

A Concept Paper on Reporting to Treaty Bodies

[A Background Paper presented in a Seminar on Reporting to Treaty Bodies organized by National Human Rights Commission on November 16, 2003 at its Convention Hall in Kathmandu. The Seminar was participated by Chief Secretary of His Majesty's Government and Secretaries and representatives of 15 other Ministries.]

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Nepal is a party to many human rights treaties or international conventions. The effective implementation of international obligations taken under these treaties or conventions is of major importance to the efforts being made in the country to promote respect for and observance of human rights and fundamental freedoms. All violations of the human rights guaranteed by the local legal regime and international obligations arising from our commitment to the treaties or international conventions must be properly addressed whether they are deliberately perpetrated or as a result of lack of awareness, weak structures or insufficient governmental resources.

International Obligations

Additionally, Nepal has reporting obligations under different human rights treaties or conventions. These must be complied according to the terms of the concerned instruments, which set out related procedures to that effect. The first and foremost readership of the related report is the relevant UN Committee. So it is important to follow the specific reporting guidelines established for each treaty. Secondly, the entire international community who would have access to the reports through the UNHCHR will also have the opportunity to read them. Finally, the Nepalese people also have the right to know what their government has reported about the status of implementation of obligations under a particular treaty.

National self-assessment is critical to an honest appraisal of the domestic situation with a view to improving domestic implementation. Reporting also help establish baseline surveys that assist in gauging progress over time. This presentation to the international community is an important objective, especially given the international community's particular and ongoing interest in the human rights situation. There is an inevitable tendency for government reports to focus on positive developments and policy statements. That is understandable as long as it does not become mere propaganda. The best method is to adopt a ' strengths and weaknesses' approach which admits that a problem exists and seeks to identify means of resolving it. It is therefore necessary to involve the civil society or the stakeholders in the preparation of such a report, and thereby achieve a degree of openness.

Contents of the reports are also important. A balance needs to be achieved between legislative reports and journalistic reporting. The report had to be rigorous but also readable. One problem developing countries often find is the dearth of relevant statistics.

While statistics are useful, they are only a tool in better understanding the situation. Verbal descriptions, case studies and relevant anecdotes may also convey the necessary information. The key is to establish a system that collects relevant information steadily rather than try to retrieve all the information when the report is being drafted.

There is always a need for political commitment. There had to be political ownership of the report because ultimately Ministers would have to defend the comments in the report. The multi-faceted nature of human rights and the broad spectrum of human activity covered means that many different areas of government are involved. It is important to build up good habits of working well together and meeting timetables.

Reporting Challenges

Reporting under some treaties are easier and some others difficult. But in all cases, reporting involves serious work calling for information sharing, open access and other good information management practices. The report required under ICESCR is the most difficult to draft because it deals with such a broad range of issues. Education, health, labor and social welfare issues span a large part of the life of a nation and a large percentage of the government's activities and it is difficult to produce a report that give a succinct overview as well as necessary details. The ICESCR report also tests bureaucratic co-ordination as the activities covered fall to numerous government departments. Another reason for the sensitivity of the ICESCR report is that it touches on issues close to daily lives of ordinary people. Human rights activists are rightly concerned with the issues of civil and political rights but every parent is interested in education issues and every wage earner is interested in labor issues and the entire community is interested in health issues. Ultimately, therefore, the ICESCR report can be a very political document.

Sometimes, there is a tension within the Covenant between these Articles that are to be realized progressively and those that are immediately implementable. It is wrong to think of the whole covenant as one of best endeavors. Many important provisions have immediate and binding application and the ICESCR committee would be looking to the implementation of these provisions. They include –

- Article 3 – equal rights of men and women to enjoy economic rights
- Article 7(a)(I) – equal pay for equal work
- Article 8 – the right to form trade unions
- Article 10(3) – measures for the protection of children
- Article 13(2)(a) – free and compulsory primary education
- Article 13 (3) – parent's right to choose their children's schooling
- Article 13(4) – the right to establish educational institutions
- Article 15(3) – freedom of scientific research and creative activity

In relation to those provision that are to be progressively realized, the Committee would be looking for policies to achieve that result and evidence about the implementation of those policies. The report need not demonstrate that the economic rights of the Nepalese

people are all being met, but rather that a process is in train that would move towards that end. As such, reporting under the treaty obligations should not be taken for granted.

Existing Practices

While a detailed study needs to be done, a cursory review of the existing situation of treaty reporting procedures may be summarized as follows:

- Nepal does not have an all time policy paper on treaty reporting obligations. The Government has taken decisions in this regard almost on an ad hoc basis; and there is no discernible trend.
- Under some treaties some focal ministries are appointed to perform the role of reporting. There are still some treaties for which nobody is responsible so far. For example, the Government has not specified who will be responsible for making reports under International Covenant on Civil and Political Rights (ICCPR) which Nepal had ratified in 1991.
- Even where focal Ministries are appointed, there are no Guidelines on how to work on the report; who will do the basic works; how such works will be reviewed; and how the stakeholders will have the opportunity to strengthen it by offering their comments or insights on their contents? Generally, it is seen that the report prepared by an outside consultant has been submitted to the concerned treaty body without proper legitimization process.
- There is a general problem of integration of information in the submitted reports due to lack of an integrated process.
- These reports fail to clearly identify responsibilities undertaken by concerned Ministries, and the timetable for execution or accomplishment.
- Once reports are done, they are sent to the Ministry of Foreign Affairs, which has the responsibility to maintain all outside contacts of the Government, but which largely acts like a forwarding agent to the treaty bodies.
- The Ministry of Justice, which is in principle the premier Ministry dealing with international law, treaties and human rights, does not have any role in the process. Some focal Ministries contact them for their inputs in the matter of law and legislative programs, but that obviously is not a general practice.
- The most obvious issue is the huge backlog in Nepal reports due under various treaties. [Note that there is no provision which enables delinquent states to be censured, other than by Committees noting the delay in their annual reports, and by repeated and so far ineffectual calls on the part of the General Assembly.]

Concerns of the National Human Rights Commission

The National Human Rights Commission (NHRC) of Nepal is the only independent statutory body to protect and promote human rights in the country. Apart from other important responsibilities, the Commission has been asked by law to “study international treaties and instruments on human rights and submit the necessary and appropriate recommendations to His Majesty’s Government for effective implementation of the related provisions.” It does not have a direct role regarding reporting to treaty bodies

under the obligations of the Government. As an institution, it acknowledges that the state must fully assume its responsibilities to uphold human rights, and reporting under the treaty obligations fall under these responsibilities. It urges the state to bring international human rights norms endorsed by the Government fully to the people and to advance its national protection system by calling on the state to integrate and implement the international norms that Nepal has voluntarily accepted through treaty ratification.

The existing status of treaty reporting as briefly stated above is deplorable. The existing situation also hinders the Commission from performing protection and promotion roles according to the international trend. The protection role of the Commission is one of its core functions and one that calls for measurable results. The importance and effectiveness of the Commission's protection work is evidenced by the ever-increasing size and sophistication of its system of special procedures. However, protection goes hand in hand with promotion and we must stand ready to respond to the reports to be submitted by Government, in particular as an independent critic to these reports. Equally, the Commission must live up to its responsibilities and be prepared to call an abuse an abuse whether it is under the local law or the law of treaty.

The Danish Human Rights Commission is working under a UNDP umbrella project to assist the NHRC to develop the capacity to conduct high quality, human rights oriented analysis of legislative proposals, draft laws and existing legislation, in particular with regard to Nepal's international human rights obligations, and to provide high quality policy advice to the Government on human rights matters.

- The purpose is to identify priorities and develop research and advocacy policy, strategies, and a medium term work plan for legislative review, research and the provision of human rights policy advice with assistance of short-term national and international advisers (or staff from other national human rights institutions) with practical experience in legislative review and reform, and the provision of human rights policy.
- It will also conduct training of government officials and NGO representatives on reporting to treaty bodies under international human rights instruments facilitated by a short-term international consultant and national resource people. Training on the two major international covenants for each of three years.
- Arrange study tour for head of legislation and policy team and responsible Commission member to gain experience in carrying out policy and legislative review responsibilities of other national human rights institutions.

The Commission cannot undertake these things unless the roles and responsibilities of governmental departments, and the officials working under them are clear.

Proposal for Further Discussion

At present, the Ministry of Law, Justice and Parliamentary Affairs has an International Law, Treaty and Human Rights Division [ILTHRD] which takes care of all issues falling under its name. These issues range from providing opinion to the Government on

international law and giving it advice and counseling services on treaties being negotiated, drafted or signed. The section also has a role as to human rights or other type of treaty reporting obligations. A Publication of the Ministry of 1997¹ lays down the following responsibilities of the Division:

- Give representation in the negotiation of any bilateral or multilateral treaty or agreements to which the Kingdom of Nepal or His Majesty's Government is going to be a party;
- Draft any bilateral or multilateral treaty or agreements to which the Kingdom of Nepal or His Majesty's Government is going to be a party, consolidate such treaties or agreements, and advise His Majesty's Government to that effect;
- Give opinion, advise or consultations to His Majesty's Government in the matter of signature, accession, acquiescence or acceptance of any bilateral or multilateral treaty or agreements to which the Kingdom of Nepal or His Majesty's Government is going to be a party
- Furnish advise to His Majesty's Government on reservations to be made on multilateral treaties;
- Be the central depository of all treaties to which the Kingdom of Nepal or His Majesty's Government is a party;
- Provide legal opinion on loan agreements to which the Kingdom of Nepal or His Majesty's Government is a party;
- Get treaties or agreements to which the Kingdom of Nepal or His Majesty's Government is a party published on Nepal Gazette
- Get treaties or agreements to which the Kingdom of Nepal or His Majesty's Government is a party published on Nepal Treaty Series;
- Report on behalf of His Majesty's Government on the implementation of treaties or agreements to which the Kingdom of Nepal or His Majesty's Government is a party
- Give consultations to His Majesty's Government on negotiation of contracts, bids or agreements, their drafting, examination of contents and signature;
- Advise the Government on national outlook to be taken by it in the process of preparation of multinational treaty or conventions

¹ Ministry of Law, Justice and Parliamentary Affairs: A Brief Introduction (1997) (in Nepali)

- Give advise or opinion to the concerned entity of the Government as to the activities to be undertaken by it due to the legal obligations undertaken by the Government by virtue of being party to any multilateral or bilateral treaty or agreements; and
- Take necessary action in the matter of any legal issues arising out of any treaty, agreement or contract to which the Kingdom or His Majesty's Government is a party.

The list also includes everything related with international law. It is the most relevant divisional office in the existing governmental set up to take on the role of coordination in this regard. The Section is equipped to understand the international law and treaty regime by virtue of its long experience in this area since long. This gives it in-built strength to assume this role. It can also clearly identify responsibilities for contributing different sections of the report, and a timetable for its review and update. The focal point Ministries might submit all reports to it, with the legal and legislative portion keeping black to the Ministry of Law, Justice and Parliamentary Affairs work on. As the Ministry, however, is not expert of all subjects falling under international human rights treaties. except for the matters related with law and treaty obligations, it would need principal contribution from the focal Ministries and/or other specialized agencies of the Government. At present this section has one Joint Secretary, 4 under secretaries, 3 section officers, and a couple of other junior staffs. To meet the increased burden, the Ministry can ask the government to provide few additional officers.

What is urgently needed?

- A policy paper on treaty reporting obligations with a clear cut instruction to all Ministries to abide by Treaty reporting schedules according to the Terms of concerned Treaty;
- Raise awareness of the Ministries about the range of treaties to which the country is a party and the obligations imposed
- Determine focal Ministry for reporting under each human rights treaty or conventions ratified by Government
- Appointment of the Ministry of Law, Justice and Parliamentary Affairs as the coordinator for all treaty related reporting works;
- Guidelines as to how to work on the report; who will do the basic works; how such works will be reviewed; and how the stakeholders will have the opportunity to strengthen reports by offering their comments or insights on their contents. It is absolutely necessary to make the reporting work a teamwork, and the tradition of hiring outside consultant to do all these works should generally be discontinued.
- Review the processes followed in the preparation of periodic reports with a view to ensuring compliance with relevant guidelines, improving the quality of description and analysis and limiting reports to a reasonable length, taking due consideration of the relevant provisions of those instruments
- Strengthening collection procedures

- Clearly identify responsibilities for contributing different sections of the report, and a time table for its review and update
- These reports shall also clearly identify responsibilities undertaken by concerned Ministries, and the timetable for execution or accomplishment.
- The existing practice of Ministry of Foreign Affairs as the exit point for the report should be continued
- Foster coordination and cooperation between focal point agencies and the Ministry of Law, Justice and Parliamentary Affairs;
- Foster information sharing, open access and other good information management practices
- The report should be compiled to a time table that meets both international needs and national information needs for other purposes;