

Commentary on the Guidelines on an expanded core document and treaty-specific targeted reports and harmonized guidelines on reporting under the international human rights treaties (HRI/MC/2004/3)

*The Dutch section of the International Commission of Jurists-
Nederlands Juristen Comité voor de Mensenrechten (NJCM)
24 March 2005*

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1. Introduction

The draft guidelines on the Expanded Core Document (which is now referred to as the Common Core Document) propose the inclusion of more information in the existing core document in an attempt to tackle the delay in reporting by state parties. In the proposal, the core document will be the most important part of the report and include human rights provisions common to all or several human rights treaties or ‘congruent provisions’. The remaining of the report focuses on the treaty under consideration.

2. Comments of the Dutch section of the ICJ

The Dutch section of the International Commission of Jurists (ICJ) acknowledges that the reporting procedure needs to be revised. It underlines that the states parties’ obligation to report is an international legal obligation. Non-compliance with the reporting obligations constitutes a violation of international law. The requirement to submit a core document has proven to work well, and the Dutch section of the ICJ therefore supports the initiative to build on this practice and to carefully examine which data can be submitted in a common core document. The first two sections require states parties to submit important data, most of which is obviously relevant to all treaty bodies. The Dutch section of the ICJ welcomes that the proposed guidelines indeed guide states parties in systematically submitting such information. In this part, the common guidelines codify and improve existing practice of the various committees.

The guidelines for the common core document should require states parties to take into account the objectives of each treaty. Information submitted in the common core document should be disaggregated by age, sex, ethnicity and other relevant criteria, so as not to lose data that are currently required for the specific treaty reports. The advantage of the proposed change is that various bodies will examine this important information and can put it in the context of the treaty they monitor. The challenge for the treaty bodies is to harmonise their work, so as to ensure that they mutually strengthen each other. The meeting of chairpersons of the treaty body and the treaty bodies’ secretariat should play a role in achieving that.

As to the proposed section 3 on the implementation of substantive human rights provisions common to all or several treaties or ‘congruent provisions’, the Dutch section of the ICJ believes it is necessary to carefully consider to what extent the common core document should contain information on non-discrimination and equality, this being the subject of two specific conventions. It is indeed true that this issue is common to all treaties, but in this area it is crucial that the existing specialised treaty bodies can continue to carry out their mandate. There is definitely much to gain in submitting data on equality and non-discrimination to all treaty bodies. It might be expected that a state party that has difficulties in guaranteeing equality of men and women also would find it hard to guarantee racial or religious equality. By combining all the treaty reports, the treaty bodies will be provided with more relevant data

and societal context in which the promotion and protection of human rights occurs. This will make it possible to consider the diversity of populations and to address the issue of multiple discrimination.

At the same time, treaty bodies will have to take into consideration that general approaches to human rights have the risk of ignoring or marginalizing specific human rights concerns such as issues regarding women, children and minorities. The creation of specific human rights instruments like the International Convention on the Elimination of all forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, demonstrates the necessity of an exclusive approach to protect these rights. Therefore, the bodies should endeavour the most progressive interpretation of the congruent provisions and stimulate the dialogue between the general and specific treaty bodies. A definition of the concept 'congruence' and an outline for a process for resolving disagreements about the content of the congruent cluster would add to a constructive dialogue. The Dutch section of the ICJ would like to suggest that treaty bodies cooperate and consult each other at an early stage when pre-sessional working groups, country rapporteurs and/or task forces are preparing the consideration of reports. This requires a unified reporting cycle, which is also addressed in the report of the secretariat.

The treaty bodies will have to acknowledge that drastic steps must be taken, and that taking these steps means that the content of their work will be subjected to change. This does not necessarily imply that they will be marginalized. Each specific treaty body is responsible for clearly demarcating its 'territory', thereby ensuring that the examination and discussion of reports will be even more thorough and in-depth than currently is the case. The Dutch section of the ICJ would like to advise the OHCHR to investigate whether all 'territories' of the treaty bodies are covered once the proposed guidelines are implemented and the first reporting cycle under the new guidelines has taken place.

The section of the report on effective remedies needs further specification, and should, from the point of view of the Dutch section of the ICJ, make clear that information has to be submitted on the various types of remedies that exist or should be created in order to deal with allegations of violations of human rights. Information on effective remedies on alleged violations of ESCR should also be provided. Various general comments contain useful information on this issue.

The Dutch section of the ICJ welcomes that paragraph 46 of the report includes the requirement for state parties to identify and explain any reservations and declarations, and urges state parties to review them and establish time-lines for their withdrawal. This requirement will have a positive effect on the scrutiny of reservations and limiting declarations and it will add increased pressure on states parties to withdraw them. Furthermore, the proposed guidelines most likely will reduce the high pressure to which the reporting system is subjected. Currently, states are able to avoid complying with their reporting obligations because the system is under such immense stress. However, the Dutch section of the ICJ suggests that extra attention should be given to the effect that the implementation of the proposed guidelines has on states that lack the political will to comply with their reporting obligations.

As for the Netherlands, one of the implications of the proposed guidelines will be that the government will have to focus on revising the reporting procedure. To this regard, the Dutch section of the ICJ considers it a positive development if the establishment of a separate unit

would be realized. The Dutch section of the ICJ has two suggestions for the establishment of such a unit. The first suggestion is to establish a national human rights institute as recommended in the *Paris Principles*.¹ Such an institute should have as one of its tasks to contribute to the reporting procedure. It would need to have the necessary staff and resources to be able to meet the requirements of the new reporting procedure. The second suggestion would be the establishment of a separate interdepartmental unit that will be made responsible for the Dutch contribution to the reporting cycles. The unit will have to be informed of several important factors in the reporting process, like the role of NGOs with regard to the treaty provisions, the impact of a measure taken by the government as indicated in paragraph 66 and the developments with regard to pending cases before the European Court of Human Rights in Strasbourg. All these and other tasks will contribute to the feasibility of the effective implementation of the guidelines. Overall, state parties appear to be in favour of the proposed guidelines, which may indicate that they are also ready to accept the temporary extra burden of establishing a separate and specialised unit.

3. Conclusion

In summary:

- The Dutch section of the ICJ supports the initiative to allow states parties to submit a Common Core Document.
- The guidelines for the Common Core Document pose the advantage that various bodies will examine this important information as well as the challenge for the treaty bodies to harmonise their work, so as to ensure that they mutually strengthen each others' work.
- The Dutch section of the ICJ thinks that there is much to gain in submitting data on equality and non-discrimination to all treaty bodies. The treaty bodies will be provided with more relevant data and with the societal context in which the promotion and protection of human rights occur. This will make it possible to address, for example, issues such as multiple discrimination.
- The treaty bodies should strive for the most progressive interpretation of the congruent provisions and stimulate the dialogue between the general and specific treaty bodies.
- The Dutch section of the ICJ would like to advise the OHCHR to investigate whether all 'territories' of the treaty bodies are covered once the proposed guidelines are implemented and the first reporting cycle under the new guidelines has taken place.
- The section of the report on effective remedies needs further specification and should make clear that information is to be submitted on the various types of remedies that exist or should be created in order to deal with allegations of violations of human rights.
- The Dutch section of the ICJ welcomes that paragraph 46 of the report includes the requirement for state parties to identify and explain any reservations and declarations, and urges state parties to review them and establish time-lines for their withdrawal.
- As for the Netherlands, one of the implications of the proposed guidelines will be that the government will have to focus on revising the reporting procedure. The Dutch section of the ICJ considers it as a positive development if the establishment of a separate unit would be realized.

Leiden, the Netherlands
24 March 2005

¹ Resolution 48/134 of the General Assembly, 20 December 1993, annex (A/RES/48/134): 'Principles relating to the Status of National Institutions'.