



# International Covenant on Civil and Political Rights

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## Human Rights Committee

106th session

### Summary record (partial)\* of the 2923rd meeting

Held at the Palais Wilson, Geneva, on Monday, 15 October 2012, at 10 a.m.

*Chairperson:* Ms. Majodina

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\* No summary record was prepared for the rest of the meeting.

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*The meeting was called to order at 10.05 a.m.*

**Opening of the session by the United Nations High Commissioner for Human Rights**

1. Ms. Pillay (United Nations High Commissioner for Human Rights) declared the 106th session of the Human Rights Committee open. The most important and potentially far-reaching development in 2012 had been the treaty body strengthening process, to which the Committee had made a significant contribution. The growth of the treaty body system, owing to the increase in the number of treaty bodies, had never been matched by a commensurate increase in resources from the General Assembly. That had put pressure on all the treaty bodies and the Secretariat. In addition, the growth of the system had resulted in a mushrooming of differing working methods and practices, in turn threatening the accessibility of the system to individuals and States parties. In response, she had issued her report on treaty body strengthening (A/66/860) in June 2012, building on the three-year consultation process in which the Committee had been closely involved. The report included a series of recommendations intended to improve the predictability, independence, harmonization and impact of the treaty bodies' work. The positive tone of the Committee's preliminary statement on the report had been an important first step, particularly in leading the way for other committees. Indeed, four other committees had now adopted statements welcoming and reflecting on the report. However, she urged the Committee to continue reviewing the report during the current session and to find ways to move forward on its statement and the many recommendations addressed to treaty bodies. She also called on the Committee to adopt the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines). The Committee on the Rights of Persons with Disabilities and the Committee on the Rights of the Child had already adopted them in their entirety.

2. The urgency of moving forward with strengthening the treaty body system was accentuated by the current global economic environment. While her report had underlined the significant need to increase resources to treaty bodies, the financial reality had resulted in an ongoing decrease in voluntary contributions to the Office of the United Nations High Commissioner for Human Rights (OHCHR). Since the mandated activities of the Office were not fully financed by the General Assembly, the Human Rights Treaties Division had had to rely on voluntary contributions to ensure the effective servicing of the treaty bodies. The budgetary constraints had already translated into a 7.5 per cent across-the-board cut in all extrabudgetary resources in 2012 and there would be a further 15 per cent cut in 2013. For the Human Rights Treaties Division, which relied on extrabudgetary funds to pay for one third of its staff, the cuts directly impacted the ability to support the Committee's work. Following exploration of all possible ways to use the limited resources available to help the treaty bodies maintain their pace of work without sacrificing quality, the decision had been made to move the Committee's March session to Geneva. She asked the Committee for its understanding and active collaboration in the common endeavour to use resources effectively, so that its work could have the widest impact.

3. Despite the bleak economic outlook, there was much that could be done to strengthen the treaty body system. At a recent meeting with the heads of OHCHR field offices, it had been clear that all parts of the Office were increasingly helping to bring the work of treaty bodies, particularly the Committee, to bear on the lives of individuals, communities, and national and international policy discussions. At the country level, OHCHR field operations provided stakeholders with information about the Committee's work and channelled input to the Committee for its dialogues and for promoting follow-up to its recommendations.

4. OHCHR often relied on the work of the Committee to inform its research and policy guidance. The Rule of Law, Equality and Non-Discrimination Branch had made use of the

Committee's work on international legal protection and human rights in armed conflict and on the abolition of the death penalty. In addition, while denouncing the film "Innocence of Muslims" and the publication of cartoons depicting the prophet Mohammed, she had called for restraint in protests and condemned the related killings. In that context, she had drawn on the Committee's general comment No. 34 on article 19 to clarify the standards related to freedom of expression and the permissible restrictions. The Human Rights Council and its Special Procedures also drew heavily on the Committee's work; the recent report of the commission of inquiry on the Syrian Arab Republic made many references to the Covenant, the Committee's general comments Nos. 20 and 31, the Views of the Committee under the Optional Protocol, and its interpretation of numerous articles of the Covenant, not least article 9 on liberty and security of the person. The Committee's work clearly had an impact on other parts of the human rights system, including OHCHR field and research operations. The Committee was part of the treaty body system and, beyond that, the human rights system. In the face of economic pressures and resource drains, it was more necessary than ever to pool efforts to ensure a strong system of promotion and protection of human rights.

5. She regretted that Mr. O'Flaherty, Mr. Rivas Posada, Mr. Sarsembayev and Mr. Thelin would be leaving the Committee in the New Year, and thanked them for their significant contributions. She congratulated Mr. Bouzid, Mr. Fathalla, Sir Nigel Rodley and Mr. Salvioli on the renewal of their mandates. She commended all the Committee members for the quality of their work; the Committee had always maintained a high standard of intellectual rigour in its concluding observations, jurisprudence and general comments. The International Court of Justice attached great weight to the Committee's standard of interpretation of Covenant rights, to which international, regional and national bodies made increasing reference. She assured the Committee of the support of OHCHR and wished it a successful and productive session.

6. **Mr. Thelin** said that, since article 36 of the Covenant provided that the Secretary-General should provide the necessary staff and facilities for the effective performance of the functions of the Committee, the latter should be able to discuss priorities with the Secretary-General and the Third and Fifth Committees of the General Assembly. However, in practice, the Committee had only ever been given the opportunity to discuss financial issues with the Director of the Human Rights Treaties Division. It thus ended up discussing priorities within that Division. It had been clear from her letter dated 6 August 2012 that the High Commissioner herself had taken the decision that the Committee's March session should be held in Geneva instead of New York. Such a decision did not fall within her mandate, given that article 37, paragraph 3, of the Covenant provided that the Committee should normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva. Furthermore, the Petitions Unit had informed him one month before the current session that, as Special Rapporteur for follow-up on Views, he would be unable to present the follow-up report at the 106th session owing to budget constraints. That was yet another example of a fait accompli that had been presented to the Committee, rather than the Committee being able to influence such decisions before they were made.

7. **Ms. Chanet** said that the treaty bodies had striven to harmonize their methods of work, but the proliferation of human rights instruments and the differences between them made it difficult to find a single solution for all the treaty bodies. States parties had their own agendas in the process of strengthening the treaty body system, which they were currently discussing as part of the intergovernmental process being conducted by the General Assembly. The Committee should have direct contact with the co-facilitators of that process. The States parties could amend the treaties if they so wished, but only pursuant to international law. She drew attention to the common misperception that the report of the High Commissioner on strengthening the treaty body system represented the views of the treaty bodies. That was not the case, particularly as the idea of a comprehensive reporting calendar would impose rules on the Committee that were not compatible with its own rules

of procedure or relevant to the Covenant. Contrary to the apparent conviction of some members of OHCHR, the Committee was not under the supervision of the Office; rather, the OHCHR secretariat should facilitate the work of the Committee. The promotion of human rights would not be served by changing the rules of procedure, particularly if the system became less flexible.

8. **Mr. O'Flaherty** commended the OHCHR field officers for their engagement with the Committee, which greatly facilitated its work. The High Commissioner's report on strengthening the treaty body system had been developed from wide-ranging consultations with all stakeholders, which had resulted in a compelling document. The Committee would continue to engage in that process, as indeed it continually reviewed its methods of work both individually and in relation to the other treaty bodies. The Committee would review the Addis Ababa guidelines and might well adapt them, as opposed to adopting them. The High Commissioner should provide leadership for the intergovernmental process to strengthen the treaty body system. He urged her to encourage States parties to follow the example of the Russian Federation, which had submitted ideas on the future of the treaty body system. He also called on her to ensure that the relative proportion of resources allocated to the treaty bodies would not decrease in the future, particularly given that it had persistently declined in relative terms over the previous 15 years. He applauded the quality of the work of the OHCHR staff.

9. **Ms. Motoc** said that she appreciated the rationale behind the current efforts to strengthen the treaty body system. However, the lack of consultation about several decisions, including where to hold the Committee's March session, was deeply disturbing. While the Committees' budget was being cut, it would appear that more chairpersons' and other meetings were being held, at great expense. That tendency towards increased bureaucracy should be halted and a review conducted into the effects of the budget cuts on the Committee's ability to uphold the rights enshrined in the Covenant.

10. **Sir Nigel Rodley** said that he welcomed the High Commissioner's strong commitment to human rights and the human rights treaty bodies. In her statement she had referred to "a 7.5 per cent cut across the board in all extrabudgetary resources"; the words "across the board" had been revealing, as he did not recall any exercise to identify priorities or to analyse areas where greater efficiencies could be achieved. Noting the contrast between the efficient way in which the strengthening process had been conducted and the manner in which budgetary decisions were taken, he said that a dialogue was needed to facilitate the Committee's understanding of the financial requirements governing the decision-making process. The Committee should not be faced with a fait accompli. It was vital that the treaty monitoring bodies retain their proportionate share of the Organization's resources. He asked for reassurance that the resources already assigned to the Committee would be appropriate to its needs.

11. **Mr. Salvioli** said that the process of strengthening the treaty bodies had been conducted in exemplary fashion until States had begun to participate in it. It was worrying that States parties seemed to have focused more on a code of conduct for members of those bodies than on upholding victims' rights. He feared that the treaty bodies were falling into a trap by taking part in good faith in an exercise that would weaken them and their ability to protect victims of human rights abuses. They would have to be vigilant in order to ensure that financial decisions did not have a negative impact on their work. Since Committee members were best able to make the case for receiving an adequate budget, the Committee should hold a face-to-face dialogue with States. For that reason, the Committee needed to meet in New York, since that was where the General Assembly was held and where budgetary decisions were taken. The treaty bodies always ended up being forced to swallow decisions adopted elsewhere by other actors.

12. The Committee must support the High Commissioner in her task of ensuring that treaty bodies could hold an interactive dialogue with States. As some States maintained missions in New York, but not in Geneva, he feared that that opportunity might be restricted in the future if meetings were confined to Geneva. He was not in favour of holding meetings by means of a videoconference link since they were less effective.

13. **Ms. Pillay** (United Nations High Commissioner for Human Rights), replying first to comments regarding her report on strengthening the United Nations human rights treaty body system (A/66/860), said that she had welcomed the opportunity to consult all stakeholders in the process, because she had been alarmed by the comments of certain Member States that the universal periodic review made the work of treaty monitoring bodies obsolete. She had also been worried by the fact that, since those bodies had been created one by one, and were not viewed as a system, the question of their resources had never been properly addressed by the General Assembly. Her predecessor had seen treaty bodies as a unified whole, whereas she herself tried to champion the independence of each treaty monitoring body. She had therefore decided that the best approach was to seek everybody's comments, since the whole process would be futile without intergovernmental input.

14. The report which she had submitted in response to General Assembly resolution 66/254, presented by the Russian Federation, was the culmination of three years' work. She encouraged members and chairs of treaty monitoring bodies to continue their perusal of the report, to pass on their comments to her and to meet the two co-facilitators appointed by the General Assembly to assist the process. Her goal in producing the report had been to ensure proper funding for the treaty bodies and to obtain further contributions from Member States. The worst-case scenario would be if Member States attending the General Assembly all decided to do nothing, as the current situation was untenable; some treaty monitoring bodies had a 12-year backlog of reports filed by States parties.

15. During intergovernmental meetings she had encountered Member States' criticism and suspicion of treaty monitoring bodies. She had also noticed that they were more interested in producing a code of conduct which would limit the independence of treaty bodies' members, than regarding those bodies as something which they had created and which they should nurture in order to advance the promotion of human rights in general. In the many consultations which she had held in New York she had tried to make Member States more aware of the full picture.

16. Turning to the question of funding, she said that the dearth of funds was affecting all international organizations. The United Nations had never before faced such a severe financial crisis in all the 60 years of its existence. She had invited the Secretary-General to visit her Office so that he could see for himself how hard her staff worked in order to produce reports on time. He had been so impressed that the impending cut in funding had been postponed for three years. Since then, two hitherto faithful donors had suddenly announced that, because of the financial crisis in Europe, they would be unable to continue contributing extrabudgetary resources. As a result, her Office had been obliged to fall back on its reserves and was currently 40 million dollars in the red. That was why it would be necessary for each division in her Office to make a 7.5 per cent reduction in expenditure. She had therefore asked the staff and management of each division to consider their priorities, but unfortunately they had come up with savings of only 6.6 per cent. Although she personally had forgone the services of a speech-writer and a policy legal adviser and used economy travel whenever possible, that had made little difference, because staff was the largest item of expenditure. Heads of field offices, who considered their activities on the ground to be of primary importance, had informed her that even if programmes were rationalized, they would still need staff to implement them. Her Office was therefore undertaking a functional review in order to determine priorities, but every division and

every treaty section had put forward good reasons why they needed more and not less money. Some donor countries, whose own governments had reduced the staff of their missions or had raised the retirement age, had already criticized her for not taking hard decisions. She regretted the fact that her Office simply had no money to send support staff to New York for committee meetings there. She considered, however, that it would be useful for committee chairpersons to meet the Secretary-General to discuss the proper resourcing of treaty bodies' sessions.

17. The Fifth Committee was an intergovernmental body which could decide who could attend its formal meetings. She would be addressing that Committee on 24 October and she would press her argument for additional resources. She also intended to explore new avenues for fundraising by approaching foundations, the private sector and new donor States. One of the latter, the Kingdom of Saudi Arabia, had already responded by providing some funding. The countries of North Africa and the Middle East had shown great interest in protecting human rights; in fact they wished to have more training workshops on that subject.

18. In such hard times she looked to Committee members for support and ideas on how to convey the message to the Fifth Committee that her Office required an increase in its regular budget which in fact accounted for less than 2 per cent of the Organization's regular budget, although human rights was one of the three pillars of the United Nations. A group of ambassadors would be lobbying for an increase in her Office's regular budgetary allocation. She would rejoice when the value of the Committee's work received proper acknowledgement in terms of greater financial support. She would report back to the Committee once the functional review had produced criteria for measuring efficiency and achieving the 15 per cent savings needed in order to clear her Office's 40 million dollar deficit. In such gloomy times, one good thing was that information about the Committee's work was being disseminated more widely and was generating greater interest.

#### **Adoption of the agenda**

19. *The agenda was adopted.*

#### **Organizational and other matters, including the adoption of the report of the pre-sessional working group on individual communications**

20. **Mr. Neuman**, speaking as chairperson-rapporteur of the Working Group on Communications, said that the Working Group had met from 8 to 12 October 2012. It was composed of eight members: Mr. Bouzid, Mr. Flinterman, Mr. O'Flaherty, Ms. Motoc, Mr. Rivas Posada, Mr. Sarsembayev, Ms. Waterval and himself. He particularly thanked Mr. O'Flaherty for having helped him to discharge his duties as Chairperson. The Working Group had examined 20 cases. It recommended that five of them should be deemed inadmissible. In 12 cases it recommended that they should be considered on the merits. The Working Group had declared one case to be admissible. In another it had decided that additional information was required and that the case should be re-examined at the next session. The Working Group had decided to suspend its examination of one case temporarily following a request to that effect from the authors after the preparation of an inadmissibility decision by the case rapporteur.

21. The Working Group had discussed the recommendations concerning methods of work for the communications procedure, which were contained in the High Commissioner's report on strengthening the United Nations human rights treaty body system. It would report on that discussion in due course.

22. The Working Group's consideration of one case had been inconvenienced by the extremely late arrival of the English translation of the relevant draft documentation.

23. **Sir Nigel Rodley** asked if the Working Group would have been able to process more cases if the draft texts had been made available more promptly.

24. **Mr. Neuman** explained that the fact that the Working Group had been able to discuss working methods on communications was an indication that it did not have enough communications to fill the entire five days which had been allotted for their examination.

25. *The report of the Working Group on Communications was adopted.*

*The discussion covered in the summary record ended at 11.30 a.m.*