of adherence to covenant rights"<sup>18</sup> in which states that have ratified the Optional Protocols (in some cases even the treaties) are subject to a far greater level of scrutiny of their compliance with the treaties than states that have refrained from ratification.

If the committees find the individual complaints admissible, they ask state parties to submit written explanations or statement clarifying the matter. Most committees do not take oral testimony or hear oral arguments from parties. After the parties submit information, the committees determine whether the facts presented disclose a violation of rights guaranteed by the treaties. The committees then formulate an opinion as "views" describing the allegation of the author, the responses presented by the state party concerned, the decision of admissibility and interim measures (if any) and consideration upon which the committee is based on its decision. This also includes the degree of state party cooperation during investigation, burden of proof, and substantive interpretation of the required provisions of the treaty.

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<sup>15</sup> UN Doc. CCPR/C/21/Rev. 1, 19 May 1989.

<sup>16</sup> For example, the first optional protocol to the ICCPR provides individual communication systems.

<sup>17</sup> Lorraine R. Helfer and Ane-Marie Slaughter, Towards a Theory of Supranational Adjudication, 107 *Yale Law Journal* 273 at 342

<sup>18</sup> *Ibid.*



### 3.4 Enforcement of findings

The international enforcement mechanism does not provide legally binding power to the treaty bodies to enforce their decisions, views or comments. International treaties are "hard laws" in the sense that they possess an obligatory power compared to declarations and other "soft laws". Thus, according to the nature of treaty bodies, decisions should be implemented without any preconditions. Once a state becomes party to any international instruments, it is legally obliged to comply with them. However, states behave differently in practice. The "views" expressed by the committees are not taken as binding obligations. Implementation depends largely on the willingness of state parties. In practice, no committees serve as judicial arbiters and even they are not the highest authority of appeal against the decisions taken by the judiciary in the state concerned. Cases generally close as soon as the committee passes its view to the parties concerned. Due to the lack of follow up mechanisms, the international system lacks coercion.

The enforcement mechanism of the committees is weak and largely depends on the state's moral character and willingness to cooperate with the decisions of the committees. The committees are inadequate in addressing real situations due to the limitations placed on its conception. Therefore, they have been unable to penetrate the state's authority in implementing the overall thrust of international human rights law. Formal requirements exist calling for states to be party to the convention, and enabling the committee to frame its general comments and observations after receiving reports and information. In addition, they have to accept the compulsory jurisdiction of the committees for hearing individual communication and inter-state communication. The recommendations of the committees regarding legal and institutional change could be an effective way to create pressure and promote a conducive environment for the enjoyment of human rights. However, this largely depends on the political commitment of the state.

There have not been any definitive studies on the impact of the decisions of the committees on the state and victims. In some cases, the concerned states have taken progressive approaches and changed their legislations. For example, in *Lovelace v. Canada*, the Canadian government changed the law which violated article 27 of the ICCPR; in *Shirin Aumeeruddy Cziffra and Nineteen Mauritian Women v. Mauritius*,<sup>19</sup> in which Mauritius government amended the legislation to remove discrimination based on sex, and *Hartikainen v. Finland*, where Finland altered the statute to give added recognition of parental rights.<sup>20</sup> Apart from these cases, the implementation and respect of committee views is doubtful.<sup>21</sup> Academic writings again reveal an unsatisfactory record. Among the committees, the HRC has done some significant work despite the lack of resources. However, its work has also been heavily criticized. As McGoldrick points out, "[t]he ultimate concern of an alleged victim is...with the observance of HRC views in an individual case rather than with the procedural merits of the Optional Protocol system. It must be frankly admitted that compliance with the HRC views by state parties has been disappointing."<sup>22</sup>

However, the HRC recently started to request information on the implementation of its views. In the *Toonen case*, it held that it wishes to "receive within 90 days of the date of the

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<sup>19</sup> The Human Rights Committee under the ICCPR decides all these cases.

<sup>20</sup> Makau Wa Muta: Looking Past the Human Rights Committee: An argument for De-Marginalizing Enforcement, 4 *Buffalo Human Rights Law Review*, 1998 at 237

<sup>21</sup> Ibid.

<sup>22</sup> Dominic McGoldrick, *The Human Rights Committee: Its Role in the Development of International Covenant on Civil and Political Rights* (1991) at 202.

transmittal of its views, information from the state party on the measures taken to give effect to the views."<sup>23</sup>

#### 4. Treaty Bodies and Nepal

Nepal has ratified most human rights treaties and conventions concerning to human rights. It has also ratified the first Optional Protocol to the ICCPR. As provided by the Treaty Act 2045, the international treaties and convention in which Nepal is a party have the same status as prevailing laws in Nepal. If there were inconsistencies between international law and domestic legislation, the international treaty would prevail. Therefore, adequate consideration has been given to the importance of complying with international law. Nepal has not made any reservations (except in CERD *see* below) while ratifying, adopting or accessing international treaties; therefore, all provisions of all human rights treaties are applicable without any pre-condition.

Nepal's status on ratification, accession and signature is as follows:<sup>24</sup>

Treaty	Date of Signature	Date of Ratification/ Accession	Reservations/Declaration/Understanding
ICESCR	Direct accession	14 May 1991	No reservation/declaration
ICCPR	Direct accession	14 May 1991	No reservation/declaration
CEDAW	5 Feb. 1991	22 Apr. 1991 (ratification)	No reservation/declaration
CRC	26 Jan. 1990	14 Sep. 1990	No reservation/declaration
CAT	Direct accession	14 Sep. 1990	No reservation/declaration
CERD		03/01/1971	Reservation on Article 22/ Declaration on Article 4

The two leading covenants were ratified before the promulgation of the new constitution in 1990. Some of the rights enshrined in these two covenants are incorporated into the constitution. As a general practice, Nepal needed to change and amend its laws in order to make them consistent with the provisions of international human rights treaties. Gradually, some other changes and amendments were made to make national laws incompatible with international treaties. Some new laws, for example, the Torture Compensation Act 2053, Equal Property Rights for Women Act (Muluki Ain 11<sup>th</sup> Amendment), and the Act Relating to Children 2048, are important. There have been some policy reforms in housing, food, immunization and social security in national plans. Some institutional changes have also taken place. For example, the National Human Rights Commission was established to monitor Nepal's international human rights performance. Principally, the thrust of international human rights law has been accepted into domestic laws. However, there is still a vast gap between the "laws in books" and the "laws in action".

In terms of state reporting, Nepal's position is very poor. Most reports are overdue, as no periodic reports are submitted. Even in submitted reports, the contents are mere descriptions of laws and policies of governments and the considerations and comments of the concerned

<sup>23</sup> Toonen v. Australia, Communication no 488/1992, UN Doc. CCPR/C/50/488/1992

<sup>24</sup> Information received from the UN Office of the High Commissioner for Human Rights.([www.unhchr.ch](http://www.unhchr.ch))

committees are often ignored by the government. The status of ratification reporting of Nepal is as follows<sup>25</sup>:

Treaty	Reports Due in Year	Reports Submitted in (year).	Due/Overdue
ICESCR	30.6.2006 30.06.1993	25.10.1999	
ICCPR	13.08.2002 13.08. 1997 13.08.1992	Not submitted Not Submitted 30.03.1994	Due Over due -----
CEDAW	22.05.2004 22.05.2000 22.05.1996 22.05.1992	---- Not submitted Not Submitted 16.11.1996	--- Due Overdue Initial Report
CRC	13.10.2002 13.10.1997 13.10.1992	Not Submitted Not Submitted 10.04.1995	Due Overdue Initial Report
CAT	12.06.2000 12.06.1996 12.06.1992	Not Submitted Not Submitted 06.10.1993	Due Overdue Initial Report
CERD <sup>26</sup>	01.03.2000 01.03.1998 ROI (review of the implementation of CERD) 10.03.1988	29.04.2003 18.03.1999 10.03.1997  05.05.1997	15 <sup>th</sup> & 16 <sup>th</sup> periodic 14 <sup>th</sup> periodic  9 <sup>th</sup> , 10 <sup>th</sup> , 11 <sup>th</sup> , 12 <sup>th</sup> and 13 <sup>th</sup>

In terms of implementing the committees' concluding observations of initial reports, the position is again poor. For example, the CEDAW Committee has recommended the Nepali government to take sufficient action to reflect the provisions of the convention in domestic laws, or to amend prevailing discriminatory laws. In addition, it recommended that a definition of discrimination in compliance with article 1 of the convention be included in the relevant laws. It also urged amendments of discriminatory laws on property and inheritance, laws on marriage, nationality and birth registration, the Bonus Act and discriminatory criminal laws, including the new law on abortion as a matter of priority.<sup>27</sup> The government made some reforms, particularly in inheritance and property rights, but much remains to be done.

Similarly, the HRC has suggested clarification on the relationship between the executive and judiciary in emergency situations,<sup>28</sup> and found that there is a lack of legal clarity regarding the regulation of emergency.<sup>29</sup> These reforms are also unfinished.

<sup>25</sup> Information received from the UN Office of the High Commissioner for Human Rights ([www.unhcr.ch](http://www.unhcr.ch))

<sup>26</sup> Status after 1988 (see for earlier reports and situation at [www.unhcr.ch](http://www.unhcr.ch))

<sup>27</sup> See, A./54/38/1999 Paras 117-160

<sup>28</sup> See Para 10, Concluding Observations of the Human Rights Committee, Nepal: 10/11/94.9 initial report of Nepal (CCPR/C/74/Add.2). Found online at University of Minnesota, Human Rights Library, <http://www.Lumn.edu> URL: <http://www.Lumn.edu/humanrts/hrccommittee/nepal1994.html>, visited 7.8.2003

<sup>29</sup> Ibid, Para 9.

## 5. Efficiency and Accessibility

One of the major benefits of international human rights laws is that it gives individuals the possibility of application of human rights without considering the limits of borders. As stated earlier, no state can claim its sovereignty if there are systematic and persistent violations of human rights. Additionally, a state's treatment of its own citizens is a matter of international concern. If individuals are unsatisfied with the state's treatment, they have access to international remedies. International human rights laws enable international pressure for legal reform and institutional change at the domestic level for better protection of human rights.

Recent developments have evolved in relation to the observance of human rights. Some committees have absorbed new trends, such as the concept of provisional measures and fact-finding missions. The Committee Against Torture is authorized by convention to conduct a fact-finding mission if it finds reliable information indicating the systematic practice of well-founded forms of torture.<sup>30</sup> However, this power is not provided to the HRC and most other committees. Regardless, the HRC has initiated the suspension of certain acts of state parties while hearing the case and asking for interim measures. In the *Sierra Leon case*, the committee urged the government to stay execution the sentence to death penalty as long as the communications were under consideration.<sup>31</sup> Therefore, victims at least can feel that there are international remedies to redress the violation if remedies are unavailable or inadequate in the national level.

It is said that the typical victims of human rights violations do not have easy access to the international human rights system. Victims are usually uneducated, poor, jobless and underprivileged, and most are women and children.<sup>32</sup> The formalities prescribed by the Optional Protocols and treaty itself limits accessibility, since one must exhaust all available domestic remedies. The subjective measure of "unnecessarily prolonged" is also very difficult to justify, as there are instances of inadmissibility of cases on the basis of non-exhaustion of domestic remedies available. Yet, domestic remedies are often not "exhausted" because they are complicated and unaffordable, or domestic institutions are too corrupt. People suffer from violations mostly in wartime. Due to restrictions on travel during war, people often cannot reach locations that provide remedy. The question of access to justice is extremely difficult for people who are systematically deprived.

## 6. Problems of the Treaty Bodies

There are some substantive and procedural problems in the international human rights monitoring system. These are follows:

- The international community seeks more ratification in international human rights treaties to build up an international human rights regime. At the same time, reservation is used to restrict application of those treaties.
- Furthermore, communication jurisdiction of treaty bodies applies only to states that have ratified the optional protocols or have accepted the compulsory jurisdiction of the committees. States that have ratified the Optional Protocols and have not made any reservations are subject to far greater levels of scrutiny of their compliance with the treaties than those that have refrained from ratification or reservation.

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<sup>30</sup> Article 20

<sup>31</sup> CCPR/C/64/D/839-841/1998. Later the committee decided expressing dissatisfaction on the failure to provide interim measures.

<sup>32</sup> *Supra note 2* at 233.



- The reporting burden of the states in each treaty has created an enormous problem in terms of resource, manpower, and expertise within the domestic level and in the UN system as well. Usually, states submit reports simply describing the laws and policies of its government, lacking substantive portions of its human rights reporting obligations. And due to lack of resources, there have not been any significant achievements within the UN system also.
- All treaty bodies are suffering from resource constraints and expertise. In 1998, the Human Rights Committee had no secretary, which caused serious problems in communication between governments, NGOs and members of the Committee itself. Expertise in translating and transmitting reports are still same in the HRC.
- Some committee work is heavily criticized on the ground of political interests. Power politics influence the appointment of committee members, and there is less representation from the south and east.

## **7. Conclusion**

It is important to note as to whether the international human rights treaties can really make any differences on the behavior of the states. There is still a misconception that political willingness of the states prevails in the implementation of the international human rights treaties rather than the norms derived from them. Therefore treaties have very few impacts on the actual behavior of the states towards the treatment of citizens. If we regard "treaties" as law, subsequently it has an expressive function as it influences behaviors not only by threatening to sanction but also by what it says. It tells the actor to act in a way that is appropriate and acceptable.

However, the compliance should be measured from the actual treatment of the citizens by the state rather from the outlook of fulfillment of procedural requirements in reporting. There is at least some achievements that human rights treaties have a constructive impact on the actual behavior of the states with their citizens and it can improve the practice of state in human rights performances.

## **8. Recommendations**

- The treaty bodies should establish substantive rules on concluding observations and seek implementation within a limited time period. The committee can also seek implementation in a given time limit in individual communication (as in the Toonen case).
- The committees should be more viable and strong, ingenious, enhancing its complaint capacity since they currently cover millions of people around the world.
- The existing requirements of individual communication are very unhelpful for key victims. Key victims have less access to the international system if the existing rule of exhaustion of domestic remedy is strictly applied. In some developing countries, the judicial process is extremely lengthy, complicated, inaccessible and corrupt. Therefore, it should be based on the committee's discretion as to whether exhausting domestic remedies is necessary.
- There is virtually no systematic practice of following up on decisions at the domestic level. The Committees should coordinate with the other UN agencies working at the domestic level so as to implement the decisions made by them.
- State parties should also adopt the suggestions made by the treaty bodies as guidance in implementation of human rights.
- The UN should develop a unified reporting system for all treaties where state parties can submit all mechanisms adopted and progress achieved in the field of treaties.



## **Reference**

### **Books**

1. Dominic McGoldrick, *The Human Rights Committee: It's Role in the Development of International Covenant on Civil and Political Rights*, 1991.
2. Henry Steiner and Philip Alston, *International Human Rights in Context, Law Politics and Morals*, second edition, 2000.

### **Articles**

1. Dona A. Hathaway, 'Do Human Rights Treaties Make a Difference?' 111 *Yale Law Journals* 1935, 2002.
2. Elena A. Baylis, 'General Comments No 24: Confronting the Problem of Reservation to Human Rights Treaties', 17 *Berkeley Journal of International Law* 277, 1999.
3. Laurance R. Helfer and Anne-Marie Slaughter, Towards a Theory of Supranational Adjudication, 107 *Yale Law Journals*, 273, 1997.
4. Makau Wa Mutua, Looking Past the Human Rights Committee: An Argument for De-Marginalizing Enforcement, 4, *Buffalo Human Rights Law Review*, 211, 1998.
5. -----, Hope and Despair for a New South Africa: The Limits of Rights Discourse, 10 *Harvard Human Rights Law Journal*, 63, 1997.

### **Used websites**

The United Nation's Official Web site: [www.un.org](http://www.un.org) (for the information of treaty collection) and Office of the High Commissioners of Human Rights: [www.unhchr.ch](http://www.unhchr.ch)

## **Paper 4**

# **UN Treaty Monitoring System and Role of Non-governmental Organisations**

- Rabindra Bhattarai\*

### **1. Introduction**

This paper gives glimpses of information on role of nongovernmental organisation in facilitation of UN Treaty mechanism for effective monitoring of human rights implementation in its State parties. Though, there are several facets of monitoring activities and different aspects are prevalent this paper would be unable to address those issues. This paper is limited to deal with only the NGO's role.

### **2. Short Preview of Monitoring System**

Broadly, there are two mechanisms, in the United Nations' system, to promote human rights essence and movement worldwide, i.e., Charter based and Treaty based. UN Human Rights Commission, different Working Groups, Special Rapportuers, Economic and Social Council relate to the Charter based mechanism. There are six bodies that relate to Treaty based mechanism. Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Covenant on Civil and Political Rights (ICCPR), the Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture (UNCAT) and the Convention on the Rights of the Child (CRC) have their respective committees. These six UN treaties are at the heart of the universal protection of human rights by imposing legally binding standards for States Parties.

These treaties provide for monitoring mechanisms, commonly known as "treaty bodies", composed of independent experts, to monitor the implementation of their provisions by States Parties. The following six treaty bodies correspond to the above mentioned treaties.

- Committee on the Elimination of Racial Discrimination (comprises 18 members, which meet twice a year for two weeks in Geneva);
- Human Rights Committee (comprises 18 members, which meet three times a year for three weeks in Geneva and New York);
- Committee on Economic, Social and Cultural Rights (comprises 18 members, which meet twice a year for three weeks in Geneva);
- Committee on the Elimination of Discrimination Against Women (comprises 23 members, which meet twice a year for three weeks in New York);
- Committee Against Torture (comprises 10 members, which meet twice a year for two - three weeks in Geneva);

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- Committee on the Rights of the Child (comprises 10 members, who meet three times a year for three weeks in Geneva).

Under each of the six treaties, States Parties have an obligation to provide the Committees with regular, and sometimes "emergency" reports, on the implementation of their provisions. On the basis of these reports, Committees engage in a "constructive dialogue" with State Parties aimed at identifying obstacles in the implementation of the treaties and at proposing ways to ameliorate the protection of human rights. The reporting process is premised on the assumptions that every State may have problems implementing its treaty obligations (no matter how good its intentions might be) and that a degree of routine international accountability is in the best interests of the State, its citizens, as well as of the international community. It is an unfortunate reality that if a State is of bad faith, the Committees are virtually powerless.

The periodicity of the reporting process reflects the notion that respect for human rights requires a continuing effort from the State. It also provides an opportunity to evaluate progress achieved over time.

The bodies receive a great deal of information on the human rights situation in the countries under consideration through a variety of intergovernmental sources, such as UN agencies, the Special Rapporteurs and Working Groups of the Commission on Human Rights and NGOs. All this information is transmitted to the members of the bodies through the secretariat.

When State Party reports are scheduled for consideration, the respective States are informed and invited to attend the session, which is public. In the meeting, the State Party is provided with an opportunity to present its report. After this presentation, the members of the Committee will put forward a number of questions to which the governmental delegation is supposed to respond without delay (the same or the following day). The Committee may demand from the State Party further details, if deemed necessary, in writing, to be provided after the session. After the State has given its replies, the treaty body finalises its consideration by presenting to the State its observations. These observations identify the praiseworthy elements of reports, note matters of concern, draw conclusions and propose recommendations. All of these figure in the treaty bodies' reports to the General Assembly.

### **3. The Purposes of State's Reporting Obligation and Monitoring**

Professor Philip Alston, former chairperson of the Committee on Economic, Social and Cultural Rights states: "the central purpose of the reporting mechanism is to promote compliance by States with the obligations, which arise under the various human rights instruments." By conducting examinations, making observations, drawing conclusions and proposing recommendations treaty bodies encourage States to adjust their laws, policies and practices in order to enhance the implementation of the obligations undertaken by States by ratifying the human rights treaties.

The specific functions of reporting are summed up as follows:

**Initial review:** The ratification and initial report under the human rights treaties provide State Parties with the occasion to undertake a comprehensive review of national legislation, administrative rules and procedures, and practices in order to ensure the fullest possible conformity with the provisions of the treaty.

**Monitoring:** Reports must strike a balance between the situation in theory and that in practice. On many occasions, treaty bodies have emphasised that reporting only on legislative developments is insufficient. Thus, a pre-condition for effective reporting is the existence of an adequate system for monitoring the situation with respect to each of the rights on a regular basis. It cannot safely be asserted that torture never occurs in prisons unless regular monitoring of the situation occurs.

**Policy formulation:** Whereas some human rights problems can be solved by merely amending relevant legislation, others require the formulation of a long-term set of policies designed to ensure full and lasting compliance with treaty obligations. In such instances, the reporting process can act as a catalyst to the formulation of carefully tailored policies designed to respond to the problems that have been identified.

**Public scrutiny:** Human rights treaties seek to promote and enhance not only a Government's international accountability but also its accountability towards its own citizens and people within its jurisdiction. The preparation of a report thus provides an important occasion for consultation with the appropriate social, economic, cultural and other sectors of society.

**Evaluation:** The obligation to prepare successive periodic reports at intervals provides an ideal opportunity for evaluating progress achieved over time.

**Acknowledging problems:** It must be accepted that no State can expect to have a perfect record in achieving respect for human rights. Even where the situation is generally very positive there is always room for improvement. The frank acknowledgement of problems, even if they are reckoned to be almost intractable, helps to establish the faith of the Government not only in the eyes of the treaty body but also of its own citizens.

**Information exchange:** Reports serve to give the treaty bodies a better understanding of the types of issues that governments typically encounter in seeking to translate the legal formulations contained in the treaties into reality.

**Ongoing dialogue:** The periodicity of the reporting procedure not only reflects that some human rights cannot be implemented overnight, but also that a permanent dialogue is needed in order to achieve a better respect for human rights.

#### **4. The Role of NGOs in the Reporting Process**

NGOs, both national and international, play an important role in the promotion and protection of human rights in the UN treaty body system. Since they defend specific interests, their views are often more focused than those of the Governments.

Committee members are in need of additional information parallel to the State Party report, not only because State Party report may suffer from unintentional oversights, but also because the report is likely to present the State Party's human rights record in a somewhat uncritical way. By furnishing alternative information on the human rights situation in the countries under consideration, NGOs can fill this gap and provide the Committees with a means against which the State's assertions can be tested.

At present, the input of international NGOs is widely appreciated and treaty bodies make extensive use of their information in the consideration of State reports. While recognising their importance, participation by international NGOs alone in the reporting process is insufficient. As national NGOs are best placed to describe the human rights situation in their countries, their input is particularly useful in making Committee members aware of the issues at stake and in creating credible pressure to rectify human rights abuses when they occur.

Recognising the importance, NGOs can play very significant role in facilitating monitoring activities through some sort of interventions. Major activities, tasks or interventions that NGOs can undertake are in the following area:

- Information inventory
- Parallel report
- Assistance in State's reporting
- Facilitating communications
- Advocacy campaign

##### **A. Information inventory**

One of the major tasks carried out by NGOs are keeping information of the provisions, programmes and their development in particular country. NGOs receive information of human rights violations in respective country. They also keep information on the status of the obligations of State as well as reports submitted or to be submitted. They document factual information of incidents of human rights violations with accuracy and updated accounts.

Information is necessary to UN mechanisms to monitor the human rights situation of the particular State. Therefore, NGOs can serve UN mechanisms as information inventory who could supply necessary information.



## **B. Parallel reports**

NGOs working at a national level can submit information in two forms. On the one hand, they may prepare thematic reports by focusing on specific violations of human rights, which have taken place in the period under consideration. Such reports are particularly useful when coming from NGOs whose mandates target **specific themes**, such as the right to housing or food, or deal with vulnerable groups, such as women and children. On the other hand, NGOs can decide to write a **comprehensive report**, which provides alternative information to the State Party report on the implementation of each of the substantive provisions of the treaty under consideration. Reports in either form are called **alternative or parallel reports**.

Although alternative reports are not referred to as such in UN instruments and documents, the broader term '**information from various sources (inter-alia information from NGOs)**' includes this notion.

Alternative reports are analytical supplements to States Parties' reports. They aim not to condemn, but instead of providing the critical view of civil society on the Government's representation of the human rights situation. In this light they furnish independent information or indicators on violations of human rights by highlighting shortcomings in government policy and practice.

The chief purposes of the submission of alternative reports to treaty bodies by national NGOs are:

- To enable treaty bodies to get as full a picture of the human rights situation in the country under consideration by providing them with independent information;
- To follow-up on observations and recommendations from treaty bodies through bringing them back to national reality;
- To encourage States Parties to prepare more accurate reports in the future;

## **C. Assistance in State's reporting**

NGOs are not always opposition to the State Party, they can play role as a partner to the State. So, the expertise of the NGOs can be very useful in preparing reports of the State whether initial or periodic. Due to its wider scope of information inventory, it can assist the government in many aspects in reporting process. Therefore, we can point it out that one of the roles of NGOs could be helping government in preparing and submitting reports.

## **D. Facilitating communications**

Communication is a vital issue in protection and promotion of human rights. In particular to the UN system, NGOs can assist this process in various modes. One of the modes is alternative report as mentioned above. Similarly, NGOs can assist and facilitate individuals to prepare and forward individual communications to the monitoring bodies as per the State's status on provisions of particular treaty.

The other ways are requesting for urgent action or have attention of the charter-based mechanisms, considering the seriousness cases and gravity of the violations. Though, this does not seem directly related to treaty monitoring, such information would also be used by the treaty bodies in their respective tasks. Therefore, this is also helpful support for monitoring activities by the bodies.

#### **E. Advocacy campaign**

All activities mentioned would not be intended to facilitate UN system; it can be used in promotion and protection of human rights at national level. By carrying out different activities as mentioned, NGOs can launch advocacy on behalf of the human rights principles and bring practical changes in actions. They can promote knowledge and understanding of the reporting process through making the general public aware of the significance of the process (and the media of its newsworthiness), in encouraging individuals and groups to reflect on their situation in the context of their rights and in co-ordinating or channelling any submissions they might wish to make to members of treaty bodies.

### **5. Conclusive Remarks**

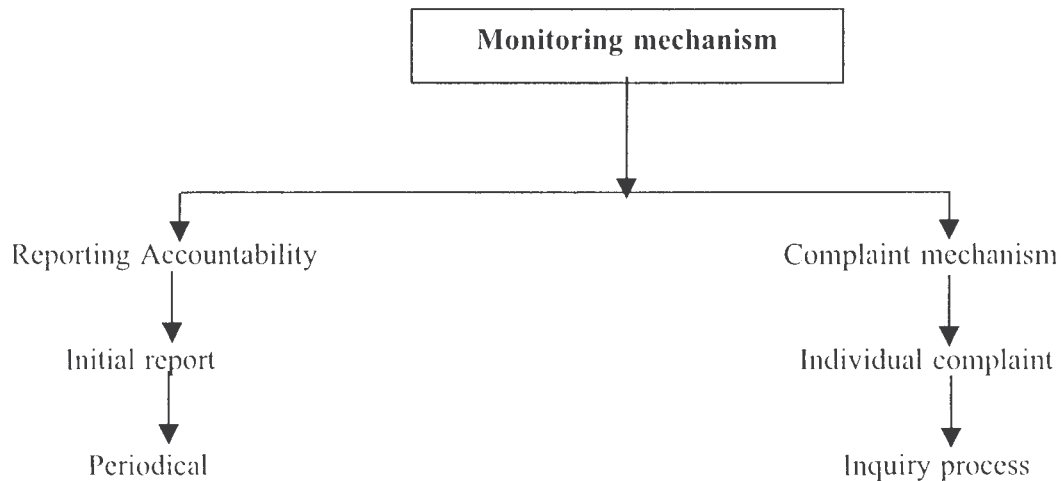
UN mechanisms both treaties based and charter based are criticised that they are very slow, they take long formal and over-diplomatic process and they would not be effective as required. To some extent, this criticism is valid. This seems very true if we look these mechanisms from the light of relief and repair of a victim. But, if we see it in the light of universal development and understanding of human rights, the results of monitoring could be beneficial and important. Whatsoever the effectiveness of the mechanisms, we can see there significant role of NGOs in bringing good observations from the treaty bodies. If NGOs play their role properly, no doubt, that would be substantive contribution to the effectiveness of monitoring process.

## Paper 5

### Preparing Shadow Reports

- Sapana Malla\*

#### 1. Principle of State Obligation



#### 2. Objectives of Reporting

- Assists state parties in fulfilling their obligations and allows the Committee to assess the extent to which the obligations have been met.
- To achieve a comprehensive review of the national laws, administrative rules and procedures and policies.
- To ensure that State Parties regularly monitor the actual situation with reference to each provision of the convention, so that they are aware of the extent to which the various rights guaranteed are being enjoyed by all women.
- To provide the State Parties with the basis for the elaboration of clearly stated and targeted policies which incorporate priorities consistent with the provision of the Convention.
- To permit public scrutiny of government policies and encourage the involvement of various sectors of the society in the formulation and review of these policies.
- To provide a baseline against which State Parties and the Committee can evaluate the extent to which progress has been made towards the realization of the obligations established in the Convention.
- To enable State Parties themselves to develop a better understanding of the problems and shortcomings encountered in the progressive realization of the aims of the Convention.
- Exchange information, develop a better understanding of the common problems, a fuller appreciation of the types of measures which might be taken to promote effective realization of the obligations in the Convention and identify appropriate means by which the international community might assist State Parties.

\*Advocate and Chief of Forum for Women, Law and Development

### **3. Processes and Procedure in Preparing Shadow Report**

- Advertisement for the participation in the Shadow Report
- Formation of writing committee and identification of areas of intervention
- Developing a writing format
- Distribution of work to writing group
- Advertisement for inputs on particular issues
- Finalising of the draft report
- Organising national consultation
- Incorporation of comments from the national consultation
- Editing of the report
- Technical inputs from IWRAW Asia-Pacific
- Publication of the report

### **4. Importance and Significance of Shadow Report**

- Assists State Parties in fulfilling their obligations and allows the Committee to assess the extent to which the obligation have been made
- To achieve a comprehensive review of the national laws, administrative rules and procedures and policies
- To ensure that State Parties regularly monitor the actual situation with reference to each provision of the convention, so that they aware of the extent to which the various rights guaranteed are being enjoyed by all women
- To provide the State Parties with the basis of the elaboration of clearly stated and targeted policies which incorporate priorities consistent with the provision of the Convention
- To permit public scrutiny of government policies and encourage the involvement of various sectors of the society in the formulation and review of these policies.
- To provide a baseline against which States Parties and the Committee can evaluate the extent to which progress has been made towards the realization of the obligations established in the Convention.
- To enable States Parties themselves to develop a better understanding of the problems and shortcomings encountered in the progressive realization of the aims of the Convention.
- Exchange information, develop a better understanding of the common problems, a fuller appreciation of the types of measures, which might be taken to promote effective realization of the obligations of in the Convention and identify appropriate means by which the international community might assist State Parties.

### **5. NGO Involvement**

- Shadow Report/Alternative Report
- Feedback on Government Report
- Participation and lobbying for effective concluding comments
- Dissemination CC
- Monitoring the implementation of CC

### **6. What is Shadow Report?**

- Government's assessments of their efforts to comply with the Convention are frequently incomplete and tend to minimize the problems and maximize accomplishments.
- The Shadow Report, therefore, is document that presents the actual situation on the status of women and the challenges they face and the gaps in the government's initiatives.

## **7. Weight of Shadow Report before Treaty Monitoring Bodies**

- The CEDAW Committee encourages direct NGO input in the form of Independent or Shadow Report and informal presentations, to bring real concerns to national and international attention.
- The presence of NGOs during the presentation of Country Report acts as motivation to the CEDAW Committee to raise questions relating to the implementation of the Convention.
- It makes the Government realize that coordination with NGOs is essential in the actual implementation of various programmes and policies.

## **8. Format of Shadow Report**

*(Report in simple language should not be more than 40 pages)*

- Contents
- Executive Summary
- Implementation status of CC
- Articles (Main body of SR)
  - Introduction
  - Critical issues/critical analysis of government report  
*(Analysis of Available information)*
  - Obstacles
  - Recommendations
- Status of Beijing Documents
- Conclusion



## **Paper 6**

### **How to Communicate to the UN under “1503” Procedure?**

- Kamdev Khanal\*

#### **1. Introduction**

As asserted in the preamble of the Charter of the United Nations, to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, the global organization and its Member States prioritized human rights issues and founded interests on human dignity. Dignity lets human beings be human beings. So, assault on dignity (of human being here) invites counter action, no matter what the forms may be. The Universal Declaration of Human Rights has also recognized the inherent dignity and the equal and inalienable rights of all members of human family is the foundation of freedom, justice and peace in the world. There are national and international laws to defend human rights, human dignity. Despite formulation of these laws and tools in different levels, a world is yet to be created where human rights and human dignity are fully recognized and defended. However, there are forums, places where we can challenge the offenders; the victim can lodge complaint vindicating his/her rights.

United Nations in the capacity of the umbrella organization of the world, initiated for the recognition, protection and promotion of human rights- it developed human rights jurisprudence-through international human rights instruments. However, the establishment of the Commission for the Human Rights, in 1946, was a milestone to work in favor of human rights.

The role of the human rights commission of the United Nations began in 1947- its role in the responding to human rights violations began only in the year when it effectively overturned a much criticized statement it adopted in 1947 to the effect that it had ‘no power to take any action in regard to any complaints concerning to human rights’. The early efforts to address serious violations were directed only problems associated with racism and colonialism. In 1979, however, the Commission’s work entered a third phase in which it began to apply the procedures it had developed in an increasingly creative fashion to an ever-widening range of countries and violations. For purposes of evaluating the Commission’s work, one should bear in mind that it began to respond not much more than 20 years ago to violations in general.

In board term, there are now three different procedures used by the Commission to address violations. They are: confidential consideration of a situation under the 1503 procedure; public debate under the 1235 procedure, which may lead to the appointment of a Special Rapporteur of the Commission, a Special Representative of the Secretary-General, or some other designated individual or group to investigate a situation; and the designation of a ‘thematic’ rapporteur of Working Group to consider violations anywhere relating to a specific theme.

In principle, each of these procedures is relatively distinct from the others in terms of its origins, the nature of its mandate, the steps to be followed and the types of outcome available. In practice, there is considerable overlap.

\* MA, LLB

Following is a glimpse of the communication procedures- 1235 procedures and the 'thematic' mechanism. The synopsis of the communication procedures will be followed by the discussion of the 1503 procedures in detail. Before that, a bird's eye view on the existing complaint/communication procedures in the United Nations system in reference with human rights.

## **2. Complaint Procedure**

Anyone may bring a human rights problem to the attention of the United Nations and many people around the world do so every year. Since the early 1970s international complaint mechanisms have developed apace, one can now bring claims to the United Nations concerning violations of human rights.

Procedure itself is not the final verdict, but, when we talk of complaint procedure, in terms of human rights, the complainant appears aware about ones rights, one, at least comes in the forefront to claim his rights and initiates/opens the door to punish the offender.

## **3. Admissibility and Merits of a Complaint**

### **3.1 Admissibility**

#### **3.1.1 Admissibility of the case**

Before the committee to which the author has brought the case can consider its merits or substance, it must be satisfied that the claim meets the formal requirements of admissibility. Some of the factors determining admissibility of the complaint:

- Sufficient authorization or otherwise justified if the author is acting on behalf of other person.
- the author must show that he/she or the person on whose behalf he/she is working is the victim of the alleged violation. It is not sufficient simply to challenge a law or State policy or practice in *actio popularis*.
- the complaint must be compatible with the provisions of the treaty invoked.
- the complaint should sufficiently be substantiated by evidences.
- the complaint must not relate to events that occurred prior to the entry into force of the complaint mechanism for your State. There are, however, exceptions. In cases where the effects of the event in question have extended into the period covered by the complaint mechanism, a committee may consider the overall circumstances.
- all domestic remedies exhausted before the complaint is lodged. A cardinal principle governing the admissibility of a complaint is that the author must, in general, have exhausted all remedies in his/her own State before bringing a claim to a committee. There are, however, limited exceptions to this rule for prolonged remedies or if they would plainly be ineffective or if the remedies are otherwise unavailable.
- the claim must not be abusive of the complaints process. In rare cases, the committees may consider a case to be a frivolous, vexatious or otherwise inappropriate use of the complaint procedure and reject it.
- the complaint being examined under another mechanism of international settlement does not get through.

### **3.1.2 Merits of the case**

Once a committee decides your case is admissible, it proceeds to consider the merits of your complaint, stating its reasons for concluding that a violation has or has not occurred under the various Articles it considers applicable. A number of States have also entered substantive reservations that may limit the scope of the human rights obligations they assume under the treaties. In most cases, a committee will decline to consider complaints falling within areas covered by a reservation, though in exceptional circumstances, as noted above, it may find a reservation impermissible and consider the case despite the purported reservation.

To form an idea of what a committee considers to be the scope of the rights contained in the treaty for which it is responsible, you may look at its previous decisions, its so-called “General Comments” expanding on the meaning of various Articles, and its concluding observations on reports submitted periodically by States parties to the treaty concerned.

## **4. 1235 Procedure**

ECOSOC Resolution 1235 (XLII), 1967 established the procedure on the basis of which the Commission holds an annual public debate focusing on gross violations in a number of States.

The provisions of the 1235 provide a vivid illustration of the extent to which the Commission’s mandate has evolved. The ways in which violations are not dealt with by the Commission under the rubric of the 1235 procedure bear only passing resemblance to the Resolution.

The procedure now operates to provide the foundation for two types of activity. The first, in accordance with the mandate, involves the holding of an annual public debate during the Commission’s annual session in which governments and NGOs are given an opportunity to identify publicly those country-specific situations and that they consider to merit the Commission’s attention.

The second involves the studying and investigating particular situations through use of whatever techniques the Commission deems appropriate. Such investigative activity is only authorized in relation to a small proportion of the situations identified during the annual debate.

## **5. The Thematic Mechanisms**

The first thematic mechanism – a mechanism devoted to a theme rather than a State or region, and hence that may have global reach rather than be restricted to a given State- to be established by the Commission was the 1980 Working Group on Disappearances.

In the two decades after the first mechanism was established the Commission created an average of slightly more than one new mechanism every year. However, the number in 2000 was 21. The mechanisms deal with: summary and arbitrary executions, torture, religious intolerance, mercenaries, sale of children, children in armed conflict, freedom of opinion, and expression, xenophobia, contemporary forms of racism, independence of judges and lawyers, violence against women, internal displacement, enforced disappearances, arbitrary detention, the rights of migrants, toxic waste, foreign debt, the right to education, structural adjustment policies, extreme poverty, guidelines on restitution, and the right to development.

In general, the techniques used in the mechanisms used include: requests to governments for information on specific cases; an urgent action procedure involving a request that the government take immediate action to rectify or clarify a case; on-site visits for a more intensive examination of either specific cases or the overall situation; and submission to the UN Commission of detailed reports containing conclusions and recommendations for further actions.

## **6. The "1503" Procedure of the Commission on Human Rights**

### **6.1 Introduction**

The procedure before the Commission on Human Rights, called the 1503 procedure after the resolution of the Economic and Social Council in 1970 whereby it was established, is the oldest human rights complaint mechanism in the United Nations system. Under this procedure the Commission, a political body composed of State representatives, generally deals with situations in countries rather than individual complaints. This procedure applies in respect of all countries in the world.

It enables two bodies of the United Nations-the Sub-Commission on the Promotion and Protection on Human Rights and the Commission Human Rights- to examine complaints, which appear to show *consistent patterns* (in order to show a consistent pattern, the communication should refer to a substantial number of violations against different individuals. In the past, the Commission has decided that as few as 6 or 7 cases of prolonged administrative detention were sufficient to show a consistent pattern) of *gross* (Gross violations are very serious violations of human rights. They include torture, enforced disappearances, extrajudicial executions, arbitrary or summary executions, widespread arbitrary imprisonment or lengthy detention without charge or trial and widespread denial of the right to leave a country) and *reliably attested* (The allegations of violations must be reliably attested, which means backed up by credible evidence.)

Violations of any of the human rights guaranteed by the Universal Declaration of Human Rights can be examined under this procedure.

By virtue of this resolution, a working group of not more than five members was set up by the Sub-Commission to meet to consider communications and government replies and to pass on the Sub-Commission those communication together with replies of governments that appeared to reveal 'a consistent pattern of gross and reliably attested violations of human rights'.

The procedure was substantially amended in 2000 by the Economic and Social Council to make it more efficient, to facilitate dialogue with the Governments concerned and to provide for a more meaningful debate in the final stages of a complaint before the Commission on Human Rights. It is this so-called revised 1503 procedure that is explained below.

### **6.2 Submission of a complaint under the 1503 procedure**

Under the 1503 procedure, the Commission has the mandate to examine a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms occurring in any country of the world. Any individual or group claiming to be the victim of such human rights violations may submit a complaint, as may any other person or group with direct and reliable knowledge of such violations. Where an NGO submits a complaint, it must be acting in good faith and in accordance with recognized principles of human rights. The organization should also have reliable direct evidence of the situation it is describing.

### **6.3 Essence of the complaint**

First, a complaint cannot be anonymous. The author should direct his/her complaint to the Office of the High Commissioner for Human Rights or the United Nations, ideally specifying that his/her wish the complaint to be dealt with under the 1503 procedure. The author should set out the purpose of the complaint and the rights alleged to have been violated.

Each complaint should describe the relevant facts in as much detail as possible. As the procedure primarily examines patterns of violations rather than individual violations as such, it is advisable for a complaint not simply to focus on the facts of an individual's case but, if possible, to expand on a group or series of such cases. It is not sufficient to rely on mass media reports; specific evidence should be provided. In short, there must be reasonable grounds to infer from the material that the alleged pattern of gross human rights violations exists.

### **6.4 Admissibility of the complaint**

Various conditions need to be met for your complaint to be considered admissible. If it does not satisfy these criteria, it may be rejected.

The complaint should be submitted within a reasonable time following the exhaustion of available remedies in your own country. The author should ideally show that he/she has exhausted such remedies. The complaint should not contain abusive or insulting language. The submission of complaints overlapping with other procedures in the United Nations system and the duplication of complaints already considered by such procedures should be avoided. Lastly, no complaint should be politically motivated or run counter to the principles of the United Nations.

### **6.5 The "1503" procedure operation**

A complaint may be submitted at any time. If the complaint gets through the initial screening process discussed below, it will be considered by the formal 1503 procedure bodies, which meet annually.

**First**, the Secretariat screens all complaints as they arrive. The complaint may be rejected as manifestly ill founded by the Secretariat acting jointly with the Chairperson of the so-called Working Group on Communications. If the complaint makes it to the next stage of the process, it will be acknowledged and forwarded to the Government concerned for comment. Government replies remain confidential and are not communicated to you.

**Second**, the Working Group on Communications meets to assess complaints that have passed the initial screening stage over the last year and have been forwarded to the Government concerned for comment at least twelve weeks before the meeting of the Working Group. It examines complaints and any replies received from Governments with a view to bringing to the attention of the Working Group on Situations any situations that appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms. The Working Group comprises five members of the Sub-Commission for the Promotion and Protection of Human Rights. It may decide to hold over a communication to obtain replies or further information from the Governments concerned or for other reasons.

The proceedings of the Working Group are confidential. They are also conducted on the basis of written material only, so that neither Governments nor complainants appear before it. It should be noted that most complaints fail to proceed beyond this point. Governments are advised of the decisions of the Working Group but you are not.



**Third,** the Working Group on Situations meets to consider situations referred to it by the Working Group on Communications. It also considers any situations of which the Commission on Human Rights itself remains seized from its previous session. The Working Group decides whether, in the light of all the material from the previous stages of the process, the situation referred to it appears to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms. The Group has five members, who are usually nominated by the regional groups of States within the Commission on Human Rights in order to ensure equitable geographic distribution.

The Working Group has a variety of options for dealing with the situations before it. It may forward a situation to the Commission, in which case the Working Group usually makes specific recommendations for action. Alternatively, it may decide to keep a situation pending before it or to close the file.

As with the Working Group on Communications, the proceedings of the Working Group on Situations are confidential and based on written material only, so that neither Governments nor complainants appear before it. Governments are advised of the decisions of the Working Group, including any recommendations made to the Commission, but the complainant is not.

**Fourth,** the Commission on Human Rights, meeting in closed session, considers the situations referred to it by the Working Group on Situations. Representatives of the Governments concerned are invited to address the Commission and answer questions. At a subsequent meeting shortly thereafter, the Commission considers its final decision, again in closed session. Representatives of the Government concerned may also be present at this point.

The Commission has a variety of options for dealing with situations that come before it. It may elect to keep a situation under review in the light of any further information received or it may keep it under review and appoint an independent expert. Alternatively, it may discontinue the matter under the 1503 procedure and take it up instead under a public procedure, or discontinue the matter when no further consideration is warranted. If it wishes, it may also make recommendations to its parent body, the Economic and Social Council.

#### **6.6 Confidentiality of the "1503" procedure**

Although you must state your name when making a complaint, you may request that it be suppressed if the complaint is forwarded to the Government concerned. All material provided by individuals and Governments, as well as the decisions taken at the various stages of the procedure, remain confidential and are not made public. This also applies to situations that have been discontinued, unless the Economic and Social Council decides otherwise or the Government concerned expresses the wish that the dossiers be made public. However, while these rules of confidentiality are binding on the United Nations bodies dealing with your complaint, they do not preclude you from disclosing the fact that you have submitted a complaint under the 1503 procedure.

#### **6.7 Advantages and drawbacks of the "1503" procedure**

The pluses of the 1503 procedure are that the author may submit a complaint against any country without needing to check whether it has ratified a particular treaty or limited its obligations under the instrument. Once he/she has submitted a complaint, the complainant does not have to respond again at a later point with further information – the initial complaint is sufficient. With the 1503 procedure, it is possible for your complaint to reach the highest

level of the United Nations human rights machinery, the Commission on Human Rights. It may thus result in very significant pressure being brought to bear upon a State to change laws; policies or practices that infringe internationally guaranteed human rights.

Possible drawbacks of the procedure are that the complainant will not be informed of the decisions taken at the various stages of the process or the reasons for them. Nor will he/she be informed of the relevant Government's responses to your complaint. The author should also be aware that the procedure can be protracted and, unlike the other procedures, there is no provision for urgent measures of protection.

#### **6.8 Its exercise**

The record of the Commission reveals that it has received most of the complaints under the communication system from the developing and underdeveloped nations. Nepal too, examined the procedure twice-in 1996 and 1999. However, it seems that there is less impact of the practice in recognizing, promoting and protecting human rights.

The procedure, it is fair to say, which is confidential until the final stage, has not fulfilled the initial high expectations. (The confidentiality requirement and the highly political nature of the Commission itself have combined to frustrate hopes that had been raised.)

Now, what should be our efforts to exploit the 1503 complaint procedure if we are sincerely to promote and protect human rights? It is for discussion hoping solutions.

#### ***Finally,***

Although the frailties of human rights as an ideal or ideology or State practice are evident, that ideal has become a part of modern consciousness, a lens through which to see the world (of human rights), a universal discourse, a potent rhetoric and aspiration. Human rights now form an indelible part of part of our legal, political and moral landscape.

It is more severe in the under developing countries like Nepal. However, particularly in the western liberal democracies but also in a growing number of countries in the developing world, courts play a vital role in resolving human rights controversies and developing human rights norms. But where governments are authoritarian and repressive, where violations are serious, systemic and brutal, courts are least relevant. Relative to western democracies, the judiciary's competence to review executive and legislative action may be sharply reduced or eliminated, its jurisdiction limited, its decrees ignored, its judges subjected to threat or worse. That is why our efforts should be to seek treatment against such anomalies- all sort of State follies against human rights-through utilizing the international forums and mechanisms.

Asserted by the Declaration of 1948, the universality of human rights is for the most part yet to be constructed. This process of universalization is not that sets out to disseminate a single model, from a single point but rather to ensure the emergence in diverse ways of a common will to recognize rights common to all human beings. So what, let us exploit the mechanism of the different communication procedures open for us in favor of human rights, including 1503.

Enforcement was poor and the UN felt necessity of creating bodies, committees that would assist the global organization implement the tools effectively.

## **7. The Other Complaint Procedures**

### **7.1 UNESCO**

The description of human rights procedures would be incomplete without some details about the work of two specialized organizations of the UN, namely the UN Educational, Scientific and Cultural Organization (UNESCO) and the International Labor Organization (ILO).

#### **7.1.1 The UNESCO Procedure**

UNESCO has passed several conventions, declarations and a great number of these instruments linked directly or indirectly with those human rights which are within UNESCO's fields of competence.

Alongside the procedures laid down on UNESCO conventions, in 1978 the Executive Board of UNESCO laid down a confidential procedure for the examination of communications (complaints) received by the Organization concerning alleged violations of human rights in its fields of competence, namely education, science, culture and information.

Individuals, groups of individuals and NGOs may submit communications (complaints) to UNESCO concerning violations of human rights, whether the authors of these communications are themselves victims of such violations or whether they deem to have reliable knowledge of such violations.

The rights falling under UNESCO's competence are essentially the following:

- The right to education;
- The right to share in scientific advancement;
- The right to participate freely in cultural life;
- The right to information, including freedom of opinion and expression.

Teachers, students, researchers, artists, writers, journalists, in short intellectuals who, by virtue of their position, come under UNESCO's fields of competence, or any other person on account of having exercised one or other of the rights set out above.

The Committee on Conventions and Recommendations examines communications in private session. In principle, the Committee meets twice a year during Executive Board sessions. Unlike the "1503 procedure", the Committee notifies both the author and the government of its decision on admissibility.

Although the process for utilizing the procedure is well documented, it is not well publicized, it functions almost as a top-secret affair and therefore lacks public pressure, and fails to explain its results.

#### **7.2 The ILO Procedure**

International Labor Organization entertains complaints in the form of representation and complaint. Under Article 24 of the ILO Constitution, a representation may be filed by a trade union or by employers' organization if a State 'has failed to secure in any respect the effective observance with its jurisdiction of any convention to which it is a party'. The ILO Governing Body handles the representation. If the representation is judged receivable by the ILO Governing Body, it appoints a tripartite committee of its own members to study the allegations.

### **7.2.1 Complaints**

Complaints that a Member State has failed to observe an ILO convention to which it is party may be submitted by an ILO Member State, which has ratified the same convention, by any delegate (government, worker or employer) to the International Labor Conference, or by the ILO Governing Body on its own motion. These complaints are examined according to procedures established by the ILO Constitution.

### **7.2.2 Special Procedure for Freedom of Association**

The most widely used ILO procedure is the special procedure for complaints about infringements of the right of freedom of association. The Committee on Freedom of Association (CFA) of the ILO Governing Body examines complaints alleging that a Member State of the ILO has infringed the basic principles of freedom of association. Such complaints may be submitted by governments, by national employers or workers organizations directly concerned with the matter, or by certain international organizations of employers or workers.

### **7.2.3 Special Surveys on Discrimination in Employment**

In 1974, the ILO Governing Body adopted arrangements allowing the consideration of special surveys of the situation in individual countries with regard to discrimination in employment. Although not a complaint procedure per se, it shares some of the features of such a procedure.

There are complaint procedures under the Optional Protocol to the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, International Convention on the Elimination of All Forms of Discrimination against Women and the International Covenant on the Protection of the Rights of All Migrant Workers and Members of Their Families. We have not discussed them here.

## **Annex I**

### **A Case Related to '1503' Complaint Procedure**

Date: 10/18/01

Radiation Health Foundation Inc.  
President Thomas Clark, (517) 321-2166  
7208 Creekside Dr.  
Lansing, MI 48917, USA  
Web Site: [www.rhfweb.com](http://www.rhfweb.com),  
Email: [tom@rhfweb.com](mailto:tom@rhfweb.com)

### **Communication to**

Human Rights Committee, United Nations  
c/o OHCHR-UNOG  
RE: 1503 Procedure Submittal  
1211 Geneva 10, Switzerland

Submitted for consideration under the 1503 Procedure, and under the International Criminal Court procedures,

Dear Human Rights Committee & United Nations,

I am a citizen of the United States of America, and according to the " 1503 " procedure which applies to all States, including the United States of America, I may bring a human rights problem to the attention of the United Nations, if the problem involves an examination of situations, rather than a specific individual complaint. As far I know, a citizen of the United States of America may not bring a human rights problem to the attention of the United Nations, if the problem involves an examination of individual complaints under the International Covenant on Civil and Political Rights and its Optional Protocol, since the U.S. has not ratified it.

Since the human rights problem that I would to bring to the attention of the United Nations, involves violations of all human rights and fundamental freedoms as covered by the 1503 procedure, and the problem involves all world citizens in general, and since I have direct or second-hand knowledge of the alleged violations, and since the pattern of violations are consistent, and since the problem is an examination of a situation, I have submitted this letter, in accordance with UN procedures, which describes the human rights problem, that I would like bring to the attention of the UN.

The human rights problems do involve, discrimination based on race and genetic ancestry, torture, and genocide, and I explain the details in accordance with the model communication as posted at your web site at <http://www.unhchr.ch/html/menu6/2/fs7.htm> below:

#### **I. Information concerning the author of the communication**

**Name:** Thomas Daniel Clark

**Nationality:** United States of America

**Profession:** President of The Radiation Health Foundation Inc. (Public Charity)

**Date and place of birth:** 01/23/62

**Social Security Number USA:** 385-80-5162

**Present address:** 7208 Creekside Dr., Lansing, MI 48917, USA

**Telephone Number:** (517) 321-2166

Submitting the communication as, Victim of the violation or violations as set forth below and as a representative for other victims of the violation or violations as set forth below.

- a. Why the victim(s) is (are) unable to submit the communication himself (themselves).  
- Fear of reprisals, and secrecy agreements, with corporations and nation states

#### **II. Information concerning the alleged victim(s) (if other than author)**

1. World Citizens in General from the USA, Canada, & Australia, of whom, I have close to 100 email complaints on file of the alleged violations received at the Radiation Health Foundation Inc. (A public charity) web site at [www.rhfweb.com](http://www.rhfweb.com). I also have emails complaints from U.S. governmental employees, who are also victims of the violations, namely retired military personnel.
2. Members of all royal houses of Europe, and the UK who have royal ancestry, including myself.

*Name of the State party (country) to the International Covenant and the Optional Protocol against which the communication is directed*



All states which are members of the UN, which utilize nonlethal weapons technologies, such as surveillance technologies, and directed energy technologies such as HAARP, GWEN Towers, and laser, sound, and gravity wave technologies.

***Articles of the Universal Declaration of Human Rights allegedly violated***

**Article 5**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 8**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article 10**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him

**Article 12**

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Steps taken by or on behalf of the alleged victim(s) to exhaust domestic remedies- recourse to the courts or other public authorities, when and with what results (if possible, enclose copies of all relevant judicial or administrative decisions):

1. Letters sent and received from the U.S. FBI, U.S. DOD Federal Case No: 1-99-CV- 150-USDC-WDMI-SD, Grand Rapids, Michigan, U.S. Congress, and the Prime Minister of the United Kingdom, which are enclosed as Exhibit 1.
2. I started a public Charity, namely, The Radiation Health Foundation Inc., which is located at the web site <http://www.rhfweb.com> to develop counter technologies and provide information on Radiation Health Issues.  
All Domestic remedies have been exhausted.

**IV. Other international procedures**

**International Criminal Court Procedures**

Has the same matter been submitted for examination under another procedure of international investigation or settlement (e.g. the Inter-American Commission on Human Rights, the European Commission on Human Rights)? If so, when and with what results?

**V. Facts of the claim**

I am alleging that nonlethal weapons technologies (surveillance technologies, directed energy technologies (Sound, Gravity, Laser), and mind control technologies) are being used by shadow governments (Omega, MONTUAK, ETC.), private corporations such as Global Technology World Alliance, Organised Crime, and by Nations States in the forms of classified surveillance, directed energy, and mind control technologies, and agreements such

as in projects like HAARP, ECHELON, TEMPEST, MONTUAK PROJECT, MK- ULTRA Project, SAGE radar sites, GWEN Radiation Towers, Russian Project Woodpecker, to target world citizens in nation states of the UN, and members of royal families in nation states of the UN, on account of their race, and genetic heritage, as a means of torture, repression, genetic experimentation, genocide of royal lines and other classes of citizens, and as a means of entertainment, through secret and private UHF 400 MHZ TV channels used to view and change citizens thoughts and dreams in the 400MHZ range, and citizens private lives.

I have enclosed the exhibits listed below to detail these facts. Exhibit 1 should be emphasized, since it has certified documents of correspondence with the Prime Minister in the UK, and with the U.S. FBI, DOD, and Congress. Also Exhibit 2 is of prime importance, since it contains an official European Parliament Report calling for the ban of nonlethal weapons technologies such as sound and HAARP.

I can provide more evidence and facts, such as local court cases concerning denial of due process in court as evidenced in court transcripts, and in local hospital procedures involving the treatment of myself as a patient due to radiation overexposure symptoms allegedly coming from mind control projects and directed energies. I also have about 100 emails from mind control and directed energy victims worldwide.

***The details of the facts of this claim are enclosed in the following Exhibits***

**Exhibit 1:** Letters to and from the Prime Minister of the UK, and in the letters and enclosures of the exhibit, are included letters sent to and received from the U.S. Congress, the U.S. DOD, and the U.S. FBI.

**Exhibit 2.** European parliament reports on the environment, security, and foreign policy, calling for a ban on the use of nonlethal weapons technologies.

**Exhibit 3:** Documented Nation State Intelligence Agencies, Directed Energi similar nonlethal weapons Technologies World Wide.

**Exhibit 4:** Documented Private Corporations Intelligence & Mind Control Agencies such as Global Technology World Alliance.

**Exhibit 5:** Additional Evidence on GWEN Transmitters.

**Exhibit 6:** Shadow Governments:

- 1.Shadow Governments In General.
- 2.Montauk Project.

**Proposed Resolutions**

I propose that the United Nations, contact Nation States, and if possible private corporations, and shadow governments, to develop agreements both public, and classified, to minimize the use of nonlethal weapons technologies (Surveillance technologies, Directed Energy Technologies etc.), as mentioned in the facts detailed above. The U.S. government does have minimization procedures for the use of surveillance technologies as defined by the DOD. If surveillance and directed energy minimization procedures as described in U.S. code were followed in the true spirit and letter of the law, by all nations states, and shadow governments, and private corporations, then many of the above human rights violations would be partially resolved.

I also ask for confidentiality, since the matters of this case involve very sensitive issues, and dangerous circumstances from reprisals by means of surveillance and directed energy technologies for all parties involved in this complaint as well as United Nations officials investigation this complaint

I would appreciate that a simple written letter of acknowledgment that this complaint was received and reviewed by the UN, be sent to the following address, if possible:

Thomas Clark, (517) 321-2166  
7208 Creekside Dr.  
Lansing, MI 48917, USA

I certify with my signature, that I am the Author of this letter, that the above facts and claims are true to the best of my knowledge:

\_\_\_\_\_  
U.S. Citizen, Thomas Daniel Clark

Date: \_\_\_\_\_

I appreciate your attentions to these matters.

With every best hope I am,

Respectfully

President Thomas D. Clark, (517) 321-2155  
Radiation Health Foundation Inc.  
Web Page: [www.rhfweb.com](http://www.rhfweb.com)  
Email [tom@rhfweb.com](mailto:tom@rhfweb.com)

***Enclosures***

**Exhibit 1:** Letters to and from the Prime Minister of the UK, and in the letters and enclosures of the exhibit, are included letters sent to and received from the U.S. Congress, the U.S. DOD, and the U.S. FBI.

**Exhibit 2:** European parliament reports on the environment, security, and foreign policy, calling for a ban on the use of nonlethal weapons technologies.

**Exhibit 3:** Documented Nation State Intelligence Agencies, Directed Energies, and similar nonlethal weapons Technologies World Wide

**Exhibit 4:** Documented Private Corporations Intelligence & Mind Control Agencies such as Global Technology World Alliance.

**Exhibit 5:** Additional Evidence on GWEN Transmitters.

**Exhibit 6:** Shadow Governments  
1. Shadow Governments In General  
2. Montauk Project

## *References*

Philip, Alston. 1980. "UNESCO's Procedure for Dealing with Human Rights Violations." In Santa Clara(ed.) *Law Review* 20/3: 665-696.

Dumont, Georges-Henri.1989. "UNESCO's Practical Action on Human Rights." In *International Social Science Journal* 122: 585-594, November.

UNESCO. 1994. *Documentation. Chapter III: UNESCO Documentation and Publications in the Field of Human Rights*. Paris: UNESCO.

Shaw, Malcom N. 1997. *International Law (Fourth Edition)*. London : Cambridge University Press.

Steiner, Henry J. and Philip Alston. 2000. *International Human Rights in Context (Second Edition)*. London : Oxford University Press.

Fact Sheet No. 7/Rev. 1. *Complaint Procedures*. Switzerland : Office of the High Commissioner for Human Rights.

*The ILO Constitution, 1944*

UNHCR. 1970. *Resolution 1503 (XLVII) of the Economic and Social Council*, Switzerland : United Nations High Commissioner for Human Rights.

## **Annex 1**

# **Reading Materials Distributed in the Workshop**

## **Paper 1: Introduction to the UN Human Rights Treaty System\***

### **1. Introduction**

The UN treaty system definitively establishes the legitimacy of international interest in the protection of human rights. It is undisputed that sovereignty is limited with respect to human rights. International supervision is valid and states are accountable to international authorities for domestic acts affecting human rights. The treaty standards are the benchmark for assessment and concern.

Over the last decade ratifications in the treaty system and acceptance of communication procedures have risen exponentially. What began, as an assertion of a few is now a global proclamation of entitlements of the victims of human rights abuse? Furthermore, this participation by states has been voluntary. The obligations of the human rights treaties have been freely assumed. It is the legal character of these rights, which places them at the core of the international system of human rights protection. For these rights generate corresponding legal duties upon state actors, to protect against, prevent, and remedy human rights violations.

### **2. The Goals**

The primary aims of the treaty system are to:

- encourage a culture of human rights
- focus the human rights system on standards and obligations
- engage all states in the treaty system
- interpret the treaties through reporting and communications
- identify benchmarks through general comments and recommendations
- provide an accurate, pragmatic, quality end product in the form of concluding observations for each state
- provide a remedial forum for individual complaints
- encourage a serious national process of review and reform through partnerships at the national level operational standards
- mainstream human rights in the UN system and mobilize the UN community to assist with implementation and the dissemination of the message of rights and obligations

### **3. The Standards**

The human rights treaty system encompasses six major treaties. They are:

- the Convention on the Elimination of all forms of Racial Discrimination (in force 4 January 1969)
- the International Covenant on Civil and Political Rights (ICCPR) (in force 23 March 1976)
- the International Covenant on Economic, Social and Cultural Rights (in force 23 March 1976)
- the Convention on the Elimination of Discrimination against Women (in force 3 September 1981)
- the Convention against Torture (in force 26 June 1987)
- the Convention on the Rights of the Child (in force 2 September 1990)

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#### **4. The Treaty Bodies**

The six treaties are associated with six treaty bodies, which have the task of monitoring the implementation of treaty obligations. Five of the six treaty bodies meet primarily in Geneva, and are serviced by the Office of the UN High Commissioner for Human Rights (OHCHR). These are:

- the Committee on the Elimination of Racial Discrimination (CERD)
- the Human Rights Committee (HRC)
- the Committee on Economic, Social and Cultural Rights (CESCR)
- the Committee against Torture (CAT)
- the Committee on the Rights of the Child (CRC).

One treaty body meets in New York and is serviced by the UN Division for the Advancement of Women. That is the Committee on the Elimination of Discrimination against Women (CEDAW).

The treaty bodies are composed of members who are elected by the states parties to each treaty (or through the UN Economic and Social Council (ECOSOC) in the case of CESCR). In principle, treaty members are elected as experts who are to perform their functions in an independent capacity.

#### **5. The Functions of the Treaty Bodies**

Meeting periodically throughout the year, the treaty bodies fulfill their monitoring function through one or more of three different methods. First, all states parties are required by the treaties to produce state reports on the compliance of domestic standards and practices with treaty rights. These reports are reviewed at various intervals by the treaty bodies, normally in the presence of state representatives. Concluding observations, commenting on the adequacy of state compliance with treaty obligations, are issued by the treaty bodies following the review. Second, in the case of four treaties individuals may complain of violations of their rights under the treaty (the Civil and Political Covenant, the Racial Discrimination Convention, the Convention against Torture, and the Women's Discrimination Convention). These complaints are considered by the treaty body, which expresses a view as to the presence or absence of a violation. Third, in the case of CAT and CEDAW, their work includes another procedure. This is an inquiry procedure, which provides for missions to states parties in the context of concerns about systematic or grave violations of treaty rights. In addition, the treaty bodies contribute to the development and understanding of international human rights standards through the process of writing General Comments or Recommendations. These are commentaries on the nature of obligations associated with particular treaty rights and freedoms.

#### **6. The National Level**

Significantly, the international system has had implications at the national level. A multitude of domestic legal systems have been affected by the treaties. The treaties form the basis of a significant number of the world's bills of rights. There are also numerous instances of legal reform prompted by the treaties. Non-governmental organizations and national human rights institutions have invoked the treaty standards in relation to proposed government legislation and policies. Legislative committees have used treaty standards as reference points. The treaties have sometimes been incorporated into national law, had direct application through constitutional provisions to national law, and been used to interpret domestic law through judicial intervention.

## Paper 2: Human Rights: an Ideal of Universality<sup>16</sup>

Asserted by the Declaration of 1948, the universality of human rights is for the most part yet to be constructed. This process of “universalisation” is not one that sets out to disseminate a single model, from a single point, but rather to ensure the emergence in diverse ways of a common will to recognise rights common to all human beings. In this sense, universality implies a shared definition, and even an enrichment of its meaning through contact between cultures.

*All societies, to some extent, live with the demands of human rights, but each in its own way. What is needed is to bring these “different approaches” closer so that they may influence each other and be mutually enriching<sup>1</sup>. Certainly, the 1948 Declaration has sometimes been criticised for expressing the predominance of Western culture. While there are some grounds for this criticism (despite the involvement of non-Western authors in the drafting of the text), the Declaration does not in fact express an ethnocentric or imperialist ideology; on the contrary, it establishes the basis for the legitimacy of the decolonisation movement that would follow and of the battle against all forms of discrimination, since it is based on the notion of a *non-exclusive universal*<sup>2</sup>.*

Rather than unification, it suggests the harmonisation of systems of law, in that differences are accepted (thus a certain cultural relativism) but subject to their being compatible with common founding principles (which would preserve the harmony of the whole and hence its universality). Acknowledging differences is to recognise that the perception of human rights may be conditioned by history and by a variety of other factors of a political, cultural, religious, economic and social order and that *the individual only attains membership of the human race through the intermediary of a particular culture*<sup>3</sup>.

But it is here that the risks of the consensus breaking down appear, which lead a philosopher like Michael Walzer to defend a « minimalist » concept of the universal moral code and human rights, on the grounds that there is no world-wide collective memory and that economic resources are unequal. The observation appears to rest on a fixed notion, that of an unchanging world and a history forever repeating itself. This is why it seems debatable. But for all that, it should not be ignored. Assuming the evolving character of the process does not lead to the denial of the existence of such obstacles, but to taking their measure in order to find means of overcoming them. In a world, which has been “broken”, it is sometimes said, obstacles are traced through diverse fracture lines. Some disassociate civil and political rights from economic and social rights, by contrasting the individualism of the rich countries (of the north and west) with the spirit of solidarity characteristic of the poor countries (of the east and south). Others differentiate, and sometimes contrast, the human rights protection instruments described as “regional”; or even forecast a withdrawal to the nation state through the interplay of reservations which limit the scope of these texts which have, nonetheless, been officially ratified.

### **Spirit of solidarity and indivisibility of rights**

Rooted in western individualism, human rights are said to mark the forgetting of the solidarity underlying and sustaining traditional societies, in the south and in the east<sup>4</sup>. Nevertheless, the duty of brotherhood, incorporated into the motto of the French Republic,

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is placed at the very beginning of the Universal Declaration: *"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."* And Article 29 stresses the individual's *"duties to the community."*

In fact, the Declaration lists, alongside civil and political rights, various economic, social and cultural rights. And the two UN Covenants adopted in 1966 insist on collective rights to the point of eliminating the word "Man", even in the title. Considered as complementary and indivisible, these texts, which have legal force and are not purely symbolic like the Declaration, recognise "economic, social and cultural rights" and "civil and political rights."

The dissymmetry became apparent later. On the one hand, when the Covenants were ratified, since some western States, prominent amongst which was the United States, did not comply with the initial undertaking to ratify and implement the two texts simultaneously and chose to ratify the Covenant on civil and political rights alone, thus providing a pretext, notably to China, to favour the other. On the other hand, the dissymmetry was not only the result of circumstances but also structural, in respect of the control mechanisms, which dictate the effectiveness of the system of protection of rights. For historical reasons, reinforced by the "cold war" between the USSR and the United States, the introduction of a control mechanism, felt to be an intolerable interference, was slow, gradual and incomplete. On both points, progress is yet to be made and the principle of the indivisibility of rights should be tirelessly reiterated.

Let us remember that the UN Covenants, preceded by the "European" Convention for the Protection of Human Rights and Fundamental Freedoms (1950), were to be followed by an entire series of international instruments for the protection of human rights, limited to America (the American Convention of 1969), Africa (the African Charter of the Rights of Man and Peoples of 1981) and the Arab League States (Arabian Charter of Human Rights of 1994).

### **The threat of "each to his own"**

This fragmentation of human rights probably indicates a certain resistance to the universalism of the 1948 Declaration, although it was reaffirmed by some 180 States attending the Vienna Conference organised by the UN in 1993, and although all these regional texts refer to the Declaration, whose universal character they thus seem to accept.

That said, the essential difference almost certainly lies in the control mechanisms, since these are the true test of the political will of States to ensure, over and above the effect of displaying a list of rights, the effectiveness of a system of protection. In terms of control, the great innovation of the post-war period has been the introduction of the principle of individual recourse against a State in cases of abuse of fundamental rights, thus bringing human rights into the legal, and not just political, arena, since they can now be defended not only at the national level, thanks to the control exercised by the constitutional courts, but also at the world level, by using the international instruments for the protection of human rights<sup>5</sup>. Yet the very notion of recourse varies considerably from one document to another.

When all's said and done, the idiosyncrasies linked with the regionalisation of human

rights take many forms. Cultural, and sometimes religious, if one reads nothing but the preambles to these conventions and charters, they do also express, in the main text of the rights that they set forth, a view of human rights that is individualistic to a greater or lesser extent. But the greatest differences are political, depending on whether or not States are prepared to accept the principle of recourse to an international body of a judicial nature, that they will have to finance, although its function will be to rule against them, if necessary, and to make its decision public.

But the erosion of human rights may take more subtle forms, when a State, which appears to be playing the game by ratifying the international text, uses the technique of “reserves” in an abusive way in order, in reality, to nationalise the text. This is a way of rejecting internationalisation and returning to the traditional “each to his own.”

At a time of economic globalisation, the universality of human rights is, more than ever before, a necessity. It points the way, if we wish to avoid hegemonic globalisation, to devising a genuinely pluralist common law<sup>6</sup>.

#### Notes

1. P. Imbert, “L'Apparente simplicité des droits de l'Homme, réflexions sur les différents aspects de l'universalité des droits de l'Homme”, *Revue universelle des droits de l'Homme*, No. 1, 1989.
2. Alain Le Guyader, “Ethique et droits de l'Homme”, *Etat de droit et droits fondamentaux dans la francophonie*, Revue de l'Institut des hautes études francophones, No. 1; 1995.
3. P. Imbert, as above.
4. See in particular, C. Amega King, “La protection des droits de l'Homme et de la démocratie est-elle étrangère à la tradition africaine ?” *Bulletin IDIEF*, 1997; Li Xiaoping, “L'esprit du droit chinois, perspectives comparatives”, RIDC, 1997.
5. See *Libertés et droits fondamentaux*, introduction, texts and commentaries, Ed. M. Delmas-Marty and C. Lucas de Leyssac, pub. Seuil, Paris, 1996, coll. Points.
6. See *les Trois défis d'un droit mondial*, pub. Seuil, 1998.

### **Paper 3: Procedure for Dealing with Communications Relating to Violations of Human Rights and Fundamental Freedoms\***

#### ***Resolution "1503" of the Economic and Social Council***

##### **The Economic and Social Council,**

Noting resolutions 7(XXVI) and 17(XXV) of the Commission on Human Rights and resolution 2 (XXI) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,

1. Authorizes the Sub-Commission on Prevention of Discrimination and Protection of Minorities to appoint a Working Group consisting of not more than five of its members, with due regard to geographical distribution, to meet once a year in private meetings for a period not exceeding ten days immediately before the sessions of the Sub-Commission to consider all communications, including replies of Governments thereon, received by the Secretary-General under Council resolution 728F (XXVIII) of 30 July 1959 with a view to bringing to the attention of the Sub-Commission those communications, together with replies of Governments, if any, which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms within the terms of reference of the Sub-Commission;
2. Decides that the Sub-Commission on Prevention of Discrimination and Protection of Minorities should, at the first stage in the implementation of the present resolution, devise at its twenty-third session appropriate procedures for dealing with the question of admissibility of communications received by the Secretary-General under Council resolution 728F (XXVIII) and in accordance with Council resolution 1235 (XLII) of 6 June 1967;
3. Requests the Secretary-General to prepare a document on the question of admissibility of communications for the Sub-Commission's consideration at its twenty-third session;
4. Further requests the Secretary-General:
  - To furnish to the members of the Sub-Commission every month a list of communications prepared by him in accordance with Council resolution 728F (XXVIII) and a brief description of them, together with the text of any replies received from Governments;
  - To make available to the members of the working group at their meetings the originals of such communications listed as they may request, having due regard to the provisions of paragraph 2 (b) of Council resolution 728F (XXVIII) concerning the divulging of the identity of the authors of communications;

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- To circulate to the members of the Sub- Commission, in the working languages, the working group refers the originals of such communications as to the Sub-Commission;
5. Requests the Sub-Commission on Prevention of Discrimination and Protection of Minorities to consider in private meetings, in accordance with paragraph 1 above, the communications brought before it in accordance with the decision of a majority of the members of the working group and any replies of Governments relating thereto and other relevant information, with a view to determining whether to refer to the Commission on Human Rights particular situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights requiring consideration by the Commission;
  6. Requests the Commission on Human Rights after it has examined any situation referred to it by the Sub-Commission to determine:
    - a. Whether it requires a thorough study by the Commission and a report and recommendations thereon to the Council in accordance with paragraph 3 of Council resolution 1235 (XLII);
    - b. Whether it may be a subject of an investigation by an ad hoc committee to be appointed by the Commission which shall be undertaken only with the express consent of the State concerned and shall be conducted in constant co-operation with that State and under conditions determined by agreement with it. In any event, the investigation may be undertaken only if:
      - i. All available means at the national level have been resorted to and exhausted;
      - ii. The situation does not relate to a matter which is being dealt with under other procedures prescribed in the constituent instruments of, or conventions adopted by, the United Nations and the specialized agencies, or in regional conventions, or which the State concerned wishes to submit to other procedures in accordance with general or special international agreements to which it is a party.
  7. Decides that if the Commission on Human Rights appoints an ad hoc committee to carry on an investigation with the consent of the State concerned:
    - a. The composition of the committee shall be determined by the Commission. The members of the committee shall be independent persons whose competence and impartiality is beyond question. Their appointment shall be subject to the consent of the Government concerned;
    - b. The committee shall establish its own rules of procedure. It shall be subject to the quorum rule. It shall have authority to receive communications and hear witnesses, as necessary. The investigation shall be conducted in co-operation with the Government concerned;
    - c. The committee's procedure shall be confidential, its proceedings shall be conducted in private meetings and its communications shall not be publicized in any way;

The committee shall strive for friendly solutions before, during and even after the investigation;

- d. The committee shall report to the Commission on Human Rights with such observations and suggestions, as it may deem appropriate;
8. Decides that all actions envisaged in the implementation of the present resolution by the Sub-Commission on Prevention of Discrimination and Protection of Minorities or the Commission on Human Rights shall remain confidential until such a time as the Commission may decide to make recommendations to the Economic and Social Council;
9. Decides to authorize the Secretary-General to provide all facilities which may be required to carry out the present resolution, making use of the existing staff of the Division of Human Rights of the United Nations Secretariat;
10. Decides that the procedure set out in the present resolution for dealing with communications relating to violations of human rights and fundamental freedoms should be reviewed if any new organ entitled to deal with such communications should be established within the United Nations or by international agreement.

## **Paper 4: The Revised "1503" Procedure\***

### **1. Introduction**

The "1503" confidential communications procedure was reformed during the fifty-sixth session of the Commission on Human Rights in 2000. The Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights, which met between the fifty-fifth (1999) and fifty-sixth sessions of the Commission included in its report recommendations on how the 1503 procedure should be amended. These recommendations were subsequently embodied in a draft resolution entitled "Procedure for dealing with communications concerning human rights" which was part of Commission decision 2000/109 (adopted without a vote on 26 April 2000). The Economic and Social Council, at its resumed organizational session for 2000, approved the draft resolution on 16 June 2000. It became Council resolution 2000/3. In accordance with this resolution, the procedure as amended may continue to be referred to as the 1503 procedure.

Pursuant to Council resolution 2000/3 of 16 June 2000, a Working Group is designated on a yearly basis by the Sub-Commission on the Promotion and Protection of Human Rights from among its members. It is geographically representative of the five regional groups and appropriate rotation is encouraged. Called the Working Group on Communications, it meets annually immediately after the Sub-Commission session to examine communications (complaints) received from individuals and groups alleging human rights violations and any government responses. Manifestly ill-founded communications, such as communications raising issues that fall outside the scope of the Universal Declaration, are screened out by the secretariat, with the approval of the Chairperson-Rapporteur of the Working Group on Communications: they are not sent to the Governments concerned or submitted to the Working Group on Communications. The fact that a communication is being transmitted to the State and acknowledged to the complainant does not imply any judgment on the admissibility or merits of the communication. Where the Working Group identifies reasonable evidence of a consistent pattern of gross violations of human rights, the matter is referred to the Working Group on Situations.

The Working Group on Situations comprises, as before, five members nominated by the regional groups, due attention being paid to rotation in membership. It meets at least one month prior to the Commission to examine the particular situations forwarded to it by the Working Group on Communications and decide whether or not to refer any of these situations to the Commission. Subsequently, it is the turn of the Commission to take a decision concerning each situation brought to its attention in this manner.

### **2. Confidentiality**

All initial steps in the process are confidential until a situation is referred to the Economic and Social Council. Since 1978, however, the Chairperson of the Commission on Human Rights has announced the names of countries that have been under examination. Thus, if a pattern of abuses in a particular country remains unresolved in the early stages of the process, it can be brought to the attention of the world community through the Economic and Social Council - one of the principal bodies of the United Nations.

### **3. What are the Criteria for a Communication to be Accepted for Examination?**

To decide what communications may be accepted for examination, the Sub-Commission on the Promotion and Protection of Human Rights has drawn up rules of procedure (Sub-

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\*A paper downloaded from UN website on 16 August 2003 for the workshop.

Commission resolution 1 (XXIV) of 13 August 1971). In general terms, these rules may be summarized as follows:

- No communication will be admitted if it runs counter to the principles of the Charter of the United Nations or appears to be politically motivated.
- A communication will only be admitted if, on consideration, there are reasonable grounds to believe - also taking into account any replies sent by the Government concerned - that a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms exists.
- Communications may be submitted by individuals or groups who claim to be victims of human rights violations or who have direct, reliable knowledge of violations. Anonymous communications are inadmissible as are those based only on reports in the mass media.
- Each communication must describe the facts, the purpose of the petition and the rights that have been violated. As a rule, communications containing abusive language or insulting remarks about the State against which the complaint is directed will not be considered.
- Domestic remedies must have been exhausted before a communication is considered - unless it can be shown convincingly that solutions at the national level would be ineffective or that they would extend over an unreasonable length of time.

**Where to send communications**

Communications intended for handling under the "1503" procedure may be addressed to:

**Support Services Branch**

**OHCHR-UNOG**

**1211 Geneva 10, Switzerland**

**Fax: (41 22) 917 90 11**

**Paper 5: States Examined under the "1503" Procedure by  
the Commission on Human Rights (as up to 2002)**

States	Year	Session
Afghanistan	1981-1984	37th-40th
Albania	1984-1988 1995	40th-44th 51st
Antigua & Barbuda	1997	53rd
Argentina	1980-1984	36th-40th
Armenia	1994-1996	50th-52nd
Azerbaijan	1994-1996	50th-52nd
Bahrain	1991-1993	47th-49th
Benin	1984-1985 1988	40th-41st 44th
Bolivia	1977-1981	33rd-37th
Botswana	1997	53rd
Brazil	1974-1976	30th-32nd
Brunei	1988-1990	44th-46th
Burma (Myanmar)	1979-1980 1990-1992	35th-36th 46th-48th
Burundi	1974-1975	30th-31st
Central African Republic	1980-1981	36th-37th
Chad	1991-1999 2002-2003	47th-55 <sup>th</sup> 58th-59th
Chile	1975-1976 1978-1979 1981  2000	31st-32nd 34th-35th 37th 56th
Czech Republic	1997	53rd
Democratic Republic of the Congo	1985-1989 1991-1993	41st-45th 47th-49th
Djibouti	2003	59th
El Salvador	1981	37th
Equatorial Guinea	1976-1979	32nd-35th
Estonia	1994 1997	50th 53rd
Ethiopia	1978-1981	34th-37th



Gabon	1986	42 <sup>nd</sup>
Gambia	1997-1999	53rd-55th
German Democratic Republic	1981-1983	37th-39th
Germany	1994	50th
Grenada	1988	44th
Guatemala	1981	37th
Guyana	1974-1975	30th-31st
Haiti	1981-1987 1989-1990	37th-43rd 45th-46th
Honduras	1988-1989	44th-45th
Indonesia (and East Timor)	1978-1981 1983-1985	34th-37th 39th-41st
Iran	1974-1975 1983	30th-31st 39th
Iraq	1988 1989	44th 45th
Israel	1975-1977	31st-33rd
Japan	1981 1998	37th 54th
Kampuchea Democratic (Cambodia)	1979	35th
Kenya	1993 2000	49th 56th
Republic of Korea	1977-1982	33rd-38th
Kuwait	1994	50th
Kyrgyzstan	1997-1998	53rd-54th
Lao People's Democratic Republic	1995	51st
Latvia	1995 1997 2000	51st 53rd 56th
Lebanon	1997	53rd
Liberia	2002-2003	58th-59th
Lithuania	1997	53rd
Malawi	1977-1980	33rd-36th
Malaysia	1984	40th
Maldives	2001	57th
Mali	1996	52nd
Moldova	1995	51st
Mozambique	1981	37th
Nepal	1996 1999	52nd 55th

Nigeria	2002	58th
Pakistan	1984, 1985 1988	40th 41st 44th
Paraguay	1978-1990 1998	34th-46th 54th
Peru	1998	54th
Philippines	1984-1986	40th-42nd
Portugal	1974-1975	30th-31st
Republic of the Congo	2000 2001	56th 57th
Rwanda	1993-1995	49th-51st
Saudi Arabia	1995-1999	51st-55th
Sierra Leone	1996-1999	52nd-55th
Slovenia	1995 1996	51st 52nd
Somalia	1989-1994	45th-50th
Sudan	1991-1993	47th-49th
Syrian Arab Republic	1989 1992 1997	45th 48th 53rd
Thailand	1995 1996	51st 52nd
Togo	2001-2002	57 <sup>th</sup> ? 58th
Turkey	1983-1986	39th-42nd
Uganda	1975-1981 1995 2000-2001	31st-37th 51st 56th-57th
United Arab Emirates	2000	56th
United Kingdom	1974-1975	30th-31st
United Republic of Tanzania	1974-1975 1997	30th-31st 53rd
United States of America	1997	53rd
Uruguay	1978 - 1985	34th-41st
Uzbekistan	1996-1997 2003	52nd-53rd 59th
Venezuela	1982	38th
Viet Nam	1994 2000	50th 56th
Yemen	1998-1999 2000	54th-55th 56th
Zambia	2002	58th
Zimbabwe	2000	56th

## **Paper 6: Human Rights and the WTO : Time to Take on the Challenge\***

### **1. Introduction**

While many trade policy negotiators may have buried memories of Seattle in a box marked 'Do not open until next millennium', one of the issues raised at Seattle has come back to haunt them. Human rights and the WTO. Already the groans, muttering and gnashing of teeth can be heard. Not another 'linkage' issue to spoil our day and get in the way of real work. Not another sop to the NGO rabble on something we know next to nothing of - and perhaps care even less about.

Surprisingly, the bearer of such fearsome tidings is not some irritating human rights group but the venerable Human Development Report 2000 produced by UNDP. The millennium issue of the report focuses on human rights and human development. Using the human freedoms framework pioneered by Nobel prize-winning economist Amartya Sen, the report challenges the conventional view that human rights are not a development issue. Its title page avows: "Any society committed to improving the lives of its people must also be committed to full and equal rights for all".

The report itself emphasizes the need to bring the development and human rights communities together in common cause with a focus on seven key freedoms: freedom from discrimination; freedom from fear; freedom of speech; freedom from want; freedom to develop and realize one's human potential; freedom from injustice and violations of the rule of law; and freedom for decent work - without exploitation. The report foregrounds poverty eradication as one of the central challenges for human rights in the 21st century and calls for redoubled efforts to guarantee economic, social and cultural rights as well as civil and political rights.

Economic globalisation and the need for human rights accountability from global actors (inter-governmental and non-state) also come under scrutiny in the report. Noting both the inequities in participation in global institutions and asymmetries in rule making in areas such as human rights, environment and trade, the report states: "(Global rules) are developing separately, with the potential for conflict. Human rights commitments and obligations need to be reflected in trade rules - the only ones now truly binding on national policy - because they have enforcement measures". This preoccupation with the 'human rights enforcement gap' is a central one and among the specific initiatives that the report proposes is one to: "Set up a global commission on human rights in global governance with a mandate to review proposals for strengthening the international human rights machinery and human rights safeguards in global economic agreements and secure a fair global economic system".

In its conclusion, the report calls on the world community to "return to the audacious vision of those who drafted the Universal Declaration of Human Rights" and slough off the cold war thinking that dominated the 20<sup>th</sup> century in order to advance "human rights for all people in all countries" in the new millennium.

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By Malini Mehra, Editor, Human Right and Economic Globalization; Director for the World Trade Organization, a paper downloaded from the UN Website on 19<sup>th</sup> August, 2003 for the workshop

## **2. Human Rights at the WTO's Door**

Whether trade policy makers can combine the lyrical idealism of the drafters of the UDHR with the hardboiled *realpolitik* of the WTO remains to be seen. What is certain however is that the issue of human rights has now arrived at the WTO's door - with diplomatic credentials - and is waiting to be let in. In this respect, perhaps the HDR 2000 can achieve what its forebears, other human rights bodies, and the NGOs picketing at the gates, have been unable to. Namely, an opportunity for serious debate on the human rights duties of multilateral bodies such as the WTO.

The issue, of course, is hardly new. The agonies of the WTO on the issue of workers rights, which are human rights, hardly bear repetition. What is new however is the recognition that human rights cannot be dealt with in a piecemeal, self-serving manner, and that a critical mass of public and institutional opinion is forming calling for broad human rights and environmental accountability from economic policy institutions such as the IMF, World Bank and the WTO.

The value of the HDR 2000 is that it has squarely stated that human rights without development, and development without human rights are a non-starter. The one cannot take place without the other. This, and the enlarged understanding of human rights to cover both the 'liberty' and 'economic' rights, is a salutary corrective to those governments who have been championing selective rights at fore such as the WTO whilst ignoring the fundamental principle that human rights are universal, indivisible and interdependent.

These three core principles, arising from the Universal Declaration of Human Rights, were reaffirmed at the UN Conference on Human Rights at Vienna in 1993. They bear repeating for those who have a reductionism understanding of the comprehensive nature of the international human rights system:

- "universality, which implies that no provision of a national, cultural or religious nature can override the principles enshrined in the Universal Declaration of Human Rights,
- indivisibility, which precludes discrimination between civil and political rights, and economic, social and cultural rights,
- interdependence between human rights, democracy and development, which is linked to a new definition of development focused on man (sic) as a holder of human rights and the beneficiary of the development process."

## **3. The New Human Rights Demandeurs?**

The global struggle for human rights has now entered a new stage - the age of enforcement and a focus on the global economy. While states bear the primary legal responsibilities for the progressive realization of all human rights for their citizens, they have long ceased to be the demandeurs of human rights especially when it comes to international economic negotiations. The new demandeurs are civil society groups and the more forward-looking bodies in the multilateral system such as the UN secretariat, UN human rights and other agencies.

For example, in his 1997 document on UN reform, the Secretary General declared human rights as one of the four main cross-cuttings issues that the organization would henceforth focus on. More recently, the Secretary General has framed his report for the Millennium Assembly in the language of human rights by organizing it along the three themes of the

freedom from want, freedom from fear, and the freedom of future generations to sustain their lives on this planet. Elsewhere, both UNICEF and UNDP have adopted human rights policy documents and are endeavouring to pursue a human rights-based approach to their work. Even UNCTAD has begun informal consultations with the Office of the High Commissioner for Human Rights to explore the human rights implications of its development mission. The World Health Organisation has also begun using human rights language, such as the human right to the highest attainable standard of health in its questioning of the public health implications of the TRIPs Agreement. This is a progression on UNDP's HDR 1999 which warned against the negative consequences of TRIPs on food security, indigenous knowledge, bio-safety and access to health care - all major human rights concerns. However, the most rigorous challenge to the single-issue focus of inter-governmental economic institutions such as the WTO has come from the UN's Geneva-based human rights monitoring bodies. In particular, the Sub-commission on the Promotion and Protection of Human Rights and the Committee on Economic, Social and Cultural Rights which is responsible for monitoring the International Covenant on Economic, Social and Cultural Rights. Both bodies have issued stern resolutions and statements on the human rights responsibilities of states and multilateral economic bodies in the era of globalisation.

In 1998, the Sub-commission emphasized, "The realization of human rights and fundamental freedoms is the first and most fundamental responsibility and objective of States in all areas of development and governance." That same year, the Committee on Economic, Social and Cultural Rights declared that "the realms of trade, finance and investment are in no way exempt from human rights obligations and principles, and that the international organizations with specific responsibilities in these areas should play a positive and constructive role in relation to human rights". And in 1999, the Sub-commission called for steps to be taken "to ensure that human rights principles and obligations are fully integrated in future negotiations in the World Trade Organization".

Seattle was the occasion of the boldest act by far of any human rights body on international economic issues. In November 1999, the UN Committee on Economic, Social and Cultural Rights issued a statement to the Third Ministerial Conference of the WTO. It was sent to the WTO Director General and all member states.

In the statement, the Committee called on the WTO to "undertake a review of the full range of international trade and investment policies and rules in order to ensure that these are consistent with existing treaties, legislation and policies designed to protect and promote all human rights. Such a review should address as a matter of highest priority the impact of WTO policies on the most vulnerable sectors of society as well as on the environment".

The statement continued, "It is the Committee's view that the WTO contributes significantly to and is part of the process of global governance reform. This reform must be driven by a concern for the individual and not by purely macroeconomic considerations alone. Human rights norms must shape the process of international economic policy formulation so that the benefits for human development of the evolving international trading regime will be shared equitably by all, in particular the most vulnerable sectors. In this regard the Committee wishes to remind WTO members of the central and fundamental nature of human rights obligations. At the World Conference on Human Rights held in 1993 in Vienna, 171 States declared that the promotion and protection of human rights is the first responsibility of Governments".



Finally, the statement concluded, "The Committee urges WTO members to ensure that their international human rights obligations are considered as a matter of priority in their negotiations which will be an important testing ground for the commitment of States to the full range of their international obligations".

What has the WTO's response been to this statement? Will it turn a deaf ear to the calls of the Committee? 142 states have signed up to the International Covenant on Economic, Social and Cultural Rights - most of them are also WTO members. Is it not beholden on them to respond to the Committee?

#### **4. Is the WTO up to the Challenge?**

The choice for the WTO is clear. It can either accept the challenge lay down by the HDR 2000, the Committee and others and begin a process of constructive engagement to examine how trade can advance human rights for all. Or it can reject the challenge and maintain the fiction that trade policy has nothing to do with human rights.

Of course, the WTO is used here as shorthand for the collective decision-making of its 136 member states. All of these member states have legally binding human rights duties and responsibilities that must be taken into account when they enter the halls of WTO. Any other stance makes nonsense of their proclaimed commitment to human rights and sustainable development.

Clearly such a change in attitude will not be easy and politics will bedevil the process. But there are ways of making it easier - and more rewarding:

Firstly, by recognizing that adopting the international human rights framework as a guide to WTO policy making brings benefits to all - especially the weak.

In Mary Robinson's words, "Human rights bring to the development discussion a unifying set of standards - a common reference for setting objectives and assessing the impact of actions taken." International human rights law and the human rights framework should become the gold standard for global governance. This means that all inter-governmental bodies, be they the WTO, Bretton Woods or UN institutions, must accept key human rights principles and duties and - within the scope of their institutional mandates - be required to work towards fulfilling them. Such an approach would not raise issues of changing areas of institutional scope or competence, as objected to by some WTO member states, but merely require adherence to a common baseline of internationally agreed norms and standards. The WTO's constitution already contains references to the UN Charter that binds governments to human rights duties and obligations. Practically, adopting the international human rights framework would merely entail a decision by General Council. Secondly, avoiding the 'exemptions-led' approach to broad human rights issues in the WTO.

The WTO's current 'exemptions' model to deal with so-called non-trade issues is inadequate, unreliable and designed to promote ad-hocism in policy-making. Human rights issues cannot be parceled up into 'human rights clauses' or 'social clauses' - which could then also be misused for protectionist purposes - but need to be integrated into the very objectives of the organization as expressed in its preamble or 'mission statement.' The WTO has been criticized for promoting the interests of the market and dominant market actors such as transnational corporations over complex and inter-related social and environmental interests. A human rights framework would enable the WTO to more clearly demarcate the boundaries

between the market and society without compromising the latter or undermining the ability of states to discharge their human rights duties.

Thirdly, avoiding the 'sanctions-led' approach to enforcement in the WTO. While enforcement will clearly be required the WTO's current trade sanctions model is a crude, politically-manipulability device which in practice has all too often been neither effective nor equitable. Moreover, trade sanctions themselves are not 'human rights-neutral' but can lead to violations, especially on livelihoods and the right to work, which must be taken into account *a priori*.

In general, however, the task of developing appropriate human rights enforcement machinery in the international system will require serious re-consideration of the WTO's Dispute Settlement Body. Importantly, it will require the granting of enforcement powers to human rights bodies such as the ILO and system-wide. Anything short of this will be seen as part of the continuing lack of seriousness on human rights enforcement by states and especially the 'big powers'. It is time to move from pious words to practical action.

Fourthly, enter into Relationship Agreements with the UN's relevant human rights bodies. Both sides could benefit from their mutual expertise and develop a learning relationship on how trade can truly promote human rights and sustainable development. Conducting a joint review of the human rights impacts of WTO agreements, as called for by the Committee on Economic, Social and Cultural Rights, could be an idea. They could begin with the human rights implications of proposed liberalization of education and health sectors in the GATS agreement currently under review.

The above measures would be first not last steps in addressing more substantive issues of potential policy inconsistency and conflict with a view to building greater coherence amongst the trade and human rights regimes. Much more can be done and parallels at the regional and national levels are also needed.

Delivering on the vision of the drafters of the Universal Declaration of Human Rights will perhaps always be a work-in-progress. But we cannot wait until the next millennium. It is time for the WTO to shed its demons and join in the struggle.

## Annex 2

### Programme Schedule of National Workshop on Treaty Bodies

Venue: Hotel Himalaya, Kupandol, Lalitpur

21 August 2003

#### Session One: Inaugural Session\*

8:45 – 9:15	<b>Registration of the Participants</b>
9:15 – 9:30	<b>Breakfast</b>
9:30	<b>Chair of the Session</b> Mr. Subodh Raj Pyakurel, Chairperson, INSEC
9:45	<b>Welcome remarks and objectives of the workshop</b> Padma Prasad Khatriwada, Director (Planning, Research and Development), INSEC

#### **Inaugural Statements: Chief Guest**

Mr. Laxman Aryal, Former Judge of the Supreme Court

#### **Statements on the Workshop**

- Mr. Krishna Jung Rayamajhi, Former Judge of the Supreme Court
- Hon'ble Sushil Raj Pyakurel, Member, National Human Rights Commission
- Mr. Sindhunath Pyakurel, Senior Advocate and President of Nepal Bar Association,
- Mr. Rashid Kang, Representative from Forum Asia

#### Session Two: Presentation

10:30 – 11:00	<b>Introductory Overview of the UN Treaty Bodies</b>
<b>Chair Presentation</b>	Mr. Subodh Raj Pyakurel, INSEC Ms. Ranjana Thapa, INSEC
11:00 – 11:20	<b>Discussion</b>

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\* Master of Ceremony: Kamdev Khanal

### **Session Three: Presentation**

**11:20 – 11:40**                      **Significance of Treaty Bodies in the Implementation of Treaties**

**Chair**                                      Mr. Ram Krishna Timilsina, Joint Registrar, Supreme Court

**Presentation**                      Mr. Pradip Shanker Wagley, Advocate

**11:40 – 12:30**                      **Discussion**

**12:30 – 1:30**                      **Lunch Break**

### **Session Four: Presentation**

**1:30 – 2:00**                      **Reporting Mechanisms under Treaty Bodies**

**Chair**                                      Mr. Kedar Poudel, Action Secretary, NHRC

**Presentation**                      Dr. Bipin Adhikari, Advisor, NHRC

**2:00 – 2:30**                      **Discussion**

### **Session Five: Presentation**

**2:30 – 3:00**                      **Reporting Status of Nepal: Problems and Prospectus**

**Chair**                                      Mr. Madhav Paudel, Joint Secretary, Ministry of Law

**Speaker**                                  Mr. Kabiraj Khanal, Under Secretary, Home Ministry

**3:00 – 3:30**                      **Discussion**

**3:30 – 4:00**                      **Break**

**4:00**                                      **End of the First day**

22 August 2003

9:30 – 10:30                      **Recap of the First day**

**Session Seven: Presentation**

10:00 – 10:30                      **Role of NGO on Reporting Process**

**Chair**                                      Honourable Sushil Pyakurel, Member, NHRC

**Presentation**                          Mr. Rabindra Bhattarai, Advocate

10:30 – 11:00                      **Discussion**

**Session Eight: Presentation**

11:00 – 11:30                      **Preparing Shadow Reports**

**Chair**                                      Ms. Geeta Sangraula, Advocate

**Presentation**                          Ms. Sapana Pradhan, Advocate

11:30 – 12:00                      **Discussion**

12:00 – 1:00                        **Lunch Break**

**Session Nine: Presentation**

1:00 – 1:30                        **Introduction to "1503" Complaint Procedures and Its Exercise**

**Chair**                                      Mr. Hari Phuyal, Advocate

**Presentation**                          Mr. Kamdev Khanal, INSEC

1:30 – 2:00                        **Discussion**

**Session Ten: Presentation**

2:00 – 2:30                        **Experience Sharing on UN System**

**Presentation**                          Mr. Rashid Kang, Forum Asia

2:30 – 3:00                        **Discussion**



### **Session Eleven: Presentation**

**3:00 – 3:45**

**Presentation**

**How to Communicate to UN under "1503"  
Procedures?**

**Mr. Hari Phuyal**

**3:45 – 4:45**

**Facilitation**

**Group Exercise**

Hari Phuyal, Ranjana Thapa, Kamdev Khanal

**4:45 – 5:00**

**Tea Break**

**5:00 – 6:00**

**Group Presentation**

**6:00**

**Closing Session**

- Mr. Subodh Raj Pyakurel, Chairperson, INSEC
- Mr. Rashid Kang, Forum Asia
- Mr. Jagdish Dahal, Programme Director, INSEC

## Annex 3

### List of Participants

SN	Name	Organisation	Telephone
1	Mr. Chandan Shrestha	CONCERN	4280754
2	Ms. Anjana Shakya	Himrights	5520054
3	Mr. Gopal Lamichhane	LL.M Student Forum	5536684
4	Mr. Pradip Niraula	Home Ministry	4228166
5	Mr. Rajan Pandey		5560732
6	Mr. Kosh Raj Neupane	NIIRC	525659/842
7	Ms Basanta Poudel	Law Campus	4444896
9	Mr. Dipesh Ghimire	Space Times	4494133
10	Mr. Bhoj Raj Acharya	Appeal Court Bar, Patan	4242627
11	Dr. Kishor Narayan Shrestha	Media Reporter	5520156/5529213
12	Mr. Raju p. Chapagain	Pro Public	4265023
13	Mr. Bhojman Lamgade	JUP – Nepal	4445300
14	Mr. Harihar Yogi	Annapurna Post	770629
15	Mr. Raju Gurung	HURINPECC	4434077
16	Ms Sudha Upreti	WOREC	4494815
17	Mr. Rajan Sunar	Dalit NGO Federation	550892
18	Mr. Komal Acharya	MLJPA (Ministry of Law)	4243025
19	Mr. Shyam Babu Kaphle	CVICT, Advocate	4373902
20	Mr. B. K. Basnet	Journalist	4480100
21	Mr. Hari Pd. Bhandari	Lalitpur Bar	553644
22	Mr. Yogendra B. Adhikari	Kathmandu Bar	4222512
23	Mr. Govinda Bandi	Advocacy Forum	4438799
24	Mr. Pradeep Wagle	Advocate	6634455
25	Mr. Pramesh	Channel Nepal	4487750
26	Mr. Bhimarjun Acharya	Advocate	4265805
27	Mr. Kedarshree Joshi	The Nepal Today	
28	Mr. Kumar Singh Acharya	Advocate, Nepalgunj	081521168
29	Mr. Bishnu Hari Sapkota	Lalitpur	
30	Mr. Rabindra Bhattarai	Advocate	4434869
31	Mr. Padam Raj Silwal	Star Express	6601067
32	Mr. N. R. Pandey	Media Reporter	5296707
33	Mr. KP Bhandari	Himalaya Times	4474092
34	Mr. Sanu Suwal	Advocate	610543
35	Mr. Jaya Poudel	CVICT, Kathmandu	373902
36	Ms Anita Pariyar	FEDO	520982
37	Mr. Rabi Khanal	LL.M Forum	225744
38	Ms Mette Damgaard	HUGOU	
39	Ladies Beauty Home		5540200
40	Mr. Mani Thapa		
41	Ms Anita Neupane	LACC	
42	Ms Nisha Karki	Student	
43	Mr. Pradip Acharya	FEDO	
44	Mr. Krishna Pd. Bhandari	Himalayan Times	4474092
46	Mr. Nicholas Bachman	ICRC	
52	Mr. Hari Phunyal	Advocate	4226246
56	Mr. Pradip Ghimire	CEHURDES	4475283
57	Ms. Sonali Regmi	FWLD	4266415
58	Mr. Shiva L. Bhushal	-	4370509
59	Mr. Lal Babu Yadav	Lecturer	5521380

## **Annex 4**

### **Working Team**

1. Ms. Ranjana Thapa
2. Mr. Upendra Poudel
3. Mr. Kamdev Khanal
4. Mr. Bal Krishna Kattel
5. Mr. Prakash Bhattarai

## **Annex 5**

### **Resource Persons**

1. Mr. Subodh Raj Pyakurel
2. Mr. Ram Krishna Timilsina
3. Mr. Sushil Pyakurel
4. Mr. Madhav Paudel
5. Mr. Kashi Raj Dahal
6. Mr. Kedar Poudel
7. Ms Geeta Sangraula
8. Mr. Hari Phuyal

## **Annex 6**

### **Paper Writers**

1. Mr. Bipin Adhikari, PhD
2. Ms. Sapana Malla
3. Mr. Pradip Shanker Wagley
4. Mr. Rabindra Bhattarai
5. Mr. Kabiraj Khanal
6. Mr. Kamdev Khanal
7. Ms. Ranjana Thapa



## **Annex 7**

### **Speakers of Inaugural Session**

1. Mr. Krishna Jung Rayamajhi
2. Mr. Sidhunath Pyakurel
3. Mr. Laxman Prasad Aryal
4. Mr. Subodh Raj Pyakurel
5. Mr. Padma Khatiwada
6. Mr. Rashid Kang

## Annex 8

### Evaluation Form

Informal Sector Service Centre (INSEC)  
and Forum Asia  
National Workshop on Treaty Bodies  
21 – 22 August 2003

### Evaluation Form

Participants are kindly requested to respond to the following questions to the point.

1. Please comment on the inaugural session.

a. Were the objectives of the workshop clearly defined?

*I think so.*

b. Did you get enough coverage of the workshop's contents through the opening remarks?

If not, which part was mainly lacking?

b. Are you impressed by the sayings of the speakers in the inaugural session?

If, yes, please mention:

Name of the speaker	Remarks made
Laxman Aryal	<i>Human rights are inherent rights, can not be deprived</i>
Krishna Jung Rayamajhi	<i>Court is being active to implement the treaties.</i>
Sindhunath Pyakurel	<i>None</i>
Sushil Pyakurel	<i>None</i>
Rashid Kang	<i>None</i>
Subodh Raj Pyakurel	<i><del>None</del> continue to organize such seminar again in future</i>

2. Please give your judgement on each of the paper presenters on the criteria specified. Be specific (such as excellent, good, poor etc, with justification)

a. Ranjana Thapa

- (i) Paper: *good*  
(ii) Presentation: *good*  
(iii) Floor discussion: *good*  
(iv) Response to questions by the presenter: *good*  
(v) Chair's role: *excellent*

b. Pradip Shankar Wagle

- (i) Paper: *good*  
(ii) Presentation: *good*  
(iii) Floor discussion: *good*  
(iv) Response to questions by the presenter: *good*  
(v) Chair's role: *Excellent*

c. Dr Bipin Adhikari

- (i) Paper: *good*  
(ii) Presentation: *good*  
(iii) Floor discussion: *good*  
(iv) Response to questions by the presenter:  
(v) Chair's role: *good*

d. Kabi Raj Khanal

- (i) Paper: *good*  
(ii) Presentation: *good*

- (iii) Floor discussion: *good*  
(iv) Response to questions by the presenter: *good*  
(v) Chair's role: *excellent*

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e. Rabindra Bhattarai

- (i) Paper:  
(ii) Presentation: *good*  
(iii) Floor discussion: *good*  
(iv) Response to questions by the presenter: *good*  
(v) Chair's role: *good*

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f. Sapana Pradhan

- (i) Paper:  
(ii) Presentation: *Excellent*  
(iii) Floor discussion: *Good*  
(iv) Response to questions by the presenter: *Excellent*  
(v) Chair's role: *Good.*

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g. Kamdev Khanal

- (i) Paper: *good*  
(ii) Presentation: *good*  
(iii) Floor discussion: *good*  
(iv) Response to questions by the presenter: *good*  
(v) Chair's role: *good*

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h. Hari Phuyal

(i) Paper: *good*

(ii) Presentation: *good*

(iii) Floor discussion: *good*

(iv) Response to questions by the presenter: *good*

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i. Other Comments if any:

It is better to organize such kinds of workshop in the days to come. Government Officials as well as other Sectoral Participants should be increased. Refresh training should be launched. If the speaker and chair person from the authentic government Official, then the discussion and conclusion will be impressive.

It will be better to submit the concluding report to the concerned authorities for their due attention toward the implementation of the treaties, which Nepal has been party.



Informal Sector Service Centre (INSEC)  
and Forum Asia  
National Workshop on Treaty Bodies  
21 – 22 August 2003

Evaluation Form

Participants are kindly requested to respond to the following questions to the point.

1. Please comment on the inaugural session.

a. Were the objectives of the workshop clearly defined?

*Yes Ofcourse the objectives of the workshop  
are clearly defined.*

b. Did you get enough coverage of the workshop's contents through the opening remarks?

*Yes. I did*

If not, which part was mainly lacking?

b. Are you impressed by the sayings of the speakers in the inaugural session?

If, yes, please mention: ✓

Name of the speaker	Remarks made
Laxman Aryal	
Krishna Jung Rayamajhi	
Sindhunath Pyakurel	
Sushil Pyakurel	<i>For Social Change for Human Rights.</i>
Rashid Kang	<i>Forum Asia is always ready to help Nepalese NGOs who is working with UN mechanism.</i>
Subodh Raj Pyakurel	<i>welcome to participate in the Treaty Body Monitoring Committee.</i>

2. Please give your judgement on each of the paper presenters on the criteria specified. Be specific (such as excellent, good, poor etc, with justification)

a. Ranjana Thapa

- (i) Paper: *Excellent*  
(ii) Presentation: *Excellent*  
(iii) Floor discussion: *better*  
(iv) Response to questions by the presenter: *Excellent*  
(v) Chair's role: *Good*

b. Pradip Shankar Wagle

- (i) Paper: *Good*  
(ii) Presentation: *Good*  
(iii) Floor discussion: *Good*  
(iv) Response to questions by the presenter: *Good*  
(v) Chair's role: *Good*

c. Dr Bipin Adhikari

- (i) Paper: *(Good) did not receive*  
(ii) Presentation: *Good*  
(iii) Floor discussion: *Good*  
(iv) Response to questions by the presenter: *Good*  
(v) Chair's role: *Better*

d. Kabi Raj Khanal

- (i) Paper: *Good Better*  
(ii) Presentation: *(Better) Good*

- (iii) Floor discussion: *Good*  
(iv) Response to questions by the presenter: *Good*  
(v) Chair's role: *Excellent*
- 

e. Rabindra Bhattarai

- (i) Paper: *best*  
(ii) Presentation: *better*  
(iii) Floor discussion: *best*  
(iv) Response to questions by the presenter: *Best*  
(v) Chair's role: *Good*
- 

f. Sapana Pradhan

- (i) Paper: *was not given*  
(ii) Presentation: *Excellent*  
(iii) Floor discussion: *Excellent*  
(iv) Response to questions by the presenter: *Excellent*  
(v) Chair's role: *Excellent*
- 

g. Kamdev Khanal

- (i) Paper: *Good*  
(ii) Presentation: *Good*  
(iii) Floor discussion: *Good*  
(iv) Response to questions by the presenter: *Good*  
(v) Chair's role: *Good*

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h. Hari Phuyal Good

(i) Paper: →

(ii) Presentation: Good

(iii) Floor discussion: Good

(iv) Response to questions by the presenter: Good

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i. Other Comments if any:

The Workshop is very useful in today's travelling situation connecting with International Mechanism. The session was also real very interesting. We never feel boring.

I would like to request to you that please try to bring some more Dalit Women as a participant so that they will be able to understand, ~~and~~ communicate & work with UN using its best mechanism.

I wish for your betterment I mean with your plan to Human Right Treaty Bodies. We always appreciate & welcome your kind initiation for the elimination of Caste & Gender Discrimination. Thank you

**कान्तिपुर** शुक्रबार, ५ भदौ, २०६०  
KANTIPUR, Friday, August 22, 2003

# मानवाधिकारसम्बन्धी सन्धि कार्यान्वयनमा सरकार उदासीन रहेको गुनासो

काठमाडौं, ४ भदौ (कास)- मानवाधिकारसम्बन्धी अन्तर्राष्ट्रिय सन्धि/सम्झौताहरू कार्यान्वयनका लागि सरकार उदासीन रहेको धारणा कानुनविद्हरूले बिहीबार व्यक्त गरेका छन् । उनीहरूले मानवाधिकार उल्लंघनका घटनाको अनुगमन प्रभावकारी हुन नसकेको साथै सरकारी तवरबाट त्यसको आधिकारिक जानकारी संयुक्त राष्ट्रसंघमा पुग्न नसकेको गुनासो पनि गरेका छन् ।

मानवाधिकारसम्बन्धी सन्धिका पक्षहरू विषयमा अनौपचारिक क्षेत्र सेवा केन्द्र (इन्सेक) ले राजधानीमा आयोजना गरेको २ दिने कार्यशालाका सहभागीले त्यस्तो धारणा राखेका हुन् ।

कार्यक्रममा सर्वोच्च अदालतका पूर्वन्यायाधीश लक्ष्मणप्रसाद अर्यालले मानवाधिकार संरक्षणको प्रमुख दायित्व राज्यको हुने उल्लेख गर्दै त्यसका लागि सरकार गम्भीर हुनुपर्ने बताउनुभयो ।

‘सम्झौतामा हस्ताक्षर गरेर मात्र पुग्दैन । कार्यान्वयन नहुने हो भने त्यसले कुनै अर्थ राख्दैन,’ उहाँले भन्नुभयो ।

त्यससम्बन्धी सन्धि/सम्झौताहरू कानुनसरह लागू हुने हुँदा राज्यले त्यसको बेवास्ता गर्न नहुने धारणा राख्दै अर्यालले सर्वोच्चबाट विभिन्न समयमा मानवाधिकार संरक्षणसम्बन्धी फैसलाहरू

भएको जानकारी दिनुभयो ।

अर्का पूर्वन्यायाधीश कृष्णजंग रायमाझीले मानवाधिकारको ग्यारेन्टीका लागि जिम्मेवारी पक्षले आफ्नो प्रतिबद्धताबाट पन्छिन नहुने बताउनुभयो ।

प्रजातान्त्रिक व्यवस्थामा मात्र मानवाधिकारको रक्षा हुने औल्याउँदै उहाँले त्यसका लागि सरकार, नागरिक-समुदाय सबै प्रतिबद्ध हुनुपर्ने बताउनुभयो ।

नेपाल बार एसोसिएसनका अध्यक्ष सिन्धुनाथ प्याकुरेलले मानवाधिकार उल्लंघनका घटनाको यथार्थ जानकारी लिन र त्यसलाई अन्तर्राष्ट्रिय समुदायसम्म पुऱ्याउन मानवाधिकार आयोगले भूमिका खेल्नुपर्ने धारणा राख्नुभयो ।

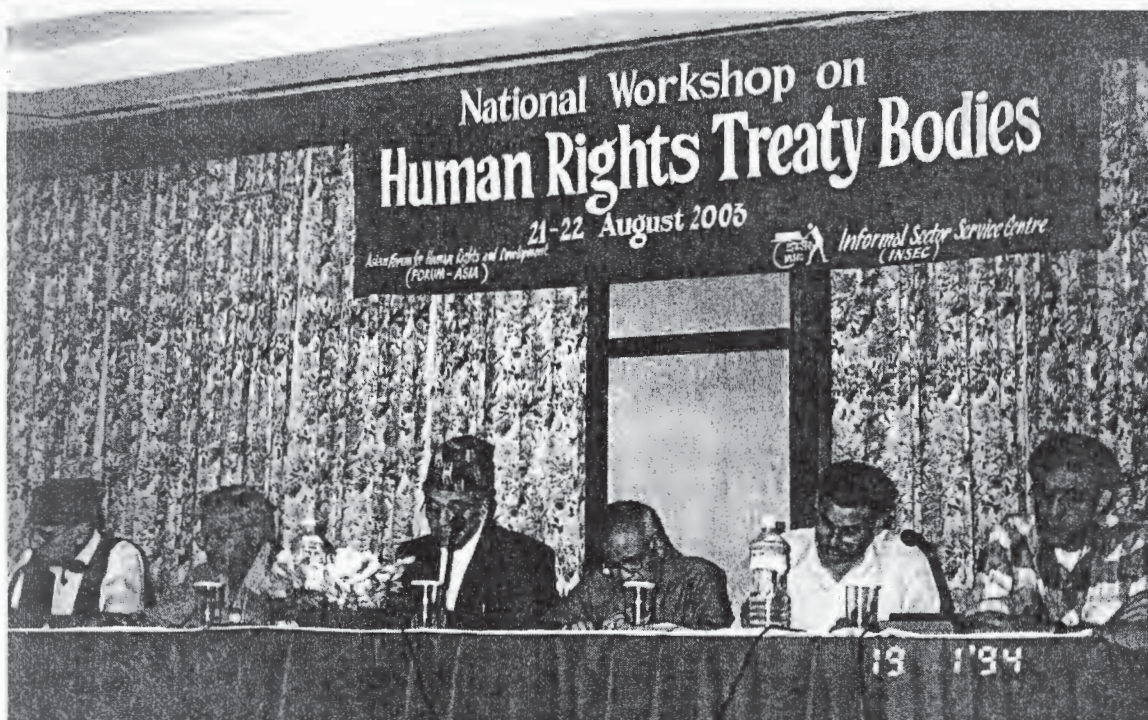
कार्यक्रममा अधिवक्ता रज्जना थापा, प्रदीपशंकर वाग्ले, डा. विपिन अधिकारी, कविराज खनाल र रत्नाकार अधिकारीले विभिन्न विषयमा कार्यपत्र प्रस्तुत गरेका थिए ।

त्यसमा इन्सेक अध्यक्ष सुबोधराज प्याकुरेल, सर्वोच्चका प्रवक्ता डा. रामकृष्ण तिमिल्सेना, अधिवक्ता टीकाराम भट्टराई, भीमार्जुन आचार्य, राजपुस साद चापागाईँसहितले टिप्पणी राख्दै मानवाधिकार उल्लंघनका घटना रोक्न सरकार, व्यवस्थापिका र न्यायपालिका सबै सजग हुनुपर्ने धारणा राखेका थिए ।



## Annex 10

### Workshop Photographs

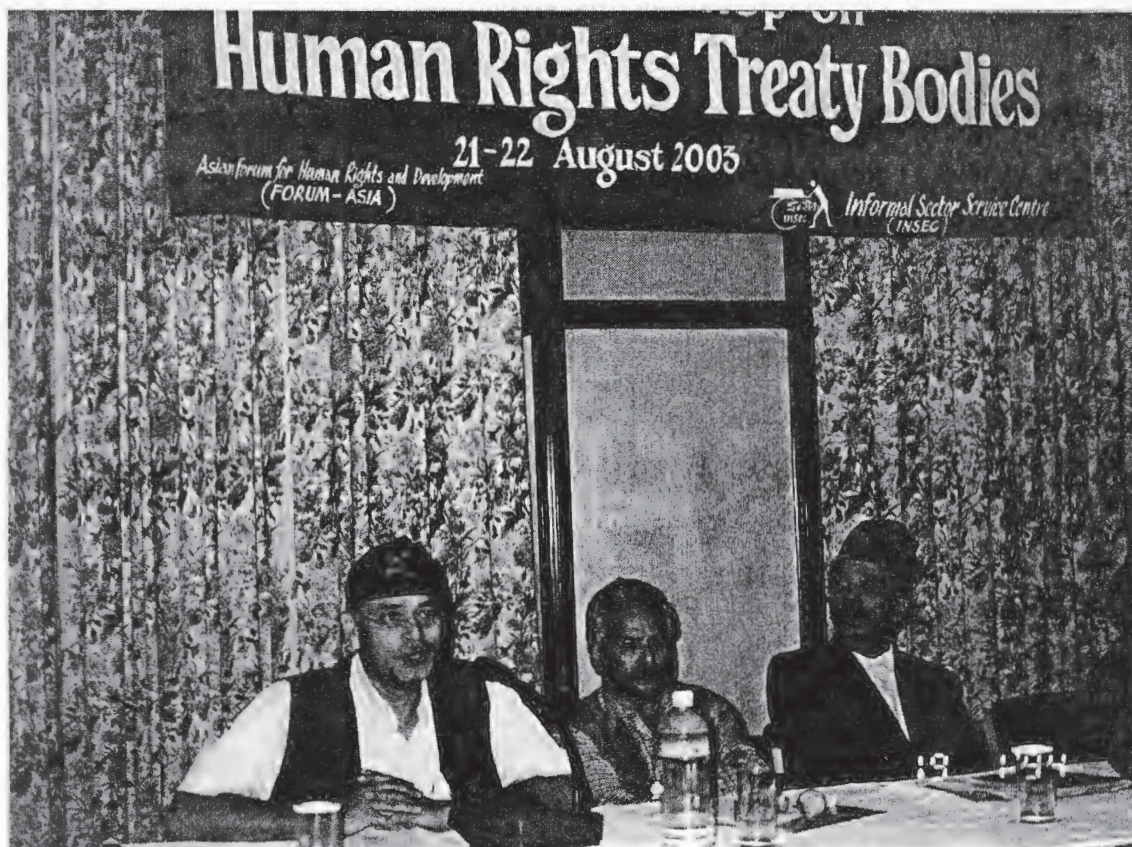


Guests of Inaugural Session



A resource person on her course





Chairperson Subodh Raj Pyakurel delivering concluding speech



Participants of the workshop



