

ISHR inputs to the 23rd November 2016 Committee on the Elimination of Racial Discrimination Consultations with Civil Society

The following inputs relate to question 3 “How can the CERD improve and enhance its engagement with civil society, and its work on racial discrimination for greater impact on the ground?” , as found in the [Committee’s Background Note](#)¹.

1. Threats to human rights defenders

In a recently issued statement, the Committee on Economic, Social and Cultural Rights stated that “[i]t considers any threat or violence against human rights defenders to constitute violations of States’ obligations towards the realization of Covenant rights since human rights defenders also contribute through their work to the fulfilment of Covenant rights.”². The CERD Committee has adopted various recommendations on the protection of HRDs, thereby acknowledging the central importance of their work for the fulfilment of the rights enshrined in the Convention (see below §2). Therefore:

- We recommend that the Committee adopt a similar statement to CESCR concerning human rights defenders working for the elimination of racial discrimination.

2. Human rights defenders and national law

The UN General Assembly has recently called upon “all States to take all measures necessary to ensure the rights and safety of human rights defenders who exercise the rights to freedom of opinion, expression, peaceful assembly and association, which are essential for the promotion and protection of human rights”³. In 2010, the Committee recommended that Guatemala adopt legislation that specifically guarantees protection for human rights defenders.⁴

National laws aimed at protecting human rights defenders are an effective way to ensure that a safe and enabling environment is guaranteed for them to operate in.

- We recommend that the Committee make systematic recommendations calling for the adoption of national laws for the protection of human rights defenders, when relevant.

3. HR Focal Points

The establishment of human rights defenders focal points in the executive is an effective method to develop the capacity of States to engage with human rights defenders.

- We recommend that the Committee advise that such human rights defenders focal points be established in Member States.

¹ <http://www.ohchr.org/EN/HRBodies/CERD/Pages/ConsultationwithCivilSocietyNov2016.aspx>

² Human Rights Defenders and Economic, Social and Cultural Rights, Statement by the Committee on Economic, Social and Cultural Rights (E/C.12/2016/2) 7 October 2016 at para. 5

³ Human rights defenders in the context of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Resolution adopted by the General Assembly on 17 December 2015 (A/RES/70/161) 10 February 2016 at p. 3. See also Protection of human rights defenders, Resolution adopted by the Human Rights Council at the 22nd session (A/HRC/RES/22/6) 12 April 2013 at 3 “Engage vivement les États à instaurer un climat sûr et porteur qui permette aux défenseurs des droits de l’homme d’agir sans entrave et en toute sécurité, dans l’ensemble du pays et dans tous les secteurs de la société, et notamment à apporter leur appui aux défenseurs des droits de l’homme au niveau local”.

⁴ Consideration of reports submitted by State Parties under article 9 of the Convention, Concluding Observations of the Committee on the Elimination of Racial Discrimination on Guatemala at the 76th session (CERD/C/GMT/CO/12-13) 19 May 2010 at para. 9.

4. Follow-up procedure

According to rule 65 of the Rules of Procedure of the Committee⁵, the Committee may decide “to request an additional report or further information from a State Party”.

- We recommend that the Committee adopt a standing follow-up procedure on its recommendations to Member States, and that it draws inspiration from fellow treaty bodies such as the Committee against torture or Human Rights Committee to do so.

Further, it has recently been recommended in a [Dublin consultation](#)⁶ that treaty bodies should adopt a joint follow up mechanism

- We recommend that the Committee consider joining a joint follow up mechanism with fellow treaty bodies, using good practices such as the CAT’s or HR Committee’s as inspiration, as mentioned above.

5. National follow-up mechanisms

National mechanisms on reporting and follow-up are effective tools to track the progress made by States in the protection of the rights enshrined in the Convention. In 2007, the Committee commended Costa Rica on the establishment of a national mechanism for follow-up to the recommendations of treaty bodies.⁷ Additionally, in June 2016, the Treaty bodies Chairs recommended: “[...] that treaty bodies consider recommending to States that they establish national mechanisms for reporting and follow-up, considering that the States that have established such national mechanisms have increased their ability to report and engage with the international and regional human rights systems.”⁸

- We recommend that the Committee systematically recommend the establishment of such national mechanisms on reporting and follow-up when relevant.

6. Treaty Body Strengthening

ISHR is willing to support a treaty body strengthening process which is inclusive to all actors, rights-oriented, and impactful. One of the central concerns of the treaty body strengthening process relates to the harmonization of working methods.

Recently, the Report of the Secretary-General on the Status of the human treaty body system states that the progress of harmonization has advanced at “varying degrees”.⁹

- We are interested in understanding what the Committee envisages doing to improve the harmonization of working methods with fellow treaty bodies.

7. Inter-state Complaints

The Convention establishes four mechanisms through which the Committee performs its monitoring functions. Among them, articles 11-13 establish the procedure for Inter-State complaints, normally applicable to all state parties of the Convention. Inter-state complaints can be an effective tool for states to keep one another in check. However, the procedure has never been used.

- We recommend that the Committee encourage Member States to use the procedure, in general and in specific country situations of concern to the Committee.

⁵ Rule 65, Rules of Procedure of the Committee on the Elimination of Racial Discrimination (HRI/GEN/3/Rev.2).

⁶ Report of the Academic Platform Project on the 2020 Review of the Treaty Body System First Regional Workshop, Dublin 7th and 8th July 2016; <https://goo.gl/BQ1ac1>

⁷ Report of the Committee on the Elimination of Racial Discrimination, Seventieth session (19 February-9 March) and Seventy-first session (30 July-17 August 2007) (A/62/18) at para 295

⁸ Implementation of human rights instruments, Note by the Secretary-General (A/71/270) 2 August 2016, para 81

⁹ Status of human rights treaty body system, Report of the Secretary-General (A/71/118) 18 July 2016 at para. 63.

- The interstate complaint could be used in a range of scenarios evidencing noncompliance or insufficient compliance with the Convention, such as in situations inter alia:
 - where the Committee assesses that a State party is failing to comply with Convention provisions and/or Committee’s Concluding Observations and/or Views
 - where civil society or other non-state actors bring to the attention of the Committee blatant violations of the Convention at any given time
 - in situations where States under review at the UPR note recommendations which directly relate to obligations under the Convention

8. Late and non-reporting States

During the 2016 meeting of Treaty Body chairs, some Chairs “noted that the practice of some treaty bodies of examining States parties in the absence of a report was positive”¹⁰. Therefore:

- We recommend that CERD adopts a procedure for reviews in absence of a report, in line with the practice established by fellow treaty bodies such as CAT or HR Committee

¹⁰ A/71/270, §13