CHAPTER III
REPORTING SYSTEM

The Reporting System of the Committee, provided under the Covenant, constitutes a vital and important part of the implementation machinery. However, the idea of the reporting system is not a new for the implementation of human rights. In fact, before the formulation of the Covenant and creation of the Human Rights Committee there have been precedents of reporting procedure emanating from multilateral treaties in the field of human rights. 1 But the Reporting System provided in the Covenant is many ways different from other reporting systems envisaged before. What is Reporting System of the Committee? To what extent it differs from other reporting systems? To what extent it has been effective? What are the limitations experienced by the States Parties in submitting their reports? What are the Constitutional and functional dynamics of the Reporting System? These points alongwith other related matters have been discussed in this chapter. Article 40 of the Covenant states that the States Parties undertake to submit reports on the measures which they have adopted to give effect to the rights recognized in the Covenant and the progress...

1See Article 9 of the International Convention on the Elimination of all forms of Racial Discrimination, Article 7 of the UNESCO Convention Against Discrimination in Education.
It should be noted here that the related provision was also included under Article 49 of the draft Covenant. But when the Third Committee considered it an amendment was submitted by India and the likeminded countries, known as Nine Powers amendment, calling for the deletion of Article 49. However, in place of it a new Article 39 bis was adopted on the suggestion of Nine Powers which became Article 40 of the existing Covenant.

To appreciate the implication of this provision it would appropriate to discuss the contenting views which were expressed at the time of formulation of the draft Covenant by the members of the Commission and different delegations when the Third Committee took up consideration of related provisions in 1966.

Those who favoured the inclusion of the Reporting System argued that reporting would constitute a useful exchange of information among States Parties, that such provision would make governments more conscious of their obligations and would help to develop a constructive approach to the promotion of respect and observance of

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2 The Nine Powers were India, Iran, Libya, Nigeria, Pakistan, Senegal, Sudan, United Arab Republic and Upper Volta. See U.N. Doc. A/6546, (1966), para 548.

3 Ibid., para 372.
human rights enunciated in the Covenant. ⁴

Furthermore, the information supplied would also be valuable to the Human Rights Committee in case of disputes and it would keep the Committee informed of the "available domestic remedies" referred to in the Inter-State Communication System and Individual Petition System. ⁵ On the other hand those who were against the inclusion of the Reporting System argued that the procedure was against the United Nations Charter in particular to "Article 2, paragraph 7" and constituted a violation of the principle of national sovereignty and it was held that it would lead to tensions between states.⁶

Apart from this it was further argued that the rights enumerated in the Covenant on Civil and Political Rights were intended to be applied immediately. Therefore,

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⁴ However, doubts were expressed on the question that whether the Committee would be able to utilize the information made available through reporting procedure, see U.N. Doc. A/2929 (1955), pp.289-90.

⁵ Ibid.

there was no evident purpose in including a Reporting System and to do so would inevitably detract from immediacy of these obligations. 7

Speaking on these objections the Indian representative expressed his views that if the Committee was not even assigned the primary function of receiving and reviewing reports it would become superfluous body. 8

Finally, the Reporting System was accepted and found its expression in Article 40 of the Covenant. 9

It is to be noted here that in 1966 when the Reporting System was adopted most of the states including those who opposed the Reporting System in the early years of the United Nations accepted the Reporting System because they considered it better than any judicial proceeding and arrangement.

**Functioning of the Reporting System:**

The Reporting System functions through three stages viz. submission of reports by States Parties, examination of reports by the Committee and interaction

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8 See the statement of Indian Representative, GAOR, 21st session, Third Committee Summary Records, 1426th mtg., 17 Nov. 1966, para 39.

between the members of the Committee and the representative of the reporting State, and final comments of the Committee on the report.

**Submission of Reports:**

In accordance with the Covenant provisions a State by becoming party to the Covenant is ipso-facto subject to the Reporting System and is obliged to submit reports to the Committee. But several questions arise here i.e. what should be the nature of the contents of these reports? When should these reports be submitted and what measures can be taken by the Committee in case States Parties fail to submit their report.

**Contents of the Report:**

In accordance with the Rule 66 of the provisional Rules of Procedure of the Committee the reports from the States Parties should state -

(i) The measures adopted by the States Parties to give effect to the rights enumerated in the Covenant;

(ii) the progress made in the enjoyment of these rights; and

(iii) factors and difficulties, if any, affecting the implementation of the Covenant.
(i) **Measures Adopted:** Under the Article 40, para 1, of the Covenant States Parties to the Covenant are obliged to submit reports on the measures they have adopted to give effect to the rights recognized in the Covenant. Now the question comes that what are these measures which States-Parties may take to give effect to these rights. The preparatory work and discussions during the consideration of the draft Covenant by the Third Committee threw the light on this point.

Article 49, paragraph 1, of the draft Covenant provided that States-Parties are required to submit reports on the legislative or other measures including judicial remedies which the States-Parties have adopted and which give effect to the rights recognized in the Covenant. Accordingly the term 'Measures' included legislative as well as judicial measures. However, when this provision came up for discussion in the Third Committee, the nine-Afro-Asian nations asked for a new provision to the effect.

"The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized. This proposal
was not acceptable to many representatives. For instance, the U.S. representative was feared that the word "measures" as proposed in the nine-power amendment might be interpreted to mean only legislative measures. Therefore, the U.S. delegation submitted an amendment seeking the replacement of the nine powers text:

The States Parties to this Covenant undertake to submit reports on the legislative, judicial or other action taken which gives effect to the rights recognized herein.\(11\)

Introducing the amendment, the U.S. delegate observed that its purpose was to remove any ambiguity connected with the word "measures". It was argued that the terms of the Covenant should encourage reporting of all actions taken to ensure the enjoyment of the rights set-forth; it should indicate very precisely the nature of the reports to be submitted, so as to ensure that they would be of maximum usefulness.\(12\) It was claimed that the U.S. amendment would give the Human Rights Committee more clearly defined powers, than did the nine powers amendment.

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\(10\) GAOR, 21st session, Third Committee Summary Records, 1427th mtg., 18 Nov. 1966, para 26.


\(12\) GAOR, 21st session, Third Committee Summary Records, 1426th meeting, 17 Nov. 1966, para 18.
and would enable that Committee to perform its functions more efficiently.\textsuperscript{13}

Referring to the U.S. amendment, the Indian delegate stated that the question of the type of action—legislative, judicial or other taken to give effect to the rights recognized in the Covenant had been thoroughly considered by the Afro-Asians sponsors and they had concluded that it was preferable not to specify the contents of the reports.\textsuperscript{14} He claimed that the proposed Afro-Asian version would leave more scope for the transmission of reports than the more "specific" system suggested in the U.S. amendment.\textsuperscript{15}

Some other speakers, too, considered the formula proposed by the United States needlessly restrictive and expressed their favour to the nine-power amendment, which spoke of "measures" without qualification and covered almost all aspects. Furthermore, it would give States

\textsuperscript{13}Ibid, 1427th mtg., para 18, Belgium, Canada, Italy, Madagascar, Uruguay, the United Kingdom and like-minded countries were also held the similar views. Ibid, 18 Nov. 1966, para 9, 21, 28 and 32 etc.

\textsuperscript{14}GAOR, 21st session, Third Committee Summary Records, 1426th mtg., 17 Nov. 1966, para 38.

\textsuperscript{15}Ibid.
Parties greater freedom to report on the entire range of steps taken to ensure compliance with the Covenant.

Legislative and judicial measures, while of vital importance, were not the only measures possible. Moreover, the formula in the nine powers amendment had already been approved in connection with the draft Covenant on Economic, Social and Cultural Rights.\(^{16}\) Hence, the representative of Iran requested the U.S. representative to withdraw the amendment.\(^ {17}\)

In reply to the above, the U.S. representative said that she would do so if she were sure that the Afro-Asian sponsors intended the word "measures" to cover legislative, judicial or other actions.\(^ {18}\) Responding to this offer the representative of Upper Volta, the co-sponsor of the nine-power amendment said that the word "measures" did have broad connotations and it comprised all spheres of activity.\(^ {19}\)


\(^{17}\) GAOR, 21st session, Third Committee Summary Records, 1425th mtg., 17 Nov. 1966, para 44.

\(^{18}\) ibid, 1427th mtg., 18 Nov. 1966, para 39.

\(^{19}\) ibid, para 40.
On the basis of this understanding, the U.S. delegation withdrew its amendment and the revised version of the nine-power amendment was adopted unanimously. Thus, under the existing provision States Parties detail in their reports various measures including legal reforms undertaken by them.

II. The Progress Made:

It is important for the Committee to have reports on the "Measures" adopted by the States Parties, but it is equally important to have information on the actual progress made consequently in the enjoyment of the rights and freedoms. Hence, Article 40, paragraph 1, of the Covenant requires reports "on the progress made in the enjoyment of those rights" which are enshrined in the Covenant.

The use of the word "progress" gave rise to some discontentment in the preparatory stages. It was feared that the submission of reports on the "progress" made seemed to imply that civil and political rights would be implemented on a progressive basis, or in the worst case, the States Parties would be allowed unlimited time to implement these rights.\(^\text{20}\) It was said that to allow time

\(^{20}\)Ibid, 1426th mtg., 17 Nov. 1966, para 32.
after ratification for necessary measures to be taken would make it difficult even to determine when the obligations under the Covenant had been fully accepted and consequently whether the Covenant had been violated.\textsuperscript{21}

Another view expressed was that before ratification, the constitutional procedures necessary to bring domestic law into harmony with the Covenant must be set in motion. Therefore, it was felt that even the present wordings of the provision left doubt as regards the immediate undertaking of the obligations. It was also argued that since the Covenant would include provisions relating to a much wider range of subject matter than did the average treaty it was impossible to apply to it normally as strict rule as would apply to the implementation of a treaty.\textsuperscript{22}

Conclusively, the protagonists of the view, that supported ratifications and complete implementation argued that it was desirable to make provisions for reporting on the "progress" made.\textsuperscript{23}

Ultimately, the use of the word "progress" was accepted. As a result, in the draft Covenant as well as in the Afro-Asian version, the States Parties were obliged


\textsuperscript{22} Ibid.

\textsuperscript{23} Ibid.
to report on the progress made in giving effect to the rights recognised herein". In the light of the discussion, the sponsors, in an oral intervention changed this to the text which is now in Article 40, i.e. "Progress made in the enjoyment of those rights". While the former phrase could be understood to mean that the government action in "giving effect" to might be undertaken progressively, the final text restricts the "progressiveness" to the "enjoyment", i.e., to the results of the government action without implying that the governmental action be taken progressively. 24

III. Factors and Difficulties:

The reports of States Parties need not be an exclusive collection of positive developments in the enjoyment of human rights. In fact, it is a right as well as duty of the States Parties to "indicate the factors and difficulties, if any, affecting the implementation" of the Covenant on Civil and Political Rights. 25 The Committee is expected to appreciate fair and frank reports. It is expected to give serious consideration


25 See Article 40, para 2, of the Covenant.
to the problems of implementing human rights that the
State Party concerned faced.

Thus, the above discussion clarifies that the
reports of the States Parties must be a collection of
various facts, figures, measures, progress and problems.
Needless to say, their presentation into a single report
is not a simple job. Moreover, each State Party adopts
a different format of its report for emphasizing particular
aspects of its work. Inevitably, therefore, it would lead
to a lack of uniformity. To overcome such a situation
the Human Rights Committee at its second session adopted
guidelines concerning the form and content of reports
from States Parties.26

In formulating general guidelines regarding the
content and form of the reports from States Parties27
the Committee expressed its conviction that compliance
with those guidelines would help to ensure that reports

26 See the Rule 66(3) of the Provisional Rules of
Procedure.

27 At that time, it was expressed that the term
"guidelines" was not appropriate for a document of such
nature and term "suggestions" should be used here. On
the other hand, it was argued that the term guidelines
was used in similar circumstances in the context of the
Committee on the Elimination of Racial Discrimination and
was quite appropriate. Finally, the Committee decided
that the document should be named as "General guidelines".
were presented in a uniform manner and would enable the Committee and States Parties to have a clear picture of the situation in each state regarding the implementation of the rights recognised by the Covenant. This will also diminish the necessity for the Committee to request additional information under its rules of procedure.

Under the guidelines, the report should be in two parts, viz. general and informative. Part I should describe "the general legal framework within which Civil and Political Rights are protected", in the reporting stage. Particularly, it should state:

(a) Whether any of the rights referred to in the Covenant are protected either in the Constitution or by a separate "Bill of Rights" and if so, what provisions are made in the Constitution or in the Bill of Rights for derogation and under what circumstances;

(b) Whether the provisions of the Covenant can be invoked before and directly enforced by the Courts, other tribunals or administrative authorities, or whether they have to be transformed into internal laws or administrative regulations to be enforced by the authorities concerned;
(c) What remedies are available to an individual who claims that any of his/her rights have been violated; and

(d) what other measures have been taken to ensure the implementation of the Covenant.\(^{28}\)

Part second of the report should give information in relation to each of the Articles in part I, II and III of the Covenant. This part should elaborate in relation to the provision of each article:

(i) The legislative, administrative and other measures in force in regard to each right;

(ii) Any restriction or limitation, even of a temporary nature, imposed by law or practice or any other manner on the enjoyment of the rights;

(iii) Any other factors or difficulties affecting the enjoyment of the rights of persons within the jurisdiction of the State; and

(iv) Any other information on the progress made in the enjoyment of the rights stipulated in the Covenant.\(^{29}\)

Lateran at its eleventh session, the Committee decided that it should develop some more guidelines in the


\(^{29}\)Ibid, p.70.
light of its experience gained during the consideration of the initial reports because it was thought that the contents of the subsequent reports should concentrate on the progress made in the meantime, changes made on laws and practice involving the Covenant, difficulties in the implementation of the Covenant, the completion of the initial reports taking into account the questions raised in the Committee; additional information as to questions not answered or not fully answered; information taking into account general comments that the Committee may have made in the meantime; action taken as a result of the experience gained in co-operation with the Committee.  

It should be noted here that these guidelines are not binding on States Parties. They have only the force of a recommendation and were drawn up in order to make it easier for the Committee to discharge its functions. However, most of the States Parties since then have more or less followed this recommendation and thereby considerably facilitated the work of the Committee. Naturally therefore, at its eleventh session, the Committee considered that the guidelines which it adopted at its second

session for the preparation of initial reports, which have been followed by the majority of reporting States, have proved useful - both to those States as well as to the Committee. Nevertheless, it was said that the Committee would in due course review them to see whether they could be improved.31

When the Reports should be submitted:

About the periodicity of the reports, Article 40, paragraph (a) and (b) states that the States Parties shall submit their reports - "within one year of the entry into force of the present covenant and thereafter whenever the Committee so requests".

It is clear from the text of the Covenant that States Parties are obliged to submit their initial reports to the Committee within a period of one year from the date of the entry into force of the Covenant.

At the drafting stage it was feared that the one year period between entry into force and submission of reports would develop a confusion that the obligations under the Covenant on Civil and Political Rights called only for progressive implementation. This concept of progressivism was seen to be implied in the whole reporting

31 Ibid.
procedure. However, in the debates of the Third Committee it became clear that implementation of the Covenant on Civil and Political Rights was possible only progressively. The urgency of obligation imposed upon States Parties under Article 2, paragraph 1, of the Covenant is not affected by the submission of reports under Article 40.

In addition to the submission of initial reports within one year, of the entry into force of the Covenant for the States Party concerned, the Covenant requires submission of subsequent reports too. But it is not clear when these subsequent reports ought to be submitted. In other words, what would be the interval between the initial and subsequent reports? The Covenant states that after the initial report the State Party shall submit reports "whenever the Committee so requests". Thus, it has been left to the discretion of the Committee to decide the timings of subsequent reports. The Committee at its first session, adopted two draft rules regarding periodicity of reports to be submitted by States Parties, according to which the Committee is authorized to "determine the dates by which subsequent reports shall be submitted".

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32 Under the Anti-Racism Convention, States Parties are obliged to submit their subsequent reports every two years and whenever the Committee so requests. See Article 9, para 1 of the Convention.

33 Article 40, para 1(b)

34 Rule 66, para 2, of the provisional Rules of Procedure.
At the eleventh session of the Committee it was stated that to continue the dialogue with States Parties, the Committee deems it desirable to establish a three or four year periodicity for subsequent reports under Article 40, paragraph 1(b) of the Covenant. Because of the actual work load the Committee will decide in principle to request a second periodic report to be submitted by any State Party within four years of the date when its initial report was examined by the Committee. As far as the States Parties whose additional information or supplementary reports have already been considered by the Committee are concerned these reports may be considered to be their second reports.35

Actions, if States Parties fail to submit Reports:

The Reporting System of the Committee begins with a basic presumption that States Parties will submit their reports within the stipulated period. However, there have been numerous instances when States Parties failed to comply with this obligation. In order to meet such contingencies, which seem to be normal practice now, the Committee has evolved certain tools and techniques. When

a State Party fails to submit its report, the Committee takes the following steps:

(a) **Reminders:** In cases of such States Parties who fail to submit their reports or additional information in time the Committee may transmit to the State Party concerned through the Secretary General a reminder concerning the submission of the same. (36)

At its ninth session, therefore, the Committee decided **inter alia** to send reminders to all the countries which should have already submitted their reports. 37

(b) **Aid Memoirs:** When a State Party does not submit its report even after the reminders the Committee may dispatch an aid Memoire. The aid memoire states the reporting obligations of the Governments under Article 40 of the Covenant, the reminders that had already been sent, the fact that the matter would be reexamined at the next session of the Committee and finally indicates that unless replies were received before next session, the Committee would find it difficult to avoid mentioning in its next annual report to the General Assembly, the failure of the Governments concerned to comply with their treaty obligations. (38)

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36 See, Rule 69, para of provisional rules of procedure.

37 The reminders were sent to Jamica, Rawanda, Uruguay, Guyana, Panama, Zaire, Dominican Republic, Guinea, Portugal and Austria. See Report of the Human Rights Commission (1980), para 35.

Using this tool the Committee decided that an aide-memoire would be prepared and handed over by its Chairman to the permanent representatives at New York of the States Parties whose reports were due in 1977.

Since then the Committee sends several reminders and aide-memoire to such States Parties at its each session.

In addition to this the Chairman of the Committee sometimes makes personal contacts with the permanent missions in New York and persuades them to submit reports or additional information as the case may be.39

**Mentioning of the Names in Annual Reports:**

In case if a State Party whom the reminder has been sent, still does not submit its due report, the provisional Rules of Procedure provides that the Committee shall mention the names of such States in its annual reports to the General Assembly.40 The purpose to mention the names of such states in the annual reports of the Committee is to remind them once again of their obligation under Article

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40 *Rule 69*, para 2 of the provisional Rule of Procedure.
of the Covenant and of the Committee's request for their initial reports to be submitted without delay.

However, when the Committee makes use of this sanction it takes into account the practical difficulties of the States Parties concerned. If the Committee considers that there were some genuine reasons for the non-compliance of the reporting obligation of a State Party, it does not exercise its "black-listing" power.  

It goes without saying that the least effect of this sanction is the exposure of State Party to the international Community. No country would like to be named a defaulter on human rights. Naturally, therefore, States Parties submit their reports sooner or later.

In the process of the submission of reports, the U.N. Secretary General gets a certain discretionary power to transmit to the specialised agencies concerned, copies of such parts of report, as may fall within their field of competence, whereas the Committee has the authority or obligation to begin consideration of these reports.

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41 At its 10th session the Committee decided not to mention Lebanon's name in its black list. The Committee took into account the explanation of the Government of Lebanon regarding the special difficulties that prevented Lebanon from submitting its report.

42 See, Article 43, para 3, of the Covenant.
Second Stage: Consideration of Reports:

Consideration of reports of the States Parties is a principal function of the Committee. However, before discussing the procedure of consideration of reports it may be well to understand the meaning of the word "consideration".

During the debates of the Third Committee, the representative of Canada expressed the opinion that the term "consideration" and "study" were rather vague. He suggested instead that the Committee should be authorised to examine, analyse, appraise and evaluate the reports and it should do so in a searching and critical manner. This view has also been reaffirmed in the latest practice of the Committee. Thus, the authority as well as the obligation of the Committee to consider and study reports is sufficiently all-embracing. In order to fulfil this obligation effectively, the Committee has laid down a systematic

43 It should be noted here that in the draft Covenant the Inter-State complaint system was the principal element among the proposed measures of implementation. But when Third Committee considered the draft in 1966 it made the Inter-State complaint system optional. Consequently the Reporting System became the principal part of the implementation machinery.

44 GAOR, 21st session, Third Committee Summary Records, 1426th mtg., 17 Nov. 1966, para 22.

45 ibid.
procedure. This procedure begins with the introduction of reports by Government representatives and ends with comments thereto by the members of the Committee. It proceeds as follows:

(1) **Introduction of Reports:** After receiving the reports, the Committee through the Secretary-General notifies States Parties as early as possible of the opening date, duration and place of the session at which their respective reports will be examined. Accordingly, the State Party concerned may send its representative to introduce the report before the Committee. Though there is no obligation for any State to send a representative, all States Parties so far have taken advantage of this opportunity and sent, in most cases, high ranking officials. In fact, no report has been examined unless the presence of the representatives of the States concerned was possible. In practice this has proved to be useful procedure. It follows the States Parties to amplify and clarify the reports and to correct deficiencies or omissions in the reports submitted.

(2) **Questions, Clarifications and Comments:** After the introduction of the report, the representative listens to the questions and comments of Committee members. It is

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46 See, Rule 68 of the provisional Rules of Procedure.
interesting to note that the Covenant does not expressly authorize the Committee to do so. Nevertheless, the members of the Committee ask questions/clarifications and seek additional information regarding the means and machinery available for implementation of human rights in the States Parties concerned. More importantly, they often ask a variety of questions - both specific and general. Specific questions and clarifications usually have a direct bearing on the domestic situation of the country concerned. Sometimes, members seek information on the kind of offences in respect of which capital punishment may be imposed; or the statistical information on the numbers of people who had applied for passport to travel abroad and the number of cases when passports had been refused. They do not hesitate to ask questions regarding the existence of political prisoners and political parties. However, the general questions usually asked are of the following nature:

Whether the Covenant by reason of its ratification had become part of the domestic law so that a citizen could invoke it in the courts?

What was the place of international treaties in the hierarchy of legal norms applicable in the State Party?
What is the procedure regarding the control of constitutionality of laws?

What is the procedure for amending the human rights provisions contained in different international instruments to which the concerned state is a party?

How and under what circumstances a public emergency could be invoked and what are exceptional measures which could be taken accordingly?

What kind of institutions and procedures are established to ensure the effective observance of human rights, including remedies available to individuals in case of violation of human rights?

What Articles of the Covenant had not been reflected in the constitution and ordinary legislation of the country concerned?

Could relevant provisions of the Covenant be invoked in the Courts of the country and in dealings with administrative authorities and did they prevail over any legislation or administrative acts or inconsistent with them?

More detailed information concerning organization, competence and procedure of the administrative and judicial courts.
Information on measures in the economic and social fields which have affected Civil and Political Rights?

Clarification may be sought whether the law recognised the right of everyone, even a person who is not a victim or representative of the victim, to complain before the courts in violation of human rights.

After raising the questions, the state representative is given the choice of either replying to them at the very session in which the report of his State was examined or of doing so by way of a supplementary report at a later date or both. 47

The questions posed are generally replied by the representative of the government concerned with regard to unanswered questions he usually assures the Committee that they would be included in the additional information.

The system of question–answer adopted by the Committee has differed depending on whether an initial or a supplementary report was being considered. In the case of initial reports members of the Committee put their questions one after another with time being given to the

47 Ibid.
representative of State concerned before he replies to the question.\(^ {48}\) In the case of supplementary reports, on the other hand, the practice has been for members to ask questions on a topic by topic basis, giving the representative of the State concerned the possibility to answer immediately all the questions relating to a particular topic.\(^ {49}\) The Committee, however, has been flexible in its procedures.

Hence, it is clear that this method requires considerable effort and skill on the part of States' representatives, as they were often called upon to provide answers at short notice not only over the whole range of issues covered by the Covenant but also on large areas of intricate legislation, administrative practices and perhaps in a lesser measure facts of economic and social life in the context of which the Covenant is designed to operate.\(^ {50}\)

A number of members of the Committee have suggested that in order to adopt a more systematic approach and to save valuable time, either an analytical document could be prepared by the Secretariat which would indicate,

\(^ {48}\) See Report of the Committee 1979, para 18.

\(^ {49}\) Ibid.

\(^ {50}\) Ibid, para 19.
without any value judgment, all the questions that had been asked for which answers had been provided, and those questions for which information still remained to be provided; so that Committee could meet, before the resumption of the examination of the reports of States Parties concerned in order to identify the issues or matters in relation to which further information was necessary, or else a working group could be appointed for the purpose. 51 Thus, at the eleventh session, it was decided that "the Committee will request the Secretariat to establish after each examination of a State report an analysis of the study of its report. This analysis should set out systematically both to the questions asked and the response given with precise references to the domestic legal sources quoting the main ones. 52

Prior to the meeting, with representatives of the reporting states, at which the Second Report will be considered, a working group of three members of the Committee will meet to review the information so far

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received by the Committee in order to identify these matters which it would seem most helpful to discuss with the representatives of the reporting state. This will be without prejudice to any member of the Committee raising any other matter which appears to him to be important.53

Third Stage: Study and General Comments:

The Covenant provides that the Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the ECOSOC these comments along with the copies of the reports it has received from States Parties to the present Covenant.54

In addition to this provision, the Committee incorporated rule 70(3) within its provisional Rules of Procedure. The prescribed procedure under this rule is

53 Ibid.

54 See Article 40, para 4, of International Covenant on Civil and Political Rights.
as follows:

If on the basis of its examination of the reports and information supplied by a State Party the Committee determines that some of the obligations of that State Party under the Covenant have not been discharged, it may, in accordance with Article 40(4) of the Covenant make such general comments it may consider appropriate.

Thus, reading together Article 40(4) of the Covenant and Rule 70(3) of the provisional Rules of Procedure, the functions of the Committee could also be divided into three specific parts:

(i) Study of reports of the States Parties;
(ii) Submission of reports by the Committee as a result of the Study of reports; and
(iii) the adoption by the Committee of "general" comments and transmission of these comments to states parties and to the ECOSOC.

The last function is optional, whereas the first two are obligatory. Naturally, therefore, the Committee felt that since a sufficient number of reports of States Parties had now been initially examined the time had come to fulfil these functions. Opinions differed as to what the result, should be and as to how the Committee should produce its own reports as a result of a study by the Committee of reports of States Parties; whether it should make general comments, and if so, in what form and in respect of what matters the comments should be made and
Lastly whether reports and comments should be made to States Parties individually or to all the States Parties as a whole.\(^{55}\)

In this regard the two main trends of opinion evolved during the discussion.

Firstly, most of the members of the Committee advocated a liberal approach to the effect that the functions of the Committee under the reporting procedure ought to be viewed in the context of the very objects of the Covenant as a whole. Since the objects of the Covenant were to promote and ensure the observance of the Civil and Political Rights recognised therein,\(^{56}\) States Parties are obliged to submit reports and the Committee has a duty to study these reports, and since there must inevitably be some purpose to that study the Committee should make appropriate general comments towards the attainment of that end.\(^{57}\)

Furthermore, the study of reports should aim at ascertaining whether the State Party had reported as it should and whether it should and whether it had


\(^{56}\) Ibid, para 375.

\(^{57}\) Ibid.
implemented or was implementing the Covenant as it had undertaking to do. The study should thus, lead to the adoption of separate report by the Committee on each State Party's report. The exercise should, however, be conducted in such a way as not to turn the reporting procedure into contentious or inquisitory proceedings, but rather to provide valuable assistance to the State Party concerned in the better implementation of the provisions of the Covenant. It is to be noted that the reports to be adopted by the Committee as a result of its study of each individual State report should not be seen as identical with the annual report which the Committee is required to submit to the UN General Assembly and which relates to all the activities of the Committee, although they might be appended to annual report. These reports on States reports should be flexible enough, where consensus could not be reached, to allow for shades of opinion of members to be expressed. These reports should be transmitted separately to each individual State Party concerned.

58 Ibid, para 378
59 Ibid.
60 Ibid.
As regards the general comments, these should be adopted on the basis of an overall study of reports of States Parties which might highlight matters of common interest to the States Parties for example, possible amendments to the Covenant the general aspects of the reporting obligation of States Parties, the length and content of reports, the nature of additional material, problems of implementation in federal systems, the status of the Covenant in the national law of States Parties the nature and scope of the rights set forth in the Covenant and methods of implementation. 61

On the other hand, the second opinion gives a restrictive interpretation to the word "study" and "general comments". It holds that the study which the Committee is required to make is limited to the exchange of information, the promotion of co-operation among States, with the purpose of maintaining a steady dialogue and assisting States in overcoming difficulties. It is forcefully submitted that the study does not have in it any element of assessment or evaluation. An interpretation or practice to the effect would go far beyond the wording

61 Ibid, para 379.
of the Covenant.\textsuperscript{62} It cannot be justified by referring to rule 70(3) of the provisional Rules of Procedure since these rules cannot confer upon the Committee a mandate which it did not enjoy under the Covenant.

Furthermore, the reports which the Committee is required to transmit under Article 40(4) must be in fact the annual reports "otherwise the Covenant would have specified the contents of the reports and the Parties for which they were intended, as it does in Articles 41 and 42 relating to the inter-state communication procedure.\textsuperscript{63} As regards the general comments the supporters of this opinion are very critical. In their view the "general comments" should not be in the nature of recommendations or suggestions, but merely intended to be of a general character and of common interest to all states parties. Such general comments may include suggestions for studies to be undertaken on particular human rights topics deduced from the content of the reports of States Parties. Yet those general comments can be addressed only to all the States Parties collectively.\textsuperscript{64}

\textsuperscript{62} Ibid, para 380.
\textsuperscript{63} Ibid.
\textsuperscript{64} Ibid, para 380 and 381.
It was also argued that the reporting procedure is designed to assist States Parties in promotion of human rights and not in pronouncing on whether the States Parties are or are not implementing that undertakings under the Covenant.

After considering the arguments of both sides it became clear that there was a convergence of opinion on the need for the Committee (at the very least) to make general comments. However, there is no unanimity on the thrust of these general comments. Therefore, in order to solve this tangle, the Chairman of the Committee appointed a working group to try to find out a middle ground between these two opinions. It was asked to consider the formulation of such general comments as are likely to gather the widest support from the Committee as a whole; and to examine in the light of all the views expressed, what further work, if any, the Committee should undertake to give effect to its duties under Article 40 of the Covenant.

The working group met from 13 to 17 October 1980. On its recommendations the Committee adopted at its eleventh session, by consensus, a paper. According

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to this paper, in formulating general comments the Committee should be guided by the following principles:

(i) they should be addressed to the States Parties, in conformity with Article 40, paragraph 4, of the Covenant;

(ii) they should promote co-operation between States Parties in the implementation of the Covenant;

(iii) they should summarize experience the Committee has gained in considering states reports;

(iv) they should draw the attention of States Parties to matters relating to the improvement of the reporting procedure and the implementation of the Covenant; and

(v) they should stimulate activities of States Parties and international organizations in the promotion and protection of human rights.66

The general comments could be related inter-alia to the following subjects:

(i) the implementation of the obligation to submit reports under Article 40 of the Covenant;

66 Ibid., p.2.
(ii) the implementation of the obligation to guarantee the rights set forth in the Covenant;

(iii) questions related to the application and the content of individual articles of the Covenant; and

(iv) suggestions concerning co-operation between States Parties in applying and developing the provision of the Covenant. 67

Transmission of Comments to States Parties:

As noted earlier in accordance with Article 40 paragraph 4 of the Covenant the Committee "shall transmit reports, and such general comments as it may consider appropriate to the States Parties. 68 Paragraph 5 of Article 4 states that the States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this Article.


68 For this purpose the Committee formulated Rule 71(1) of the provisional Rules of Procedure which provides that the Committee shall through the Secretary-General, Communicate the States Parties for their observations the general comments it has made on the basis of its examination of the reports and informations furnished by States Parties.
Now the question arises, is a State Party bound to submit its observations to the Committee on the comments made by the latter? Here the provisions of the Covenant and the provisional Rules of Procedure do not seem to be in harmony. Under the Covenant a State Party "may submit (its) observations "on the other hand, under the Rules of Procedure "the Committee may, where necessary indicate a time limit for the receipt of observations 69 from a State Party. Thus, the Covenant leaves a State Party free to either submit or not to submit its observations, whereas under the Rules of Procedure the same Party could be asked to submit its observations within a stipulated "time limit". There has been no experience so far on this question to guide one and only future will spelt out the practical implications.

Transmission of Comments to the ECOSOC:

In accordance with Paragraph 4 of Article 40 of the Covenant the Committee may also submit to the ECOSOC these comments along with the copies of the reports it has received from states parties to the present

69 Rule 71(1) of the Provisional Rules of Procedure.
At the outset, it should be made clear that it is discretionary for the Committee to transmit comments to the ECOSOC. However, in case of transmission of these comments to the ECOSOC the question arises: What action can or should the ECOSOC take thereupon? The Covenant as well as the draft Covenant are silent in this regard. However, in the Third Committee meetings when the matter was discussed, the Pakistani representative stated that once the Human Rights Committee had transmitted the reports with its comments, it would be up to the council (ECOSOC) to take whatever action might be necessary and to consult whatever subsidiary organ it might wish. There was, therefore, no need for a specific provision to that effect.

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70 Ibid 71(2)

It provides that the Committee may also transmit to ECOSOC its comments referred to on the States reports; together with copies of the reports it has received from the States Parties to the Covenant and the observations if admitted by them.

71 GAOR, 21st Session, Third Committee Summary Records, 1426th mtg., 17 Nov. 1966, para 15.
Covenant does not confer any additional power on the ECOSOC. It stands to reason that in regard to the report and comments of the Human Rights Committee under Article 40(4), the Council can take any action which it is authorized to take under the Charter no more no less.

Thus, after having considered the Reporting System its mechanism and related aspect, the question comes that to what extent the Reporting System has been effective? In this regard we can say that perhaps with the help of the Reporting System the Committee has atleast been successful in establishing a constructive dialogue with the States Parties and in assisting States Parties in their efforts to promote and ensure the enjoyment of human rights enumerated in the Covenant.