

IWRAW ASIA PACIFIC OCCASIONAL PAPERS SERIES

NO. 4

**MAKING UN HUMAN RIGHTS TREATY
BODIES MORE EFFECTIVE:**

**A gender critique of reforms to the
reporting process**

The case of the ‘common core document’

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[BH: PAGES TO BE ADJUSTED LATER]

I. Introduction¹

This paper responds to the draft guidelines that have been proposed by the Office of the High Commissioner for Human Rights (OHCHR)², in an attempt to address some of the problems that have arisen with the system of States parties reporting periodically on their implementation of the United Nations (UN) human rights treaties. The guidelines suggest that, instead of the present system of reporting separately to each treaty body, which is considered burdensome, States parties should be required to submit a 'common core document',³ which would provide information on the implementation of rights that are common or 'congruent' to all or several human rights treaties, and shorter, more specific and targeted 'treaty-specific documents'. It is hoped that this new approach would streamline reporting obligations by reducing repetition and promoting a more holistic approach to implementation.

The draft guidelines propose that four clusters of 'congruent' provisions be reported on in the 'common core document'. One of the congruent clusters consists of the provisions on non-discrimination and equality in the human rights treaties. Almost all of the substantive provisions of the Convention on the Elimination of All Forms of Discrimination against Women (the CEDAW Convention) are included in this cluster, which, together with other aspects of the draft guidelines, raises a number of challenges for women's human rights advocates. Six of these challenges are identified and discussed here:

1. Resisting the reinstitution of women's invisibility and marginalisation;
2. Ensuring that 'congruence' leads to adoption of the most progressive jurisprudence and to further progressive development of the law;
3. Ensuring that the principles of equality and non-discrimination are interpreted substantively and inclusively;
4. Securing a central role for the CEDAW Committee in the progressive development of a common understanding of gender equality;

¹ Efforts to strengthen the effectiveness of the United Nations (UN) human rights treaty body system are ongoing. Thus, although this paper discusses the proposed reforms to the reporting process – specifically the guidelines of the 'common core document' and its implications – the points it raises should be taken into account in any similar treaty reform attempts in the future.

² [Draft] Guidelines of an Expanded Core Document and Treaty-Specific Targeted Reports and Harmonized Guidelines for Reporting under the International Human Rights Treaties: Report of the Secretariat. (In short, the [Draft] Guidelines.) HRI/MC/2004/3. 9 June 2004. <<http://www.unhchr/ch/html/menu2/6/a.htm>>

³ The 'common core document' is also known as the 'expanded core document'.

5. Ensuring that governmental women's offices and departments are not sidelined in the government's preparation of the 'common core document'; and
6. Empowering women's human rights NGOs (non-governmental organisations) to contribute to the monitoring processes of all the treaty bodies.

In concluding the paper summarises the pros and cons of the proposed guidelines as seen through a gender lens. It urges women activists not only to make a contribution to ongoing discussions about the merits of the new proposal, but also, to be aware of how any reform to the reporting process may impact on women's human rights.

II. Background to the 'common core document' proposal

There are now seven international human rights treaties that require States parties to report periodically on their compliance with their obligations under the treaty.⁴ Each of these treaties also has a treaty body (committee of experts) that is responsible for monitoring States parties' implementation of their treaty obligations.⁵ States' periodic reports are the main monitoring tool available to the treaty bodies,⁶ which may also receive related written (and sometimes verbal) information from other UN agencies, and from international and national NGOs in the form of 'shadow reports'. On the basis of all the information available to

⁴ International Covenant on Economic, Social and Cultural Rights (ICESCR); International Covenant on Civil and Political Rights (ICCPR); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Convention on the Elimination of All Forms of Discrimination Against Women (the CEDAW Convention); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Convention on the Rights of the Child (CRC); and Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW).

⁵ Committee on Economic, Social and Cultural Rights (ICESCR); Human Rights Committee (ICCPR); Committee on the Elimination of Racial Discrimination (ICERD); Committee on the Elimination of Discrimination Against Women (the CEDAW Committee); Committee Against Torture (CAT); Committee on the Rights of the Child (CRC); and Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW).

⁶ The treaty bodies may also have other monitoring mechanisms available to them, including procedures for individual complaints and complaints by other States parties. But these mechanisms are mostly optional, and a State party must have consented to subjecting itself to them. Periodic reporting is the only compulsory monitoring procedure.

them, the treaty bodies then engage the reporting State party in a 'constructive dialogue', which takes place during a session of the treaty body in either Geneva or New York. The treaty committee then produces its 'Concluding Observations'⁷ in writing, which usually praise the State party for the progress that has been made, as well as makes recommendations about further measures that are required to address any problems with implementation.⁸

With over 80 per cent of UN member states having ratified at least four human rights treaties,⁹ the system of periodic reporting has been placed under considerable strain. There are a huge number of overdue reports, despite the fact that reporting is a legal obligation that States parties assume on ratification. Some have not even provided an 'initial report', which is required within a year or two of ratification. Those that have submitted reports usually face waiting periods of up to two years before their report is considered, which often means that it requires substantial updating in order for the constructive dialogue between the committee and the State party to be meaningful.

There are many factors that have contributed to the problems with reporting but three stand out. One is the limited capacity of the treaty committees, that meet for only a few weeks each year and whose members are overloaded and under-resourced.¹⁰ A second factor is that many States parties, particularly developing ones, find the reporting obligations difficult to comply with because they do not have the resources or the technical capabilities required. Thirdly, many States parties lack the political will to comply with their reporting obligations and are largely able to avoid them with impunity because the system is under such stress.

Dating back to the late 1980s, there have been many proposals for reform of the entire human rights treaty monitoring system, which have suggested changes

⁷ Some treaty bodies use slightly different terminologies of 'Concluding Recommendations' or 'Concluding Comments'.

⁸ States' reports and the Concluding Observations of the committees are available at <<http://www.unhchr.ch/tbs/doc.nsf>>.

⁹ Amnesty International. "United Nations proposals to strengthen the human rights treaty bodies". September 2003. <<http://www.web.amnesty.org/library/print/ENGLIQR400182003>>

¹⁰ Office of Internal Oversight Services (OIOS). Management review of the Office of the UN High Commissioner for Human Rights. A/57/488. 21 October 2002. This observed that the demands on the treaty body team were virtually impossible to fulfil because of lack of capacity.

to the reporting procedures in the context of broader reform.¹¹ In response to these proposals, the human rights treaty bodies have adopted a number of measures to assist states and to streamline their own monitoring responsibilities, including the development of reporting guidelines for each treaty,¹² the wider provision of technical assistance, and the introduction of annual meetings of the chairpersons of the treaty bodies to enhance coordination and cooperation. Since 1991, States parties have also been encouraged to produce a 'core document' containing general background material under four headings: land and people, political structure, the framework within which human rights are protected, and other methods of promoting and protecting human rights.¹³ The idea was that the core document could be used by all the treaty bodies, thus obviating the need for repetition of general information in every report.¹⁴ However, in the 14 years since the option of preparing a core document was made available, only about half of the states involved had done so.

The treaty bodies have also gradually formalised procedures for NGOs to contribute to their reporting processes,¹⁵ and many NGOs have eagerly taken the opportunity to assist the Committees in their work. Parallel or shadow reports are now routinely produced by many domestic NGOs, which have vastly improved the effectiveness of the monitoring process by providing the Committees with critical information that is absent from the official government reports. The parallel reports often serve as an effective advocacy tool in the domestic context, both in the lead-up to a State party participating in constructive dialogue with a treaty committee and afterwards, to lobby for implementation of the Committee's recommendations. They provide a means of drawing public attention to the claims a State party makes in its report, and help to educate the media and the public about the state's international human rights obligations. In fact, a Nigerian activist

¹¹ Final, interim and initial reports on enhancing the long-term effectiveness of the UN human rights treaty system, by the independent expert Philip Alston. E/CN.4/1997/74, A/CONF.157/PC/62/Add.11/Rev.1, and A/44/668. See further <<http://www.ohchr.org/english/bodies/icm-mc/documents-system.htm>>. See also, Philip Alston and James Crawford (eds). *The future of UN human rights treaty monitoring*. Cambridge University Press. 2000.

¹² Compilation of guidelines on the form and content of reports to be submitted to the international human rights treaties. HRI/GEN/2/Rev.2. 7 May 2004.

¹³ *ibid.* Initial parts of State party reports ('core documents') under the various international human rights instruments. p3.

¹⁴ Amnesty International. *op. cit.*

¹⁵ See, for example, NGO participation in activities of the Committee on Economic, Social and Cultural Rights. E/C.12/1993/WP.14. 12 May 1993.

has described the NGO alternative reports as “an effective unofficial mechanism for the enforcement of women’s human rights in Nigeria”.¹⁶

While these and other measures have eased some of the problems, the number of overdue reports has continued to grow. This led eventually to the proposal by the UN Secretary-General, in 2002, that:

First, the committees should craft a more coordinated approach to their activities and standardize their varied reporting requirements. Second, each State should be allowed to produce a single report summarizing its adherence to the full range of international human rights treaties to which it is a party.¹⁷

In his 2005 proposal for UN reform, the Secretary-General again drew attention to the duplication of reporting requirements, proposing that “[h]armonized guidelines on reporting to all treaty bodies should be finalized and implemented so that these bodies can function as a unified system”.¹⁸

While there has been little disagreement with the suggestion that Committees seek to harmonise their reporting requirements, the proposal of a single report has been controversial. Following an initial round of consultations,¹⁹ the treaty bodies agreed in 2003 that they would not support the idea of a single report because it “would be a complex, perhaps unmanageable exercise ... [that] would result in either very lengthy reports or superficial and summary reporting”.²⁰ Instead, they proposed expanding the existing core document to include more information that was relevant for all or several treaty committees (now referred to as the ‘common core document’) and the retention of treaty specific periodic reports, but with more focused content.²¹

¹⁶ See Chibogu Obinwa. “BAOBAB for women’s rights (Nigeria) response to the Expanded Core Document and its implications for women’s human rights”. Paper written for IWRAW Asia Pacific’s cedaw4change listserv discussion. January-March 2005. p2.

¹⁷ Report of the Secretary-General. Strengthening of the United Nations: An agenda for further change. A/57/387. 9 September 2002. para. 52 and Corr. 1.

¹⁸ Report of the Secretary-General. In larger freedom: Towards development, security and human rights for all. UN Doc A/59/2005. 21 March 2005. para. 147.

¹⁹ See in particular, Report of a brainstorming meeting on reform of the human rights treaty body system. Malbun, Liechtenstein. 4-7 May 2003. HRI/ICM/2003/4. 10 June 2003.

²⁰ Report of the Second Inter-Committee Meeting of the human rights treaty bodies. HRI/ICM/2003/5. 27 June 2003. para. 17.

²¹ *ibid.* para. 18.

III. Draft guidelines on the 'common core document' and treaty-specific targeted reports

Following the approach agreed to by the treaty bodies, the Secretariat of the OHCHR produced draft guidelines, with an accompanying introduction.²² The guidelines propose that States parties' reports consist of two parts: the first being a 'common core document' and the second a 'treaty-specific document'. The OHCHR's introduction to the draft guidelines anticipated that the two complementary documents would reduce repetition and the length of reports, promote a more 'consistent and holistic' approach to reporting across the system, assist coordination between the treaty bodies, and help to avoid conflicting interpretations of human rights provisions.²³

The draft guidelines suggest that information in the 'common core document' be provided under three main headings. Firstly, general factual and statistical information should be supplied and, secondly, the state's general framework for the protection and promotion of human rights should be outlined. This information is much the same as that provided through the existing system of core documents, although considerably more detail is required than previously. It is the third heading of the 'common core document', requiring information on the implementation of substantive provisions that are common or 'congruent' to all or several human rights treaties, which is the controversial innovation. The draft guidelines do not define congruence, but the introduction refers to provisions that are closely-related in content.²⁴ The congruent provisions that should be reported on in the 'common core document' are identified in the following way (the CEDAW references are highlighted in bold):

²² See [Draft] Guidelines.

²³ *ibid.* Introduction. para. 8.

²⁴ *ibid.* para. 17.

Non-discrimination and equality ²⁵	<p><u>Non-discrimination and equality</u>: Articles 2(1) and 3 ICCPR; Articles 2(2) and 3 ICESCR; Articles 2-7 ICERD; Articles 2 and 9-16 CEDAW; Article 2 CRC; Articles 7,18,25,27 CMW; preamble CAT</p> <p><u>Equality before the law and equal protection of the law</u>: Articles 14(1) and 26 ICCPR; Article 5(a) ICERD; Article 15 CEDAW; Article 18(1) MWC; Article 9(2) CRC; Articles 12 and 13 CAT</p> <p><u>Special measures to accelerate progress</u>: Article 27 ICCPR; art 2(3) ICESCR; Articles 1(4) and 2(2) ICERD; Articles 4 and 14 CEDAW; Articles 22 and 23 CRC</p>
Effective remedies ²⁶	Article 2(3) ICCPR; Article 6 ICERD; Article 2(c) CEDAW ; Article 14 CAT; Articles 37(d) and 39 CRC; Article 16(g) CMW
Procedural guarantees ²⁷	Articles 14(2),(3) and (5) and 15 ICCPR; Article 5(a) ICERD; art 15 CAT; Articles 37 and 40 CRC; Articles 18(2) and (3) and 19 CMW
Participation in public life ²⁸	<p><u>Right to a nationality</u>: Article 24(3) ICCPR; Article 5(d)(iii) ICERD; Article 9 CEDAW; Articles 7 and 8 CRC; Article 29 CMW</p> <p><u>Right to political participation and access public service</u>: Article 25 ICCPR; art 5(c) ICERD; Articles 7 and 8 CEDAW; Articles 18(2) and (3) and 23(3) and (4) and 26 CRC; Articles 41 and 42(3) CMW</p>

The diagram above shows that almost all of the substantive provisions in the CEDAW Convention are included.

²⁵ *ibid.* paras. 58, 67 and 69.

²⁶ *ibid.* para. 71.

²⁷ *ibid.* para. 73.

²⁸ *ibid.* para. 78.

The draft guidelines do not specify what should be included in the 'treaty-specific documents', suggesting instead that detailed guidelines should be developed once agreement on the guidelines for the 'common core document' has been reached. It is envisaged that each treaty body would develop its own treaty-specific guidelines. However, the draft does propose that the following information should be included:

- (a) Information requested by the relevant treaty body in its guidelines;
- (b) More specific information requested by the relevant treaty body to supplement what is provided in the 'common core document'; and
- (c) Information on steps taken to address issues that were raised in the Concluding Observations on the State party's previous report, where applicable.

The OHCHR's introduction to the guidelines envisages that the information provided in the treaty-specific document will enable each treaty body "to pursue in greater depth any issues of particular concern to its mandate, although these may already have been covered in the 'common core document'".²⁹

States would be encouraged to 'regularly' update the 'common core document' so as to maintain its complementarity with each treaty-specific document.³⁰ It is also proposed that the different periodicities of a State party's reports, which can range from 2-5 years,³¹ be synchronised so that a state's combined reporting cycle is confined to a period of 18 months.³² If this is done, it is suggested that the core document would need to be updated every reporting cycle.³³ The draft guidelines, and the OHCHR's introduction to them, go to some lengths to emphasise that States parties should be alert to the possibility that some of the information required by the treaty bodies may already have been compiled as a result of complying with other reporting procedures, such as those associated with the Millennium Development Goals or required by the systems of the International Labour Organisation. The emphasis is on identifying and capitalising on overlap, wherever it may exist, in order to reduce the burdens of reporting.³⁴ Finally, the

²⁹ *ibid.* para. 21.

³⁰ *ibid.* para. 10.

³¹ For example, following a State party's initial report, which is usually due within 12 months of ratification, ICERD requires reporting "every two years and whenever the Committee so requests" (Article 9(1)(b)); CEDAW requires reporting "at least every four years" (Article 18(1)(b)); and CRC requires reporting "every five years" (Article 44(1)(b)).

³² [Draft] Guidelines. Introduction. para. 27.

³³ *ibid.* para. 26.

³⁴ *ibid.* paras. 13-15.

OHCHR proposed that the guidelines be piloted by interested states in order to test them in concrete situations and evaluate their effectiveness.³⁵

The draft guidelines were approved in principle by the Third Inter-Committee Meeting of Human Rights Treaty Bodies and the Sixteenth Meeting of the Chairpersons of the Human Rights Treaty Committees in 2004, although it was also agreed that further development of them was required.³⁶ To this end, the OHCHR was requested to continue work on them with a view to producing revised guidelines in 2005. The meeting also agreed that piloting the guidelines was important, provided it was done with the approval of the treaty committees.

IV. A women's human rights perspective on the draft guidelines

The proposal to reorganise reporting arrangements, to accord with the draft guidelines just outlined, has the potential to result in positive advances for women's enjoyment of human rights. However, there are also many dangers presented by the proposal, which could set back struggles for women's full enjoyment of all human rights and result in the loss of many of the hard-won gains of recent years. Many of the challenges that women's human rights advocates need to consider in relation to any initiative to improve the reporting processes of treaty bodies are highlighted by this proposal. These include:

1. Resisting the recurring problem of women's invisibility in generalist settings like the proposed 'common core document';
2. Ensuring that the 'congruence' of provisions means their interpretation continues to develop, using the most progressive jurisprudence rather than the lowest common denominator;
3. Ensuring that the principles of equality and non-discrimination are monitored and interpreted substantively and inclusively across the system;
4. Carving out a central institutional and jurisprudential role for the CEDAW Committee (and the other specialist bodies);
5. Ensuring that governmental women's offices and departments are not sidelined in the government's preparation of the 'common core document'; and
6. Building the capacity of women's rights NGOs to play a role in the reporting processes of all treaty bodies.

³⁵ *ibid.* para. 34.

³⁶ Report of the chairpersons of the human rights treaty bodies on their sixteenth meeting. Geneva. 23-25 June 2004. A/59/254. 11 August 2004; Report of the third Inter-Committee Meeting of the human rights treaty bodies. 21-22 June 2004. A/59/254. Annex I. para. 22.

The following sections discuss how the current proposal raises these challenges.

Challenge 1: Resisting the reinstitution of women's invisibility and marginalisation

Until the mid-1990s, women's human rights were treated as if they were the sole concern of the CEDAW Committee by all the other treaty committees, which resulted in their neglect of the specific human rights concerns of women (and girls).³⁷ While in 1993, the treaty bodies were officially urged to mainstream women's human rights into all of their work by the World Conference on Human Rights,³⁸ which was reiterated by the World Conference on Women two years later,³⁹ they were slow to respond. However, some positive signs of change have emerged more recently, with the adoption of interpretive statements by two of the treaty bodies, which have sought to make their work more gender-inclusive: the Human Rights Committee adopted General Comment 28 on women's equal enjoyment of ICCPR rights,⁴⁰ and the Committee on the Elimination of Racial Discrimination (ICERD Committee) adopted General Recommendation 25 on the gender-related dimensions of race discrimination.⁴¹

However, the Committee on Economic, Social and Cultural Rights has taken much longer to finalise its discussions on a general comment on women's equal enjoyment of ICESCR rights, which was released in May 2005.⁴² The Committee against Torture and Committee on the Rights of the Child have yet to formally respond. Formal statements are, however, only a beginning, and a cursory examination of the Concluding Observations to states' reports under ICERD, since the adoption of General Recommendation 25, reveals that it has had little impact on the practice of States parties and the ICERD Committee, although it is heartening to see from the Concluding Observations of the HRC that General

³⁷ Dianne Otto. "“Gender Comment”: Why does the UN Committee on Economic, Social and Cultural Rights Need a General Comment on Women?” 2002. 14. *Canadian Journal of Women and the Law* 1.

³⁸ The Vienna Declaration and Programme of Action. 1993. para. 37.

³⁹ The Beijing Declaration and Platform for Action. 1995. para. 213.

⁴⁰ ICCPR. General Comment 28. “Equality of rights between men and women (Article 3)”, CCPR/C/21/Rev.1/Add.10. 29 March 2000.

⁴¹ ICERD. General Recommendation 25. “Gender-related dimensions of racial discrimination”. 2000.

⁴² ICESCR. General Comment 16. “Article 3: The equal right of men and women to the enjoyment of all economic, social and cultural rights”. E/C.12/2005/3. 13 May 2005.

Comment 28 seems to have been quite influential. Compounding the problem, persistent calls to rectify the under-representation of women on all the treaty committees except CEDAW⁴³ have had little effect.⁴⁴

The slow progress of gender mainstreaming needs to be understood against the backdrop of history, which has consistently shown that general or generic approaches to human rights ignore or marginalise women's specific human rights concerns. The same result occurs with the human rights of racial and ethnic minorities, children, migrant workers, people with disabilities, sexual minorities and other groups that have little economic, social or political power. This explains why it was necessary to develop specific human rights instruments, like the CEDAW Convention, ICERD, CRC and MWC.⁴⁵ These instruments have proved to be a critical counterpoint to the exclusionary effects of general instruments, although they can also be used to further marginalise, as has been the experience of CEDAW,⁴⁶ until the recent effects of gender mainstreaming have started to change this situation.

Gender mainstreaming remains an important goal, but its success depends on the parallel maintenance of forums for the identification and promotion of women's specific concerns, and a robust dialogue between the general and specific treaty bodies. The proposed 'common core document' could provide an important means of advancing such a dialogue, promoting the indivisibility of women's human rights and ensuring that feminist insights inform the work of all the treaty bodies. However, it could also provide a means of reasserting the generic (which has a masculine form) over the specific, and thus serve to reinstate party women's marginalisation, playing into the hands of those states (and religious groups) that do not support women's equal enjoyment of human rights.

The draft guidelines pertaining to the 'common core document' do pay some attention to these issues. The general factual and statistical information to be provided in under the first heading of the report should include relevant statistical data that is 'disaggregated by sex and other population groups'.⁴⁷ In an annex to

⁴³ See for example, "Improvement of the status of women in the United Nations system". UN Doc A/Res/57/180. See further, Amnesty International. *op. cit.* point 4.

⁴⁴ Report of a brainstorming meeting. *op. cit.* point 85.

⁴⁵ A convention on the rights of people with disabilities is currently being drafted, and efforts to ensure the inclusion of sexual minorities are slowly having a widening effect.

⁴⁶ Andrew Byrnes. "Women, feminism and international human rights law: Methodological myopia, fundamental flaws or meaningful marginalization? Some current issues". 1992. 12 Australian Year Book of International Law 205.

⁴⁷ [Draft] Guidelines. Annex I. para. 37.

the core document full statistical information should be provided “disaggregated by sex ... [and] should be further disaggregated where possible in relation to other demographic groups including, inter alia, children and young people under the age of 18, racial, ethnic, indigenous, linguistic or religious groups, persons with disabilities, minorities, refugees, internally displaced persons or migrants”.⁴⁸ While the fore-fronting of gender disaggregation is a good start, it would be preferable if the language used was mandatory (‘must’ instead of ‘should’).

A long list of indicators is provided in Appendix 4 to the draft guidelines, which “may be relevant to reporting”.⁴⁹ These also make reference to sex disaggregation in a number of contexts including demographic characteristics, household heads, workforce participation and representation in parliament. But this is far from being comprehensive and there are many areas of entrenched women’s inequality that are omitted from this list, for example in income, in education, before the law, and in cultural and family life. References are also made to indicators concerning births, fertility, and infant and maternal mortality, which all concern women, but have historically served to advance population agendas rather than progress women’s human rights. With this in mind, an indicator relating to the availability of family planning information and contraception should also be included.

The guidelines for the information to be provided under the second heading of the ‘common core document’ – to describe the general framework for the protection and promotion of human rights – also provide some important openings for more fully integrating women’s human rights into the system as a whole.⁵⁰ For example, States parties are required to identify and explain any reservations and declarations, and are urged to review them and establish timelines for their withdrawal.⁵¹ If this leads to more intense scrutiny of reservations and increased pressure to withdraw them, it could have particularly important consequences for women, as the CEDAW Convention is the most highly reserved of all the human rights treaties.

A second example of possible openings to advance women’s rights is that when describing national machineries for implementation of their international human rights obligations, States parties are encouraged to include information about mechanisms devoted to the advancement of women and to addressing the particular situation of various disadvantaged groups.⁵² This is a welcome

⁴⁸ *ibid.* para. 38.

⁴⁹ *ibid.* para. 39.

⁵⁰ *ibid.* paras. 46-55.

⁵¹ *ibid.* para. 46(b).

⁵² *ibid.* para. 48(f).

recognition that the full enjoyment of human rights will not result from a 'one-size-fits-all' approach, but that different measures may be necessary to address different forms of inequality and historical disadvantage in order to achieve substantive equality.

A third opening is created by the requirement that States parties must report on the steps they have taken to encourage the engagement of civil society, including NGOs, in the promotion and protection of human rights.⁵³ Information on the participation of groups who are most affected by specific treaty provisions in the preparation of a State party's 'core common document' (including women) is also required,⁵⁴ as is information on how earlier Concluding Observations of all the treaty bodies have been followed up.⁵⁵ These components of the core document will help to support the advocacy work of women's human rights NGOs.

However, the problem is whether the guidelines provide a framework that will be effective in resisting the propensity to marginalise or erase women's human rights issues in the generality of a core document. Clearly, there are doubts:

Knowing our patriarchal/male-dominated society, this proposed reporting process will subsume women's human rights issues as [the] government will tend to be more focused on mainstream human rights issues whilst women's rights specific issues will take a back seat.⁵⁶

One glaring inadequacy is that the guidelines have avoided any specific reference to human rights in the private sphere, including the domestic sphere of family relationships. For example, in addition to the silences about family planning, there are no indicators relating to violence against women, or to the distribution of household income. Further, there is no reference to indicators that measure changes in the structural impediments to women's full enjoyment of human rights, such as cultural attitudes and practices based on stereotyped gender roles or on notions of women's inferiority. The danger is that private and structural causes of women's human rights violations will not be treated as a concern of all treaty bodies, but will be regarded as belonging exclusively in the targeted CEDAW report. This would breach the principle of gender mainstreaming and undo the hard-won progress that has been made towards this goal. Women's human rights

⁵³ *ibid.* para. 49(g).

⁵⁴ *ibid.* para. 50(d).

⁵⁵ *ibid.* para. 51.

⁵⁶ Obinwa. op. cit. p2.

advocates need to find ways to ensure that the gendered dimensions of human rights violations are fully comprehended by and integrated into the 'common core document', or it is likely that women's marginalisation in the human rights treaty system will be reinvigorated.

Challenge 2: Ensuring that 'congruence' leads to adoption of the most progressive jurisprudence and to further progressive development of the law

The third heading of the proposed common core document requires States parties to report on the implementation of substantive human rights provisions that are 'congruent' to all or several human rights treaties. The draft guidelines group congruent articles together into four clusters as set out in the chart above: non-discrimination and equality; effective remedies; procedural guarantees, and participation in public life. In the OHCHR's introduction to the guidelines, there is another chart that maps the congruence of the majority of the substantive provisions of the seven human rights treaties into 26 clusters.⁵⁷ A number of issues are raised by the treatment of congruence in the guidelines, which need to be addressed.

Firstly, no definition of congruence is provided and there are no processes outlined for resolving disagreements about the content of a congruent cluster. Secondly, there is no rationale provided for the selection of the four clusters in the guidelines from the 26 clusters identified in the introduction, without which there is great potential for gender issues to be ignored and for economic and social rights to be sidelined. Finally, the effect of the different implementation obligations applying to different rights in the cluster is not discussed. These points are discussed in turn below using the right to life as an example.

First, how is congruency to be defined and what is the process for resolving disagreement about which rights are congruent? The concept of congruence is new to the human rights regime. It is not a term that is used in any of the human rights treaties, and nor has it been used by any of the treaty committees in their work, therefore it has no pre-existing content and no history of application. The guidelines do not define congruence, but the introduction refers to provisions that

⁵⁷ [Draft] Guidelines. Introduction. "Chart of congruence in the substantive provisions of the seven core international human rights treaties". Between paras. 19 and 20.

have “closely-related content”,⁵⁸ and suggests that congruence may range from absolute, “where provisions of the treaties have the same scope or objective (and often identical wording)”, to congruence in a broader sense “where provisions are not identical but are related”.⁵⁹ The guidelines do not suggest a process for deciding on what belongs in a particular congruent cluster of provisions, or for enabling other provisions to be included as jurisprudence develops. The right to life is one of the clusters in the more comprehensive chart in the OHCHR’s introduction to the guidelines. The provisions included in the cluster are as follows:

	ICESCR	ICCPR	ICERD	CEDAW	CAT	CRC	CMW
	Article No.	Article No.	Article No.	Article No.	Article No.	Article No.	Article No.
Right to life; right to physical and moral integrity; slavery, forced labour and traffic in persons		6; 7; 8		6	1; 16	6; 11; 19; 32; 33; 34; 36; 37(a)	9; 10; 11

However, this mapping is inconsistent with the jurisprudence of some of the treaty committees on gender issues. The Human Rights Committee interprets Article 6 (the right to life) to require States parties to provide information, inter alia, on “the particular impact on women of poverty and deprivation that may pose a threat to their lives”.⁶⁰ This interpretation means that the right to an adequate standard of living is closely related or congruent to the right to life, and therefore that ICESCR Article 11 should be included in the cluster. Another example is the CEDAW Committee’s interpretation of its mandate to include violence against women as a form of discrimination against women.⁶¹ Domestic violence, rape and other forms of violence against women violate women’s right to physical integrity, so there is a strong argument for inclusion of CEDAW General Recommendation 19 in the cluster, as an interpretive guide. This would also be consistent with the inclusion of CRC Articles 19 and 34, which protect children from physical and mental violence and sexual exploitation and abuse. Also, inexplicably, Article 5(b) of ICERD, which grants the right to security of the person and protection

⁵⁸ *ibid.* Introduction. para. 17.

⁵⁹ *ibid.* para. 18.

⁶⁰ ICCPR. General Comment 28. para. 10.

⁶¹ CEDAW. General Recommendation 19. “Violence Against Women”. 1992.

from violence, is not included. A revised charting of congruence would include the provisions in the row added below (and there may be others that have been overlooked):

	ICESCR	ICCPR	ICERD	CEDAW	CAT	CRC	CMW
	Article No.	Article No.	Article No.	Article No.	Article No.	Article No.	Article No.
Right to life; right to physical and moral integrity; slavery, forced labour and traffic in persons		6; 7; 8		6	1; 16	6; 11; 19; 32; 33; 34; 36; 37(a)	9; 10; 11
Additional congruent provisions/ jurisprudence	11		5(b)	1(1) and GR 19			

This example illustrates how important it is that the concept of congruence be defined, and in such a way as to:

- (a) Avoid an unduly narrow approach which would have the effect of immunising the content of a cluster from progressive development of the law, and not be so open-ended that all human rights are possible contenders for inclusion;
- (b) Ensure that the identification of congruence is gender-inclusive;
- (c) Ensure that economic and social rights are given equal weighting with civil and political rights; and
- (d) Enable the identification of congruent rights to be kept in step with the evolution of the law.

Supporting processes will need to be established to resolve disagreements about congruence and to regularly update the content of the cluster and identify the related jurisprudence.

The second issue is the lack of a rationale for selecting the clusters of congruent rights that will be addressed in the 'common core document'. It would be relatively easy to justify the inclusion of the provisions relating to non-discrimination and equality, as they are undeniably central to the entire regime. Further, the inclusion of provisions relating to remedies and procedural guarantees can be defended on the basis that the provision of effective remedies for rights

violations and the establishment of procedures whereby those remedies can be claimed are indispensable to the enjoyment of rights in practice. In their absence, implementation would clearly be inadequate. However, a strong argument can be made that it is more effective to emphasise implementation through the treaty specific process.⁶² Indeed, as each Committee is concerned with the specific implementation obligations of its treaty, this detail could be lost if implementation is primarily treated in the 'common core document'.

However, it is the fourth cluster that seems to lack any rationale for its inclusion. While rights associated with participation in public life are important, why would they be chosen over a cluster of rights congruent with the right to life, for example? It can be argued that the enjoyment of the right to life cluster is an essential prerequisite to the exercise of rights to participation in public life; as for the many women who live in extreme poverty. Indeed, the choice of a limited number of substantive congruent rights from the 26 clusters identified in the OHCHR's introduction risks either recreating old hierarchies or instituting new ones, which is inconsistent with the recognition that human rights are indivisible and interdependent. Therefore, any selection beyond non-discrimination and equality, effective remedies, and procedural guarantees would seem to be ill-advised. In any event, a rationale for the selection of congruent clusters needs to be carefully developed in order to ensure that:

- (a) The former hierarchy that gave priority to civil and political rights is not reinstated;
- (b) New human rights hierarchies are not created; and
- (c) Selection does not result in gender-disproportionate advantages.

Thirdly, what does identifying congruence mean for a State party's implementation of obligations when different obligations apply to different rights in the cluster? States' obligations differ to some extent from one treaty to another in a number of ways. Some treaty obligations are immediate and others allow progressive implementation; some treaties are stricter about allowable derogations and limitations than others; and a State party's obligations will be differently affected by any reservations that it may have entered. In the right to life example above, no derogations are allowed under any circumstances to most of the ICCPR and CAT provisions included,⁶³ while the obligations under the CEDAW Convention and ICERD require States parties to immediately pursue a policy directed at full and effective implementation⁶⁴ and some components of the ICESCR obligation

⁶² Obinwa. *op. cit.* p3.

⁶³ ICCPR Article 4(2); CAT Article 2(2).

⁶⁴ CEDAW Article 2; ICERD Article 4.

are immediate while others are progressive.⁶⁵ Further, while the notion of a 'core minimum' obligation developed by the ICESCR Committee makes sense in the context of progressive realisation of the right to an adequate standard of living, if it is applied to other provisions in the cluster it would have the undesirable effect of diminishing a state's implementation of its obligations.

The problem of reservations also arises where they limit a State party's obligations with respect to one of the provisions in the cluster, but not the others. For example, the effect of a reservation that limits a state's obligation to measures that are compatible with Islamic *Shariah*⁶⁶ or consistent with the teachings of Catholicism,⁶⁷ would, in the context of congruence, need to be strictly limited to the provision(s) that they are directed at and not be allowed to affect the obligations under the other treaties. While there is no easy resolution to the problem of differing implementation obligations, congruency should not, under any circumstances, result in a watering down of a State party's legal obligations under any of the treaties.

There are also a number of other, more legalistic, issues associated with the notion of congruence that need to be resolved. They include whether the provision of a core document would be a binding legal obligation and what the implications would be if it was not; whether the core document would have a legal status; whether a treaty body's Concluding Observations responding to information in the core document would have the same legal status as its Concluding Observations to the treaty specific document; whether the treaty bodies can be bound by each other's jurisprudence; how inconsistencies would be resolved; and what impact the ratification of only some of the human rights treaties would have on reporting in the 'common core document'.

Challenge 3: Ensuring that the principles of equality and non-discrimination are interpreted substantively and inclusively

The principles of equality and non-discrimination are central to the human rights regime in that all human rights are to be enjoyed without discrimination, on grounds that are non-exhaustively identified in the treaties.⁶⁸ This open-endedness allows for further forms of discrimination to be recognised and

⁶⁵ ICESCR. General Comment 3. "The nature of States parties' obligations". 1990. para. 5.

⁶⁶ See, for example, CEDAW reservations of Bahrain and Egypt.

⁶⁷ See, for example, CRC reservations of the Holy See.

⁶⁸ ICESCR Article 2(1); ICCPR Article 2(2); CRC Article 2.

explicitly included in the regime as the law develops. Special emphasis has been placed on equality between women and men⁶⁹ and on the elimination of all forms of racial discrimination.⁷⁰ There is also a growing awareness of the need to recognise and address ‘intersectional’ discrimination, where a person’s experience of discrimination arises from the interaction between a number of grounds of discrimination, such as, for example, sex and race.⁷¹ The following chart sets out the articles identified as congruent in the guidelines, summarising from the earlier chart:

	ICESCR	ICCPR	ICERD	CEDAW	CAT	CRC	CMW
	Article No.	Article No.	Article No.	Article No.	Article No.	Article No.	Article No.
Non-discrimination and equality	2(2); 3; 2(3)	2(1); 3; 14(1); 26; 27	2-7; 5(a); 1(4); 2(2)	2; 9-16; 15; 4; 14	Preamble; 12; 13	2; 9(2); 22; 23	7; 18; 25; 27; 18(1);

Although there is considerable commonality in the text of the treaty provisions relating to equality and non-discrimination, there are also some differences in wording and in interpretation. Some of these differences are outlined below before returning to the critical issue, which is whether the concept of congruence means that a lowest common denominator approach is to be adopted in the ‘common core document’, or whether States parties will be expected to report in a way that is consistent with the most progressive treaty body jurisprudence.

One difference in the treaty texts relating to non-discrimination is that only ICERD and the CEDAW Convention define the concept. The definitions are very similar, both recognising that acts of discrimination can take a number of forms, that discrimination can be direct (purposeful) or indirect (an effect), and that the goal is to ensure the equal ‘enjoyment or exercise’ of human rights and fundamental freedoms; that is, substantive or de facto equality. To date, the only other treaty body to formally address the question of definition is the Human Rights Committee, which has adapted the ICERD and the CEDAW Convention definitions to the ICCPR.⁷² However, the provisions that define non-discrimination

⁶⁹ ICCPR and ICESCR common Article 3; CEDAW.

⁷⁰ ICERD.

⁷¹ ICERD General Recommendation 25 is ground-breaking in this respect.

⁷² ICCPR. General Comment 18. “Non –discrimination”. 10 November 1989. paras. 6-7.

in ICERD and the CEDAW Convention are not included in the congruent grouping in the draft guidelines. What could the OHCHR be thinking by this? Could it mean that that States parties will only be required to report in terms of minimal non-discrimination standards in the 'common core document', and if so, how would that minimum be determined?

For example, if a state is not a party to CEDAW, does the concept of congruence mean that it is legally obliged to adopt measures to eliminate sex discrimination in the enjoyment of ICESCR rights that prohibit both direct and indirect discrimination? Further, if a State party to CEDAW has entered a reservation that makes its implementation of anti-discrimination measures under the CEDAW Convention subject to religious mores, will the notion of congruence mean that this reservation can impact on its obligations to eliminate sex discrimination under the ICESCR and ICCPR? In order to address these issues, the concept of congruence should ensure the following that:

- (a) Articles 1(1) of ICERD and CEDAW are included in the cluster of congruence;
- (b) The ICERD/CEDAW definition of non-discrimination (appropriately adjusted) is adopted across the treaty regime;
- (c) States parties are expected to report against that standard of substantive equality in the 'common core document'; and
- (d) Any reservations affecting a State party's obligations to implement non-discrimination under one treaty are not allowed to affect the implementation of congruent obligations under another treaty.

A second difference in the treaty texts relating to non-discrimination is in the prohibited grounds of discrimination that are explicitly recognised. While the ICESCR and ICCPR texts are identical in this regard, ICERD expands the concept of racial discrimination to include discrimination based on descent and ethnic origin, and the CEDAW Convention expands sex discrimination to include discrimination on the basis of marital status. The CRC also recognises ethnic origin and the additional ground of disability. Many of the treaty bodies have expanded on the grounds explicitly identified in the text of their treaty in General Comments and in their responses to individual complaints.⁷³ The grounds on which discrimination is prohibited is an area of human rights law that is constantly developing and

⁷³ See, for example, ICERD General Recommendation 23, "Indigenous peoples" (1997); ICERD General Recommendation 27, "Discrimination against Roma" (2000); ICESCR General Comment 5, "Persons with disabilities" (1994); ICESCR General Comment 6, "The economic, social and cultural rights of older persons" (1995).

expanding, and the treaty bodies do not always keep pace with each other. How will the reporting requirements in the core document deal with the issue of different and expanding grounds of prohibited discrimination being recognised by the various treaty bodies? Will a state be expected to report only on the grounds that are common to the treaties to which it is a party, or will congruence mean that all of the identified grounds must be addressed in the core document?

For example, as the Human Rights Committee has recognised discrimination on the grounds of sexual orientation as a form of sex discrimination,⁷⁴ does congruence mean that States parties must report on measures to eliminate this form of discrimination in the enjoyment of ICESCR, the CEDAW Convention and CRC rights as well? In order to address these issues, the concept of congruence should ensure the following:

- (a) That the prohibited grounds of discrimination to be reported on in the core document are updated as soon as new grounds are identified by any of the treaty bodies; and
- (b) That all states are required to report on measures to eliminate discrimination on all recognised grounds, in addition to any other forms of discrimination that may be particular to that State party.

A third difference in the treaty texts is the way in which the language of equality is used. Both the ICESCR and ICCPR protect the 'equal right' of men and women to 'enjoy' the rights in those instruments⁷⁵ the Human Rights Committee has elaborated on what this means for the implementation of the ICCPR in great detail in General Comment 28 and the Committee on Economic, Social and Cultural Rights has done likewise in General Comment 16, as previously mentioned. Both Covenants also use the language of equality in several substantive provisions.⁷⁶ These additional articles should also be included as congruent because they underline the general non-discrimination and equality provisions in articles 2 and 3, drawing attention to areas of particular concern, like equal pay and equality between spouses. Their inclusion would be consistent with the inclusion of the substantive provisions from ICERD and the CEDAW Convention.

Many of the CEDAW Committee's General Recommendations emphasise that the CEDAW Convention requires the realisation of women's substantive or *de facto* equality. The specific references to equality in ICERD are fewer, which

⁷⁴ Toonen v Australia (488/92) 31/3/94; Young v Australia (941/00).

⁷⁵ ICESCR and ICCPR, common Article 3.

⁷⁶ See ICESCR Articles 7(a)(i), 7(c) and 13(2)(c); ICCPR Articles 14(3), 23(4), 25(b) and (c).

may account for the lack of ICERD Committee jurisprudence that develops the normative content of equality required by ICERD. The CRC uses the language of equality in only a few places,⁷⁷ the CAT refers to equality only in its preamble, and the CMW uses equality in the special sense of requiring equality of treatment with the nationals in the state of employment for various purposes. This may explain why the work of other specialised treaty bodies on equality has so far been minimal. The 'common core document' would provide an opportunity for them to benefit from the work already undertaken. In order to address these issues, the concept of congruence should ensure the following that:

- (a) Equality is understood substantively, as equality in result, requiring States parties to ensure that rights are equally enjoyed and exercised in fact (*de facto*), and not just formally (*de jure*), across all the treaties;
- (b) Jurisprudence relating to the norm of equality in any of the treaties is understood to be applicable to them all;
- (c) ICESCR Articles 7(a)(i), 7(c) and 13(2)(c) and ICCPR Articles 14(3), 23(4) and 25(b) and (c) are included in the congruent cluster; and
- (d) The treaty bodies whose primary mandate is to eliminate discrimination and guarantee equality are encouraged to take the lead in the further development of the law in this regard.

A fourth difference between the treaties is the specificity with which they describe the measures that should be adopted by States parties to eliminate discrimination and guarantee equality. Not surprisingly, it is ICERD and the CEDAW Convention that are the most detailed in this regard. For example, the CEDAW Convention requires that States parties address the historical and structural underpinnings of women's inequality by modifying social and cultural practices and beliefs that normalise women's inequality,⁷⁸ and by ensuring that family education about roles and responsibilities is consistent with the goals of the convention.⁷⁹ The ICERD requires States parties to take 'special and concrete measures' to ensure that different racial groups are able to fully and equally enjoy human rights and fundamental freedoms.⁸⁰ These and other specific requirements in the CEDAW Convention and ICERD are essential to achieving the goal of substantive equality and should therefore be applicable across the treaty regime.

⁷⁷ CRC Articles 28(1), 29(1)(d), 30(2) and 40(2)(b)(iv).

⁷⁸ CEDAW. Article 5(1).

⁷⁹ CEDAW. Article 5(2).

⁸⁰ ICERD. Article 2(2).

Yet only some of these provisions are included as congruent in the guidelines. Both ICERD and the CEDAW Convention also explicitly promote the adoption of temporary 'special measures' for the purpose of accelerating the achievement of equality. While the other treaties are silent on this matter, such measures are important components of realising substantive equality. The guidelines rightly include these provisions in the cluster of congruent rights, which supports the view that other provisions proposing specific measures should also be considered congruent. In order to address these issues, the concept of congruence should ensure that Articles 1, 3 and 5 of the CEDAW Convention are included in the cluster because they provide specific guidance about measures necessary to eliminate discrimination and ensure substantively equal enjoyment of human rights and fundamental freedoms.

A revised chart of provisions congruent with the principles of equality and non-discrimination would include the provisions in the row added below:

	ICESCR	ICCPR	ICERD	CEDAW	CAT	CRC	CMW
	Article No.	Article No.	Article No.	Article No.	Article No.	Article No.	Article No.
Non-discrimination and equality	2(2); 3; 2(3)	2(1); 3; 14(1); 26; 27	2-7; 5(a); 1(4); 2(2)	2; 9-16; 15; 4; 14	Preamble; 12; 13	2; 9(2); 22; 23	7; 18; 25; 27; 18(1);
Additional congruent provisions/ jurisprudence	7(a)(i); 7(c); 13(2)(c); GC 4, 5,	14(3); 23(4); 25(b) and (c); GC 18; GC 28; related OP juris	1(1); GR XXV	1(1); 3; 5; GR		28(1); 29(1)(d); 30(2); 40(2)(b) (iv)	

Challenge 4: Securing a central role for the CEDAW Committee in the progressive development of the common understanding of gender equality

The CEDAW Convention was adopted in 1979 because of the neglect of women's human rights by the mainstream human rights bodies. Since its establishment in 1982, the CEDAW Committee has made important contributions to the development of the norms of women's substantive equality and sex non-discrimination through its General Recommendations and Concluding Comments.

The Committee now has the power to substantially expand these contributions through its individual complaints mechanism that entered into force in 2000.⁸¹ The proposed guidelines for the 'common core document' include most of the provisions of the CEDAW Convention as congruent to the principles of non-discrimination and equality. In fact, as pointed out above, all of the general provisions of CEDAW should be included in the congruent cluster in order to ensure that States parties' reporting in the 'common core document' is informed by the most progressive jurisprudence in the system.

However, if this occurs, what would be the role of the CEDAW Committee in relation to the 'common core document' and what would a State party's CEDAW-specific report contain? Does this suggest that the obligations to implement women's equal enjoyment of all human rights can be split into core and specific obligations? The draft guidelines attempt to avoid this by drawing a distinction based on degree of 'focus' rather than breaking down the right into core and specific components; the core document providing general information and the treaty-specific documents providing information that is more focused or targeted to the treaty. However, the danger is that the core document will allow, even encourage, an inadequate standard of equality/non-discrimination, which may then become acceptable as a minimum. Legally, substantive equality is the common standard across the system, as already argued. The principles of equality and non-discrimination are not obligations that can be progressively fulfilled; therefore the notion that 'minimum' core obligations might be identified is inconsistent with the law. Further, the practical effect of such a division would promote – even condone – regressions in women's equal enjoyment of all human rights. There is a fine line between core 'focus' and core 'minimum' that will need to be closely scrutinised to avoid their conflation.

The distinction between 'core' and 'specific' needs further thinking through. As outlined, it is proposed that the treaty-specific reports include information: required by the guidelines of the treaty body; requested by the treaty committee to supplement information in the 'common core document'; and reporting on follow-up from the committee's previous Concluding Observations as applicable. The idea is that the specific report will enable the treaty body to pursue issues of concern to its mandate in greater depth than the 'common core document' would allow. But would this mean the CEDAW Committee's ability to monitor the obligations of sex non-discrimination and equality as a whole might be reduced? Or, even worse, would the other treaty bodies leave all the references to women

⁸¹ Optional Protocol to CEDAW. 1999. Entry into force 22 December 2000.

in the core document to the CEDAW Committee to monitor? If this occurred, it is not hard to see that the entire gender-mainstreaming agenda would rapidly unravel.

The danger that the CEDAW Committee, and women's human rights, might be further marginalised by the proposal needs to be addressed urgently. The treaty bodies have yet to develop guidelines for the treaty-specific documents that would operate in conjunction with the 'common core document' proposal. However, most of the information required by the CEDAW Committee's current reporting guidelines relating to the implementation of the convention would/should be included in the 'common core document'. This suggests, on the one hand, that the proposal to report on congruent rights in the core document is untenable because of its negative impact on the work of the more targeted treaty bodies. On the other hand, the role of the CEDAW Committee (and likewise the ICERD, CAT and CRC Committees) could be enhanced if the proposal was to recognise its particular expertise and give it a central role in informing, perhaps even coordinating, monitoring of the 'common core document' by the other treaty bodies, in respect of women's equal enjoyment of all human rights. This would boost gender mainstreaming across the system and ensure a central role for the CEDAW Committee.

Challenge 5: Ensuring that governmental women's offices and departments are not sidelined in the government's preparation of the 'common core document'

From the perspective of smaller states with limited resources, it seems to make a lot of sense to have a more coordinated approach to monitoring and reporting on the implementation of the human rights treaties. In the context of Vanuatu, for example:

The concept of a core document would be very useful as it would provide a general reference point for all documents submitted by the Government, whether they be treaty reports or not.⁸²

Smaller states often suffer from a general lack of understanding by both government officials and NGOs about what the CEDAW Convention requires,

⁸² Andonia Piau-Lynch. "Implications of the Expanded Core Document for States parties: Vanuatu". Paper written for IRAW Asia Pacific's listserv cedaw4change discussion. January-March 2005. p4.

and how to institutionalise mechanisms that will ensure its promotion and implementation. Perhaps a 'common core document' would help to "ensure that States parties are up-to-date with international positions and developments and apply them locally,"⁸³ but before the proposed reporting arrangements could possibly result in such positive outcomes, the other two main problems – lack of resources and lack of political will – need also to be addressed.

Resource limitations will inevitably make proposals look attractive if they promise to reduce overlap and repetition and generally be less resource-intensive. However, the 'efficiencies' of the 'common core document' may be at the cost of mechanisms that women's human rights advocates have fought hard to establish, such as women's focal points within government bureaucracies, women's departments and women's advisory committees. These mechanisms have been established in order to ensure there are formal mechanisms through which to pursue the implementation of the CEDAW Convention, to ensure that periodic reports are prepared and to put pressure on the government to address the critical comments and recommendations from the treaty committees. Compared with those departments that would be primarily concerned with the preparation of the proposed common core report – the departments of foreign affairs and attorney-general – these mechanisms are weak. It is very likely that women's issues and concerns would be sidelined in the process of preparing the 'common core document', and this would further weaken the women's mechanisms that have been so crucial, at the domestic level, for the promotion of women's human rights.

Challenge 6: Empowering women's human rights NGOs to contribute to the monitoring processes of all the treaty bodies

There are also many uncertainties related to how women's human rights NGOs would engage with the proposed new system of reporting. The OHCHR's introduction identifies participation by civil society as "an important aspect" of the new process,⁸⁴ but nothing concrete is proposed to facilitate this. Yet the adoption of the guidelines will demand a lot more from human rights NGOs, who will need to produce a shadow report to the 'common core document' in addition to the present practice of providing information to treaty bodies in reports that parallel the treaty-specific periodic reports. They may also need to

⁸³ *ibid.*

⁸⁴ [Draft] Guidelines. Introduction. para. 29.

participate in the processes of many more of the treaty bodies than they currently do. This will require capacity building and resources that are beyond the reach of many women's NGOs, which may make grassroots engagement with the system impossible. Further, the demands of shadow reporting may become so bureaucratised that the elements of activism and advocacy, which are so essential for promoting progressive change, may be lost.

Currently, NGOs have largely organised themselves around the different treaties. Indeed, many NGO constituencies preceded the adoption of the human rights treaties, as in the case of women's movements. The proposed system may encourage and strengthen coalitions between NGOs, which may broaden the visions and contributions made by them. But it may also lessen the impact of the treaty-specific constituencies and give more power to the general human rights NGOs, who have historically neglected women's rights as well as economic and social rights, and are a very long way from the grassroots. As the following comment suggests, the challenges posed to NGOs could be a major problem with the reform proposal:

It will impact negatively on the strategies of women's human rights activists, built over the years, in the area of advocacy and lobbying around the UN treaties and their domestication and/or implementation at the local level. It is definitely not the way forward for the protection and promotion of women's human rights.⁸⁵

Guidelines that facilitate the participation of NGOs need to be adopted by all the treaty bodies, and the processes whereby the 'common core document' will be monitored should be clarified. If the new system has the effect of disempowering women's human rights NGOs, then certainly, the cost is too high and the proposal should be rejected.

V. Conclusion

As the foregoing analysis illustrates, the proposed guidelines are a double-edged sword for women's human rights advocates. On the one hand, they may help to advance women's human rights by opening many new opportunities to promote gender mainstreaming through congruency, and ensuring that women's

⁸⁵ Obinwa. *op. cit.* p4.

substantive equality is recognised and developed progressively across the entire system. But, on the other hand, the proposed guidelines may lead to regressions in the jurisprudence and practical realisation of women's human rights if they condone lowest common denominator approaches to addressing women's inequality, and lead to the marginalisation of the CEDAW Committee and the disempowerment of women's human rights NGOs.

This paper has outlined six main areas of challenge that need to be addressed in the further development and piloting of the guidelines or, for that matter, in any other initiative of this nature. While it is to be hoped that these challenges will be taken up by all those involved in the reform process, women's human rights advocates have important contributions to make and it is imperative that they are encouraged to participate at all levels.

Ultimately, though, the question is whether reforms to the reporting process of treaty bodies – as exemplified by the guidelines proposed for the 'common core document' – that are eventually adopted will enhance reporting and implementation of states' obligations under the human rights treaties, or provide a new cover for malingerers. The Secretary-General's suggestions for reform have served to focus attention on the reporting obligations of the system. This focus risks representing the cause of the stresses in the system as a problem of the burdensome reporting requirements, and ignoring the compounding problems of lack of resources and capacity, and lack of political will. These contributing factors also need to be addressed before reform efforts can really hope to strengthen the effectiveness of the human rights treaty monitoring system.



