

## **Remarks by Bruce Porter for the Side Event on the Implementation of United Nations Treaty Body Recommendations. United Nations, NYC, October 26<sup>th</sup>.**

I thought it might be helpful to focus my remarks on particular challenges in the implementation of recommendations relating to ESC rights - not only from the CESCR but from other treaty bodies as well, particularly CEDAW, CRPD, CRC and CERD whose recommendations have increasingly addressed systemic/structural issues linked to poverty, homelessness, education, health and other ESC rights. And in this context, I want to emphasize the importance of engaging with national institutions capable of overseeing human rights compliance.

Recommendations in the area of ESC rights raise particular problems: i) they involve longer term progressive implementation rather than discrete changes that can be immediately implemented; ii) they involve multiple actors and levels of government to implement strategies; and iii) they involve complex policy issues that may be seen as beyond the competence of an international body.

A key challenge is first to engage effectively with treaty monitoring bodies to secure recommendations that are consistent with the core competence of treaty bodies and which are the most effective in terms of implementation at the domestic level. Unfortunately, the critical role of treaty bodies is often misunderstood in relation to ESC rights. It is sometimes imagined that the CESCR, for example, plays the role of policy experts advising governments on how to develop effective programs and policies to provide housing, education, health care, food security etc. When they are considered as such, governments and bureaucrats are likely to be skeptical about why the recommendations from a Committee in Geneva should be accorded any authoritative status to which they should be held accountable. But this completely misunderstands that treaty bodies provide. What they provide is a human rights framework that is usually lacking at the domestic level. It is the human rights framework that civil society and indigenous organizations seek from treaty bodies and it continues to be immensely important in our work.

Canadian NGOs were the first to insist that treaty body review should not be considered as some kind of two way dialogue between treaty body experts and government officials and instead include rights holders and focus on how to better protect and ensure human rights. We petitioned the Chair of the CESCR in 1993, Philip Alston, to consider what was then thought to be a "radical" idea that the CESCR should hear oral submissions not only from the Canadian governmental delegation but also from civil society. Philip, to his credit, succeeded in convincing the Committee and Canada to try out this new approach and of course it has now been instituted in some fashion by all treaty bodies and Canadian civil society continues to be absolutely committed to the periodic review process. Every Canadian review is full to overflowing with NGOs and Indigenous Peoples' representatives.

It is important to remember why we value this process. Low income participants in these processes feel that their rights claims are being heard for the first time in their lives and they see their government held to account for homelessness, hunger, and intolerable living conditions in

Indigenous communities in a way that is not seen at home. The key feature of effective recommendations is that they allow us to effectively bring that human rights framework in Geneva back home, to be implemented over time, through effective engagement with national institutions. So, for example, rather than asking the Committee to adopt a recommendation to raise social assistance levels to a particular amount, which it might not feel competent to determine, we would ask the Committee to refer to recommendations from the independent arms-length body, the National Welfare Council with respect to inadequate social assistance rates, emphasize the need for ongoing monitoring by an independent bod and raise concerns that courts are not playing an effective role in ensuring effective remedies for those denied an adequate income. We encourage Committees to engage more with the national human rights framework and how rights can be better monitored and enforced to address the key issues they identify rather than simply making policy recommendations to governments. We have encouraged Committees, for example, to make direct recommendations to courts about how they must ensure access to effective remedies for those who are homeless or living in poverty; to make recommendations to governments to cease making arguments in courts which deny any effective remedies; to emphasize that the mandate and capacity of human rights institutions and obudspersons or auditors should be enhanced so as to provide more effective monitoring of the implementation of both treaty rights and of Committee recommendations; to ensure that both the federal parliament and provincial legislatures allocate responsibility to committees to hold hearings into compliance with international human rights obligations and oversee implementation of recommendations.

Canada has the same challenges and opportunities of a federal system as have been referenced by other speakers from federal countries. This means that implementation processes must be established at all levels of government. I am a recent appointment to the Ontario Human Rights Commission. In Canada, where the greatest responsibility for implementing ESC rights lies with provinces, I believe that provincial human rights institutions must play a critical role in identifying recommendations that require provincial implementation and to monitor this. Not only the national level government but every province and municipality should have in place a mechanism through which its obligations with respect to the implementation of recommendations are identified and procedures for ongoing accountability and hearings from those affected are put in place. We have emphasized that this obligation should be included, for example, in housing and anti-poverty strategies adopted by all levels of government. And of course, a critical obligation in federal systems is the obligation to co-operate with other levels of government to implement joint strategies that clarify the obligations of all actors.

While treaty body recommendations are not directly enforceable in Canada by courts, there are ways to have these become more embedded in domestic law. For example, a key recommendation from a range of treaty bodies in Canada over the last decade, supported by a number of special rapporteurs in reports on missions to Canada, has been that Canada must put in place a process with stakeholders to design and implement a national housing strategy to address the human rights crisis of widespread homelessness in so affluent a country. The previous government of Canada refused to implement this recommendation, despite years of political advocacy and recommendations from human rights institutions, senate and parliamentary committees and independent experts that it do so. So we launched in the domestic courts a constitutional challenge in which homeless people argued that the government's failure

to implement this recommendation violated their rights to life, security of the person and equality under the Canadian Charter of Rights and Freedoms. In much of our strategic litigation in Canada we reference treaty body recommendations in order to clarify the positive obligations of governments under international human rights law, showing that the failure to implement them results in violation of domestic human rights law. This is a strategy that we are also applying internationally in strategic litigation in the area of ESC rights.

Effective follow-up by treaty bodies is critical, of course. It is imperative that there be enhanced accountability of states parties for the implementation of recommendations. Civil society can play a role in that, particularly by providing ongoing review and disseminating results through social media. There are limits to the capacity of treaty bodies in this respect, however. I would not want to premise recommendations on the assumption that the current inadequate resources provided to UN treaty bodies will not be addressed. Nevertheless, we do have to be realistic about the limited capacity of treaty bodies to engage in the longer term oversight that is required for the effective implementation of recommendations, particularly in the field of ESC rights. In that context, it is particularly important to recognize that it is the state party's obligation to put in place effective procedures for the effective implementation of treaty body recommendations. Treaty bodies need to rigorously monitor and promote state party accountability for that obligation, clarifying that states parties must ensure effective domestic implementation procedures, within a human rights framework, and ensure meaningful participation and engagement with rights holders. Ongoing monitoring by treaty bodies should focus on that key obligation. If governments meet their obligations to ensure effective accountability at the domestic level, civil society and indigenous peoples' organizations will have a space in which to claim rights that is too often lacking. What happens in Geneva remains of utmost importance to civil society and the struggle to bring that human rights framework home continues to be a key element in domestic human rights advocacy.