

Internship at the 80th Session of the Committee on the Elimination of Racial Discrimination and 19th session of the Human Rights Council

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I. Introduction

From 20th February 2012 to 23 March 2012, I worked as an intern at the International Movement Against All Forms of Discrimination and Racism's (IMADR) office in Geneva, Switzerland. From 20th February 2012 to 9 March 2012, I observed the 80th session of the Committee on the Elimination of Racial Discrimination (CERD), and from 27th February 2012 to 23 March 2012 I had the opportunity to observe the Human Rights Council (HRC). The parameters of my work as an intern were defined by the role that IMADR played as a representative of civil society in the different structures, objects and activities of the CERD and HRC. I will outline my work as an intern in the two bodies and my observations regarding the faced by the CERD and HRC. In addition, I will outline some topics that were of interest during the CERD and HRC sessions, and make some general observations about my experience.

II. Work undertaken as an intern at the CERD and HRC

I. IMADR and IMADR interns at the CERD

CERD is a body comprised of 18 independent experts. The primary focus of CERD's work in the sessions is the examination of periodic reports by these experts. CERD's examinations of State parties' reports are public, while meetings of Committees within the CERD, such as those of the Committee on Individual Communications, are generally closed. Thus any civil society wishing to participate in CERD's sessions, including IMADR, are constrained from the outset by this limitation on access to CERD's activities.

IMADR has developed a close working relationship with CERD in the last two and a half years since the IMADR Geneva office has been operational. IMADR's relationship with CERD has resulted in opportunities for IMADR, such as that of conducting the webcasting of CERD sessions. The main role that IMADR plays at the CERD is facilitating civil society's access to CERD. Other roles that IMADR can play within the CERD are facilitating long-term civil society access to CERD for NGOs, carrying out lobby work to promote IMADR's concerns at the CERD, and indirectly improving CERD's internal processes. IMADR carries out these roles by carrying out work

such as lobbying individual members, utilising CERD mechanisms (such as the early warning/urgent action procedure), webcasting, and providing on-the-ground assistance to civil society actors who come to Geneva to participate in CERD sessions.

IMADR's role in the context of CERD means that interns are required to assist with webcasting, taking notes on each meeting and producing reports on country examinations. As an intern for only one session of the CERD, I was required to assist with webcasting, and the taking notes of sessions for lobbying purposes.

2. IMADR and IMADR interns at the HRC

In contrast to IMADR's close relationship with the CERD, the inherently state-centric nature of the HRC means that the status of IMADR at the HRC is similar to that of any other small NGO. Larger and more well-established NGOs such as Human Rights Watch and Amnesty International wield greater influence within the HRC as a result of their reputation and connections to delegates. IMADR's potential to affect outcomes at the HRC is therefore limited in this regard. As a result, IMADR aims to address human rights situations and issues that larger NGOs may omit to cover in the HRC context. IMADR's role within the HRC consists in organising side events for awareness raising, lobbying delegations, and making oral interventions on its issues of concern in General Debates at the HRC. As an intern, I was required to assist with the organization of side events and general office duties. In addition, interns were required to attend meetings which had potential importance to the work of IMADR.

3. Gains of the internship

The activities I undertook as an intern of IMADR allowed me to gain a more holistic and consolidated understanding of the UN human rights system and how NGOs and civil society actors may use this system to press for justice. The opportunity to participate and observe in the CERD and HRC sessions allowed me to see the very fundamental differences in their operations, structure and goals. In particular, as a result of the circumstances in Syria, I had an opportunity to see how, and to what extent the HRC can respond to urgent human rights crises, and the political nature of reactions to these responses within the HRC system.

III. Problems and challenges observed in the CERD and HRC

1. CERD

The numerous challenges the CERD faces are linked to its mandate and envisaged role. The CERD is a body made up of 18 independent experts, who are nominated by states. The CERD's mandate is to oversee the interpretation of the Convention on the Elimination of Racial Discrimination. Follow up is perhaps the most serious of CERD's problems. The CERD's decisions, concluding observations and the products of its urgent action and early warning procedure are not binding. Therefore, as acknowledged by CERD members, one of the most serious challenges it faces is the implementation of its decisions, letters to governments, and concluding observations.

CERD's approach to tackling this problem is in the formative stages, but will certainly involve the cooperation of civil society.

It was also observed that the cooperation and participation of civil society in the CERD's activities is another area of concern. There is significant difference between the NGOs of countries that are able to effectively lobby and participate in the CERD sessions and those that are not. The difference in the level of effectiveness of NGO participation essentially followed North/South lines: NGOs of wealthy, liberal, first world countries seemed to utilise the CERD system more effectively, and moreover, the high number of NGOs participating (in particular, the Canadian NGOs) showed that they had the financial capacity to conduct lobbying in Geneva. These NGOs, through their oral interventions and submissions to the CERD demonstrated a good working knowledge, and certain level of comfort with CERD procedures and international human rights law. NGOs from third world countries, such as Vietnam and Laos, often participated in fewer numbers, with less clear oral interventions. The difference in the capacity of NGOs to utilise the CERD system effectively was particularly evident in the examinations of countries with more stringent country departure procedures, especially countries which had no NGOs participating in the CERD session.

The difference in NGO capacity to effectively participate in CERD procedures pointed to another set of problems: the gap between international and domestic legal systems, and the lack of experts who can act as conduits between the two. In this, academics are perhaps able to play a positive role.

Another problem that was observed was the varying levels of participation and independence of the Independent Experts making up the Committee. The political and non-transparent nature of appointments to the CERD is particularly problematic for the examination of state reports, with some members making little contribution, or making ineffectual contributions. The independence of experts may also become problematic in procedures such as the urgent action and early warning procedure, if a non-independent expert is on the relevant committee and hinders an application as a result of their state's interests.

Finally, perhaps the most complex problem of all is how to change the attitudes of states towards the issues that come under CERD's mandate. While most states that come to the CERD for periodic reporting do so in the spirit of good will and genuinely desire to learn how to implement their obligations under ICERD, others are not interested in compromise. This can be seen particularly with regard to minority issues that overlap with issues of the exploitation of resources or title to land. An example of this is the Canadian government's attitude at the CERD session regarding domestic Indigenous land and resource policies. This was demonstrated by evasive replies, or failure to reply to CERD members' questions during the examination of the state report. Such replies are often justified by appeal to the limited time allotted for the periodic

report. One of the biggest challenges for every treaty body, not only the CERD, is how to engage constructively with states in order to change these attitudes.

2. HRC

Problems with the HRC are primarily related to its nature as a state-centric body with an inherently political nature.

Perhaps the biggest primary challenge that the HRC will face is a struggle to maintain relevance and to respond adequately to situations which may amount to human rights violations. The HRC is often lauded by its participants as being able to respond expeditiously and meaningfully to urgent and not so urgent human rights violations, but political tensions within the HRC and the lack of visible effects on the ground contradict such self-congratulatory ideas. While the HRC may act for the consolidation of human rights (for example, by establishing trust funds and new special procedures), it is questionable whether the high number of resolutions that are declaratory in nature make a valuable contribution to that end. Part of this problem seems to stem from the state-centric structure of the HRC. The HRC is primarily a place for the negotiation of declarations, discussion and the creation of resolutions regarding human rights by states. The state-centric structure of the HRC and the conduct of its proceedings clearly indicate that while civil society actors are tolerated at the Council, the real actors and the real negotiations that make up the Council's day-to-day work are that undertaken by states and states only. This is reflected in the organisation and structure of the HRC's work. For example, in formal debates conducted in Room XX, states are given precedence for oral interventions in terms of time allocation and ordering. While NGOs may intervene more frequently, and without giving precedence to states in the informal negotiations away from Room XX, the greater NGO participation is dependent on the state (s) in charge of the informal negotiations and their attitude towards NGO participation. Some states are willing to hear the opinions of NGOs while others give the opinions of other states priority.

Another challenge that the HRC may face is the development of a bloc dynamic. The regional groupings of the Organization of Islamic Councils (OIC), the African States and the Non-Aligned Movement (NAM), which together have an automatic majority in the Council, are increasingly collaborating to put their stamp on the development and discussion of human rights standards within the HRC. An example of this phenomenon can be seen in the actions of the OIC, NAM and the African Group in their joint action of staging a walkout and giving similar and complementary reasoning for the rejection of a panel on LGBTI people's human rights violations. In this connection, the proposal by Senegal in one of the debates to arrange the order of oral interventions in general debates etc. so that the oral interventions of regional groupings are given before those of individual states is significant.

The HRC also faces the problem that the diplomats who carry out negotiations to create human

rights resolutions and documents are often not legal experts. The delegates' discussions in informal negotiations demonstrate the participants varying levels of knowledge on human rights and human rights documents. The main function of the HRC, that is, the promotion and protection of human rights knowledge, is profoundly influenced by the political interests of states and the level of knowledge that they have regarding human rights issues. Academics may participate in informal discussions or panel discussions convened in the HRC, but the level of participation of legal academics would seem to be inadequate given the highly technical nature of the work that is being undertaken by the delegations. A major challenge in the HRC would seem to be the lack of participation of legal academics and civil society. This might not be able to be overcome because of the inherently state-centric nature of the HRC.

3. Common challenges and problems in the CERD and HRC

Common challenges and problems in the CERD and HRC are follow up to recommendation, declarations and resolutions, the engagement of civil society, and the issue of bridging the gap between the international and domestic legal systems so that civil society can appropriately and effectively participate in the HRC and the CERD.

VI. Topics of note in the 80th CERD session and the 19th HRC session

1. CERD

Two interesting topics that arose during the CERD sessions related to the examination of the Canadian and Portuguese state reports.

i. Canada's state report

The most interesting aspect of the examination of Canada's periodic state report to the CERD was the heavy focus on indigenous issues, especially the attitude displayed by the Canadian delegation to these issues. This emphasis was a product of the intense lobbying undertaken in Geneva at the CERD session by a contingent of Canadian Indigenous rights NGOs. The Canadian NGOs lobbying was very successful, which was reflected in the fact that questions that NGOs raised in informal meetings were raised by CERD members in the formal state examination. The Canadian delegation showed an unyielding attitude with regard to indigenous policy. It evaded many pointed questions by using the excuse that no statistical information was ready to provide adequate answers,¹⁾ or allocating a greater amount of time to issues that were not given much focus by the CERD members (e.g. refugee and national security). In this way, it managed to evade thorny questions on indigenous issues, such as how section 35 of the Canadian Constitution, which guarantees the treaty rights of indigenous peoples, can be implemented in a way which incorporates the ideas of the affected indigenous peoples.²⁾ The root of these evasive tactics seemed to be an attitude of non-negotiation. This attitude highlighted the limitations of the UN human rights and treaty body systems. It is difficult to see how the CERD can make changes to the domestic policies of the country under examination when its government is from the beginning unwilling to deviate from its decided position.

In addition, it is arguable that Canada's periodic examination also showed that treaty body examinations can be politicised. At one stage during its examination, the Canadian government made a political statement regarding the recent influx of refugee claims made by Hungarian Roma people. The government stated that it was concerned that Hungarian Romas were encouraged to travel to Canada by news media, which informed them of various benefits available to them in Canada.³⁾ Such actions by governments again highlight the limitations of the treaty body system.

ii. Portugal's state report

The state examination of Portugal was notable for the cooperative and open attitude displayed by the delegation, and the delegation's clear explanation of the rationale underlying Portugal's multicultural policy.

The Portuguese examination could be taken as an example of how the treaty body system was envisaged as operating; the Portuguese delegation displayed a cooperative attitude in the formal examinations.

In addition, Portugal's attitude towards minority issues was interesting in itself. Portugal denies that it has minorities as a result of its colonial history, instead emphasising that everyone is Portuguese. This is a break from the multicultural policies of Canada and other European countries, which emphasise the different ethnic backgrounds of various groups, and maintain divisions between recognised ethnic groups. Portuguese multicultural policy, therefore, emphasises integration.⁴⁾ Whether or not this will be a successful position remains to be seen.

2. HRC

It is difficult to reduce any one session of the HRC to just a few issues, given its multi-faceted nature, the sheer number of actors at each session and the fact that many of the issues examined at one session build on the work of previous sessions and are often linked to work to be undertaken at future sessions. However, it is possible to identify the human rights situation in Syria and the LGBTI panel as issues of note at the 19th session of the HRC.

i. Urgent debate on the Human Rights Situation in the Syrian Arab Republic

The urgent debate on the human rights situation in Syria convened in the 19th HRC was notable because it highlighted the limitations and potential of the HRC. The urgent debate was convened in the first two days of the 19th session. It was opposed by traditionally anti-Western states such as Cuba, China and Russia, among others, as being against the principles of non-selectivity, impartiality and non-politicisation. On the other hand, most European countries and countries of the North took the position that the human rights violations committed by the Assad regime must not go unnoticed, and that those carrying out such acts should not benefit from impunity. It was clear that neither side of the debate would change their positions, giving rise to questions about the utility of the HRC's actions if its participants remain in a permanent state of philosophical

deadlock on topical issues. Syria's refusal to participate in the debates raised an even more fundamental question about the HRC's utility and role. It is difficult to see how the HRC's actions will maintain legitimacy and relevance if the state in question does not accept them.

ii. Panel Discussion on LGBTI Discrimination

The Panel Discussion was notable for two reasons. Firstly, it was the first event held in the HRC on the subject of LGBTI issues. Secondly, it was significant because the beginnings of a bloc dynamic were displayed in the general debate. This could be seen in the fact that the NAM, OIC, and African regional groups made similar and complementary statements. In this connection, it is significant that the representative of the African group requested in a separate debate that regional groupings be given priority for oral interventions in debates. The notion that a bloc dynamic within the HRC should be prevented as far as possible was taken up by NGOs in an informal discussion with the President of the HRC. It will remain to be seen whether or not the proposal will be taken up.

VII. Concluding observations

Academic or textbook accounts of the HRC and CERD are limited and do not reflect the multi-layered, dynamic and political nature of their actual operations. The HRC, in particular, seems almost to be a quasi-legislative body within the UN human rights system. As such it suffers from the same flaws; namely that the legislators (or in this case, the creators of soft law) are not necessarily legal experts, and that the players' decisions and actions are informed by political and economic interests. Thus, perhaps the greatest challenge for legal experts is to change the attitudes of these soft law makers, or perhaps even how to participate more actively in the UN system.

In terms of the participation of civil society in a system built by and for states, it is clear that there are many players in the UN system, such as the President of the HRC and CERD members, who try to engage civil society through a variety of means. One such method may be the use of video calls in the HRC general debates so as to engage NGOs on the ground. A point of interest in the future is how the CERD and HRC will maintain, or even step up, the participation of civil society in the future. This is particularly pertinent because bodies such as the HRC and CERD do not have the power to enforce human rights law. In particular, the HRC, which is a focus of much lobbying by NGOs, has little power to ensure expeditious compliance with human rights standards by states, particularly because states often want to maintain friendly diplomatic relations. This will inevitably affect the expectations that NGOs have for the potential of the HRC to address their concerns. The HRC and also the CERD risk losing their relevance if civil society is not engaged with effectively and meaningfully.

1) Committee on the Elimination of Racial Discrimination, *Summary Record of the 2142nd meeting*, CERD/C/SR.2142 (2 March 2012) paras 22, 23. More detailed notes of the meeting are on file with the author.

- 2) For example, CERD members Mr. Vázquez (*Summary Record of the 2141st meeting*, CERD/C/SR. 2141 (5 March 2012) para 25), Mr. Amir (*Summary Record of the 2141st meeting*, CERD/C/SR. 2141 (5 March 2012) para 14), Mr. Diaconu (*Summary Record of the 2141st meeting*, CERD/C/SR. 2141 (5 March 2012) para 15) and Mr. Thornberry (*Summary Record of the 2141st meeting*, CERD/C/SR. 2141 (5 March 2012) para 18) taking up proposals raised by NGOs in informal meetings that CERD ask the Canadian delegation, asked the delegation how Canada is implementing the section 35 Constitution rights, and in this connection, about the establishment of mechanisms for the resolution of land disputes between Aboriginal nations and the Canadian government is a possibility. While the Canadian government responded in part to this issue, explaining the land claims settlement tribunal system, it did not respond to the most fundamental part of the question, namely, where the legal basis for the Canadian governments claim to indigenous lands lies.
- 3) Committee on the Elimination of Racial Discrimination, *Summary Record of the 2142nd meeting*, CERD/C/SR. 2142 (2 March 2012) paras 69–71.
- 4) Committee on the Elimination of Racial Discrimination, *Compterenduanalytique de la 2137 séance*, CERD/C/SR. 2137 (29 February 2012), paras 2–4, 17–18.