

No.12(2)/2016-Coord.  
NATIONAL HUMAN RIGHTS COMMISSION  
(Coordination Section)

Dated: 15<sup>th</sup> June, 2017

CIRCULAR

Subject: Record of Discussion of the First Meeting of the Committee on International Conventions and Treaties held on 24.05.2017 in the Conference Room No.508, Manav Adhikar Bhawan, New Delhi -

The Commission held a First Meeting of the Committee on International Conventions and Treaties on 24<sup>th</sup> May, 2017 at Manav Adhikar Bhawan, New Delhi for advising the Commission regarding necessary changes in the existing domestic laws as well as proposed legislations and programmes / policies.

2. A copy of the Record of Discussion of the First Meeting of the Committee on International Conventions and Treaties is enclosed herewith.
3. You are requested to take necessary action as per the decisions of the Meeting and send a detailed note to the Coordination Section by 30<sup>th</sup> June, 2017 positively.

Encl: As above.

( Dr. Ranjit Singh )  
Joint Secretary (P&A)

To

1. Registrar (Law) - 16/6
2. JS(T&R) - 16/6
3. JS(P&A) - 16/6
4. DIG - 16/6
5. Director(A) - 16/6
6. JD(R) Unit - 16/6
7. JR(Law) In-charge - 16/6
8. SSA / SRO(T) Unit - 16/6

16/06

16/6

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● Record of Discussion of the First Meeting of the *Committee on International Conventions and Treaties* held on 24 May 2017 in Conference Room No. 508, Manav Adhikar Bhawan

A meeting of the *Committee on International Conventions and Treaties* (henceforth Committee) was held in the Commission on 24 May 2017 in Conference Room No. 508 at 11am. A list of participants is at Annexure.

2. The Meeting began with the remarks of the Chairperson who welcomed the Members of the newly-constituted Committee and gave them an overview of the purpose for the setting of the Committee as well as the agenda of the first meeting. The Chairperson stated that Section 12(f) of the PHR Act 1993 mandates the Commission to '*study treaties and other international instruments on human rights and make recommendations for their effective implementation.*' While the NHRC has undertaken various initiatives in the past to fulfill this particular mandate, it is for the first time since the Commission's inception that a concerted effort was being made to set up a Committee comprising legal and administrative experts who would guide the Commission on how best to bring about consonance between India's domestic legislations and the international human rights standards to which India is a State Party.

3. The Chairperson stated that the Commission hopes to organize at least three meetings of the Committee, annually, and that during the first meeting, the focus of deliberations will be the six (06) core international human rights treaties to which India is a State Party, namely:

- i. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- ii. International Covenant on Civil and Political Rights (ICCPR)

- iii. International Covenant on Economic, Social And Cultural Rights (ICESCR)
- iv. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- v. Convention on the Rights of the Child (CRC)
- vi. Convention on the Rights of Persons with Disabilities (CRPD)

4. The Chairperson invited the suggestions of the Committee Members on how to structure the discussion of the first meeting as well as to identify the broad role and functions of the Committee.

5. Shri Narinder Singh stated that the Government of India has submitted from time to time, country reports to UN Treaty Bodies. He suggested that as a first step, it would be useful for the Commission to undertake a study of the treaty body reporting obligations of India, the reports submitted so far, as well as the concluding observations of Treaty Bodies following these country submissions. This exercise will enable the Commission get a fair idea of India's international human rights obligations, the initiatives undertaken by the Government to fulfill these obligations, and the gaps that remain. On the question of torture, for instance, the Gol has maintained that the country has sufficient laws and constitutional and other provisions to address the issue. Thus, the Committee set up by the Commission could perhaps address the question of whether or not the country requires a new legislation on torture etc.

6. Shri Vinaysheel Oberoi stated that as regards the country's obligations under the Convention on the Rights of the Child (CRC), the country has taken a very progressive stance on key child rights issues in all international forums, including Treaty Bodies. However, the key challenge with respect to child rights is the implementation of laws and government policies, as is the case with other rights. Thus, it might be useful to bring greater focus and nuance to the proposed

- role of the Committee, which should not simply be limited to identifying legal gaps, but also gaps in implementation of domestic and international human rights standards as well as the existing policies and schemes of the Central and State governments.

7. Shri Yogesh Tyagi stated that this is an intellectual exercise never done before. He suggested that it is important to be clear about the objectives of this important initiative undertaken by the NHRC. He added that there must be a two-pronged approach to studying the gaps between India's international human rights commitments and domestic legislations. First, it will be important to analyse the text of the core human rights treaties vis-à-vis India's domestic laws, and secondly, to assess these conventions in the light of the General Comments and Concluding Observations made by Treaty Bodies in response to India's written submissions to these Bodies. It is through such a comprehensive study that the gaps can be identified, and subsequently, plugged. In addition, it will not be enough to simply look at the text of domestic laws, but to also make an in-depth study and assessment of the policies, schemes, programmes as well as the rules and procedures instituted to actualize domestic legislations. In the absence of such a holistic approach, one will at best, arrive at only a partial understanding of the issue under consideration. Hence, policy-oriented approaches should supplement the political approach.

8. Shri Tyagi further suggested that if the Commission thinks it appropriate, perhaps an effort could also be made to study the country's own case law and pertinent judicial interventions and judgments in matters concerning human rights, to understand how India's judicial pronouncements have set human rights standards which may be far more progressive and advanced than even the standards provided under international human rights treaties. He stated that the

'right to life' for instance, as provided for under the ICCPR, is very narrow in its scope. However, the judicial interpretation given by the High Courts and Supreme Court of India, have lent a broad and all-encompassing meaning to the 'right to life'. He also stated that right to peace should be read with right to life. In international law, they talk about right to life as also freedom from torture. He also spoke of the doctrine of margin of appreciation under which every country is given space to draw legislations as per local conditions. He also cautioned that India's international human rights obligations must not run contrary to India's foreign policy objectives and approach and vital national interests need to be taken into consideration.

9. Shri Sudhir Kumar stated that there are nine (09) core human rights treaties and eight (08) optional protocols, of which India has only ratified 06 treaties and 02 optional protocols. He suggested that in addition to studying the treaties to which India is a State Party, it would be equally important for the Commission to focus its attention on the conventions and optional protocols which India has not ratified. Further, an assessment of the reservations made by India to the conventions and optional protocols which it has ratified, reveals a clear pattern – which is an attempt on the part of the Indian State to protect its various agencies including the police, paramilitary forces, army etc.

10. Shri Kumar added that even the Indian Penal Code (IPC) and Code of Criminal Procedure (CrPC) do not match up to the human rights standards contained/set forth in the Indian Constitution, let alone match up to human rights standards contained in international conventions and optional protocols. Thus, he strongly urged the Commission to extend the study to also include the yawning gaps between the IPC, CrPC and Constitutional provisions as well as international human rights standards. He underscored the fact that making amends to the IPC

and CrPC to bring them in consonance with constitutional provisions as well as international human rights standards will be vital to ensure that human rights standards are applied more effectively and rigorously, at the domestic level. He said that it would be wrong to claim that our law contains everything.

11. Shri Kumar added that one would have to stretch one's credulity too far to believe that India's domestic laws are flawless and that they match up to international human rights standards. Thus, it makes the task of gap identification all the more important. However, this can only be the first step towards better implementation of international human rights standards domestically, and will accordingly, have to be followed up by various other actions.

12. Shri Yogesh Tyagi stated that while gap identification is important, it may be inadequate in and of itself. He suggested the adoption of a quality-oriented approach, whereby the research which has already been done on the subject, must be used and built upon to study and address the issue. He also suggested for the consideration of the Commission, the possibility of setting up specialised thematic sub-committees, such as, on child rights, disability, women, etc. to give their comments on the gaps between the relevant international convention and pertinent domestic legislations.

13. Smt Neeru Chadha stated that the Committee set up by the Commission must be perceptive and mindful of the government's concerns in not signing/ratifying certain international human rights treaties and optional protocols. She further added that while assessing gaps in domestic and international human rights standards is an essential task, it is also important to understand that most questions raised in treaty bodies relate more to the implementation of government programmes and policies relating to human rights rather than the ratification of international treaties per se.

14. Shri Narinder Singh stated that going forward, it would be useful to collect and collate information on Government of India's treaty body report submissions, and the general comments and observations of treaty bodies. It would also be important to collate the decisions of the Indian Courts, particularly the Supreme Court of India which has upheld the responsibility of the Indian State to respect even those international human rights standards to which India is not a State Party. He suggested that the Committee must not remain constrained by the black letter of the international treaties and domestic legislations alone.

15. Shri Vinaysheel Oberoi suggested that the Commission may consider having a 'guide' for each of the thematic international human rights conventions who will guide the preparation of a framework/outline of key issues, methodology etc vis-à-vis the respective convention. This will provide for constant guidance and review and thus, make the overall functioning of the Committee set up by the Commission, more effective. He added that the Committee must clearly identify the activities/tasks which need to be accomplished as well as the timeline for carrying out these tasks.

16. Shri Shyam Agarwal stated that during gap analysis it will be important to also take into account the social scenario in the country and existing social and cultural practices in society. He further suggested that the findings of the sub-committees, if these are set up, can then be placed before the Committee before the Commission takes a final decision on the issue.

17. Secretary General, NHRC re-iterated that the setting up of the *Committee on International Conventions and Treaties* is in fulfillment of the Commission's mandate under Section 12(f) of the PHR Act 1993 to 'study treaties and other international instruments on human rights and make recommendations for their effective implementation.' He added that the touchstone for the Commission in

this respect would be 'human rights' and not the government's concerns, foreign policy positioning etc. And it is this touchstone of 'human rights' which will determine the role, work and functioning of the Committee. He added that social and cultural customs and practices cannot be used as an excuse to overlook the gaps in extant domestic legislation and international human rights standards, since quite often it is these very practices and customs which engender human rights violations and other forms of discrimination.

18. Shri S C Sinha, Member, NHRC stated that the purpose of the setting up of the Committee is to achieve harmonization of domestic laws with India's international human rights obligations, and thus, it cannot be the case that the Committee merely reinforces the government's stand on various human rights issues. In fact, if in the process of assessing these gaps, the Commission is required to take a stand or say something that may be in conflict with the government's stand, the Commission will not shy away from stating its opinion. Member Shri S C Sinha added that it would be worthwhile the effort to collate the various Supreme Court judgments, so that important judicial pronouncements may also be incorporated into domestic legislation. This is yet another important task which can be assigned to the Committee.

19. JS (T&R), NHRC stated that India has made certain reservations to the core international human rights treaties to which it is a State Party. These reservations sometimes are based on the socio-economic conditions like in the case of CEDAW. He suggested therefore, that the Committee look into the question of the validity of these reservations.

20. Chairperson, NHRC thanked all participants for their valuable contributions and suggestions and added that the Commission would consider these to be taken up in the subsequent meetings of the Committee. He added that to begin



with, the Commission would take up two conventions of the O6 to which India is a State Party, get the law interns of the Commission to undertake a study on these and prepare papers for discussion within three months. These papers will then be circulated to all Members of the Committee for their consideration before the next meeting of the Committee, so as to have more focused deliberations. Chairperson further stated that the Commission would give due consideration to the suggestion for setting up thematic sub-committees to expedite the work of the Committee. He added that the next meeting of the Committee would be held within the next four (04) months and that the Committee Members will be intimated accordingly.

21. Secretary General, NHRC requested Shri Narinder Singh and Smt Neeru Chadha to send their respective comments on the CHRI note on '*Policy Analysis on Repatriation of Indian Nationals in Foreign Prisons*' concerning the extant legal framework as well as gaps concerning the repatriation of Indian Nationals in Foreign Prisons, which due to paucity of time could not be discussed during the Meeting. Secretary General thanked all Members of the Committee for their valuable contributions to the deliberations held during the first meeting of the Committee.

**Key recommendations emanating from the first Meeting of the Committee on International Conventions and Treaties, held on 24 May 2017**

1. Undertake a study of the reports submitted by India to Treaty Bodies as well as the general comments and concluding observations made by Treaty Bodies following these country submissions.
2. Bring greater focus and nuance to the proposed role of the Committee, which should not simply be limited to identifying legal gaps, but also gaps in

implementation of domestic and international human rights standards in existing policies and schemes of the Central and State governments.

3. Analyse the text of the core human rights treaties vis-à-vis India's domestic laws and assess these conventions in the light of the General Comments and Concluding Observations made by Treaty Bodies in response to India's written submissions to these Bodies.
4. Study the country's own case law and pertinent judicial interventions and judgments in matters concerning human rights, in the overall context of India's judicial system to understand how India's judicial pronouncements have set human rights standards which may be far more progressive and advanced than even the standards provided under international human rights treaties.
5. In addition to studying the treaties to which India is a State Party, it would be equally important for the Commission to focus its attention on the conventions and optional protocols which India has not ratified.
6. Study the gaps between the IPC, CrPC and Constitutional provisions as well as international human rights standards with a view to suggest to the Government to make amends to the IPC and CrPC to bring them in consonance with constitutional provisions as well as international human rights standards.
7. Explore the possibility of setting up specialised thematic sub-committees, such as, on child rights, disability, women, etc. to assist the Committee in its work. These sub-committees may give their comments on the gaps between the relevant international convention and pertinent domestic legislations.
8. Explore the possibility of having a 'guide' for each of the thematic international human rights conventions who may guide and oversee the

preparation of a framework/outline of key issues, methodology etc vis-à-vis the respective convention. This will provide for constant guidance and review and thus, make the overall functioning of the Committee set up by the Commission, more effective.

9. Validity of reservations based on socio-economic conditions made by Gol to the core international human rights treaties may also be looked into by the Committee.

10. Consult the civil society in this process where feasible.

**LIST OF PARTICIPANTS****NHRC, India**

1. Justice Shri H L Dattu, Chairperson [Chair]
2. Justice Shri D Murugesan, Member
3. Shri S C Sinha, Member
4. Smt Jyotika Kalra, Member
5. Dr Shri S N Mohanty, Secretary General
6. Shri Ashok Kumar Koul, Registrar (Law)
7. Shri J S Kochher, JS (T&R)
8. Dr Shri Ranjit Singh, JS (P&A)
9. Smt Chhaya Sharma, DIG
10. Shri B S Nagar, US (Coordination)
11. Ms Sonali Huria, Research Consultant
12. Law Interns

**Members of the Committee**

1. Shri Narinder Singh
2. Smt Neeru Chadha
3. Shri Shyam Agarwal
4. Shri Sudhir Kumar
5. Shri Vinaysheel Oberoi
6. Dr. Yogesh Tyagi