

# **REPORT**

## **The UN Human Rights Treaty System: Universality at the Crossroads**

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## **Executive Summary**

The human rights treaties are at the core of the international system for the promotion and protection of human rights. Every UN member state is a party to one or more of the six major human rights treaties. 80% of states have ratified four or more. It is a universal human rights legal system which applies to virtually every child, woman or man in the world - over six billion people. Yet human rights violations are rampant. The need is to make the human rights treaties effective in the lives of everyday people. The problem is that the implementation scheme accompanying the core human rights standards was drafted during a period of history when effective international monitoring was neither intended nor achievable.

Participation in the treaty system has expanded enormously in terms of ratifications, acceptance of individual communication procedures, the numbers of reports produced and considered, the individual cases decided, as well as the meeting time of six different treaty bodies. This participation and the assumption of legal obligations by states has been voluntary. The treaty rights generate corresponding legal duties upon state actors, to protect against, prevent, and remedy human rights violations. The treaty system definitively establishes the limitations on sovereignty, the validity of international supervision and accountability. The treaty standards are the benchmark for assessment and concern. Furthermore, at the national level a multitude of domestic legal and political systems have been positively affected by the treaties.

Nevertheless, the gap between universal right and remedy has become inescapable and inexcusable, threatening the integrity of the international human rights legal regime. There are overwhelming numbers of overdue reports, untenable backlogs, minimal individual complaints from vast numbers of potential victims, and widespread refusal of states to provide remedies when violations of individual rights are found.

The post of UN High Commissioner for Human Rights was constituted decades after most of the human rights treaties were adopted. Treaty body after treaty body was created, without a relationship to a High Commissioner, and without a relationship to each other. The result has been a burgeoning reporting burden, duplication of procedures, little effort to synchronize substantive outcomes, and rudimentary follow-up processes and responsibilities. In the meantime, treaty body members have struggled to preserve their independent expert status in a highly politicized UN environment, which has populated their numbers with many government surrogates and grossly underfinanced their work.

The reforms envisaged in this Report have assumed that improvements not requiring formal amendment will be more easily accomplished. Hence, the recommendations generally assume a six treaty body regime, and focus primarily on offering concrete suggestions for improvements in working methods of the treaty bodies and procedures at the Office of the High Commissioner for Human Rights (OHCHR). The proposals for bolstering national level partnerships are also made in the context of the current conditions of overlap and a multiplicity of treaty bodies. Follow-up

is the key missing component of the implementation regime, and therefore recommendations in this context are developed at some length. While one major reform requiring amendment is ultimately recommended, most of the specific recommendations concerning working methods and OHCHR processes remain relevant to a reorganized treaty regime.

Ultimately, the human rights treaty system will remain inefficient and inadequate in the absence of consolidation of the treaty bodies. Some limited amendment is, therefore, unavoidable. The treaty bodies cannot handle in a timely manner the number of reports which the system now requires or produces, even if there was a general amnesty - which in practice is now the case. The average consideration by each treaty body of a state for six or seven hours once every five years has not maximized constructive interaction. Six different working methods, documents, practices, rules of procedure, and reporting guidelines do not serve users. There is substantive overlap of treaty rights and freedoms, and inevitable overlap of reporting and dialogue. Examination of a single state in light of all human rights information, encourages a coherent understanding of problems and needs. It means the concrete application of the “universal, indivisible, interdependent and interrelated” nature of rights. It integrates programmatic advice from the international level and matches the crosscutting character of human rights for operational agencies or organs at the national level. Consolidation would conform to the overall goal of modern UN reform which seeks to adopt a global approach to the needs of each country.

At the same time, consolidation is not a panacea. To work, it must be accompanied by a commitment on the part of states to accept the equally fundamental need for independent and expert membership on the monitoring bodies, coupled with the provision of adequate resources.

Examples of principal recommendations:

#### *Treaty bodies*

- Committee meetings should involve engagement with states parties, both in writing and orally, at multiple stages in the reporting process: an initial dialogue on a report, follow-up to requests for additional information, the failure to report, follow-up to inadequate responses to Views on communications.
- States parties should be requested to submit one consolidated report applicable to all treaties which they have ratified.
- The consolidated report should be organized on a thematic, rather than treaty by treaty, basis.
- The treaty bodies should adopt a more proactive approach to engaging in information exchange and encouraging programming initiatives with UN agencies/organs.
- Concluding observations should be far more cognizant of programmatic requirements.

#### *OHCHR*

- OHCHR should make incoming data on country situations available to the treaty bodies to a far greater extent. This entails the early creation of an adequate central database organized by state, requirements for the internal posting of information on the system, clear lines of responsibility for desk officers in relation to the work of the treaty bodies, and greater assistance in the preparation of country analyses. A system which avoids different OHCHR staff repeatedly familiarizing themselves with the same human rights conditions in a single state should be instituted.
- OHCHR should introduce a “management of follow-up” process in-house. A follow-up analysis of concluding observations should be conducted. Key needs and programmes drawn from the concluding observations and Views should be identified. OHCHR should adopt a proactive role in utilizing its field mission and technical cooperation capacity to directly support the substantive outcomes of the treaty bodies. The “management of follow-up” process should include the identification and implementation of a specific set of expectations for the High Commissioner.
- A standard model national human rights action plan which incorporates a national implementation strategy for human rights treaties should be developed and promoted.
- OHCHR should review all proposed CCA and UNDAF documents to ensure that human rights, the treaty standards and the results of treaty body reviews, are integrated into UN programming.
- A coherent, principled and transparent set of guidelines should be developed to channel or stream communications to treaty bodies and/or special procedures. Streaming guidelines should place a clear priority on the implementation of the treaties’ legal obligations and their concomitant procedures and remedies.
- CEDAW should be moved to OHCHR in Geneva, and the petitions and inquiry functions under the CEDAW Optional Protocol should be integrated into the OHCHR Petitions Team.
- OHCHR should assume a leadership role in encouraging broader reforms and organize consultations or an informal task force of interested states parties concerning the issue of consolidation of the treaty bodies.
- OHCHR should produce an annual report on compliance with treaty standards on a state-by-state basis for all state participants in the treaty system. It should include a compilation of the reporting record, current reservations, summary of recommendations in concluding observations and findings of violations of individual cases or inquiries.

### *NGOs*

- A central database of NGO partners at the international and national level should be created.
- NGOs should be encouraged and assisted to develop an integrated approach to implementing human rights treaties, aimed both at maximizing national input at the international level, and using international standards at the national level in policy and legal advocacy.
- Further steps to inform national level partners and to engage them with the treaty system's processes and outcomes need to be taken by both OHCHR and the treaty bodies. This includes an improved media strategy, greater efforts to contact directly NGOs at the national level, more transparent procedures and the publication of user-friendly manuals on a number of treaty body functions.
- An NGO-treaty body liaison officer should be appointed to assist and facilitate various aspects of the NGO-treaty body relationship.

### *UN Agencies, Bodies and Programmes*

- Wherever OHCHR has a field presence or office, they should be invited to be a member of the UN Country Team. All Country Teams should have a human rights thematic group. In addition, human rights should be a crosscutting theme which is integrated into the work of all thematic groups.
- All CCA should include an assessment of the status of the implementation of human rights treaties ratified by the country concerned. Both the design and application of all UNDAF should use human rights treaty standards and concluding observations in the identification of development priorities, and in the design of development programmes by country teams and individual agencies/organs.
- UNDP should significantly deepen the extent and form of its cooperation with the treaty bodies. UNDP should apply the human rights guidelines of the Resident Coordinator system and specifically organize analyses of treaty implementation pre- and post-reporting.

### *States parties*

- States parties should ensure that adequate funding is provided for the enhanced professionalization of the operations of the treaty bodies and OHCHR's supporting functions. Funding from the regular UN budget should be emphasized.
- Individuals who are employed by their governments in any way, or unprepared to terminate such employment upon their election, should not be nominated or elected for treaty body membership.
- States parties should develop and institute a national implementation strategy for human rights treaties. This should involve a step-by-step programme of action which recognizes the limited and secondary nature of reporting, and assumes primary responsibility for a national-level cycle of engagement: promotion of education concerning the standards, review of existing laws and practices, planning of amendments or future initiatives including incorporation of the treaties into domestic law, monitoring the implementation of those plans, reporting to the treaty bodies, and follow-up to treaty body conclusions.
- The Commission on Human Rights should establish an open-ended working group to elaborate a draft omnibus, procedural, optional protocol to all six human rights treaties (and the Convention on Migrant Workers). The purpose of the protocol would be to establish two consolidated treaty bodies, one for considering state reports and one for examining communications and inter-State complaints, and conducting inquiries.

*For a complete list of recommendations see Section III.*

## Abbreviations

ACC	Administrative Committee on Coordination (of the United Nations)
APB	Activities and Programmes Branch (of OHCHR)
CAT	Convention Against Torture Committee Against Torture
CCA	Common Country Assessment
CCPOQ	Consultative Committee on Programme and Operational Questions (of the United Nations)
CCPR	Covenant on Civil and Political Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women Committee on the Elimination of All Forms of Discrimination Against Women
CEEPS	Common Early Entry Point System
CERD	Convention on the Elimination of All Forms of Racial Discrimination Committee on the Elimination of All Forms of Racial Discrimination
CESCR	Covenant on Economic, Social and Cultural Rights Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child Committee on the Rights of the Child
DAW	Division for the Advancement of Women (of the United Nations)
ECOSOC	Economic and Social Council (of the United Nations)
GA	General Assembly
GDP	Gross Domestic Product
GNP	Gross National Product
HRC	Human Rights Committee
HURICANE	Human Rights Computerized Analysis Environment
HURIST	Human Rights Strengthening
ILC	International Law Commission
ILO	International Labour Organization
IWRAW	International Women's Rights Action Watch
LAC	Latin American and Caribbean (regional group within the United Nations)
MOU	Memorandum of Understanding
NGO	Non-governmental organization
OHCHR	Office of the UN High Commissioner for Human Rights
SSB	Support Services Branch (of OHCHR)
UNDAF	United Nations Development Assistance Framework
UNDG	United Nations Development Group
UNDP	United Nations Development Programme
UNFPA	United Nations Fund for Population Activities
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
WEOG	Western European and Others Group (regional group in the United Nations)
WHO	World Health Organization

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## **I. Background**

This Report is the product of a study of the United Nations human rights treaty system commenced in 1999 and conducted in collaboration with the Office of the High Commissioner for Human Rights (OHCHR), with the support of the Ford Foundation. The contents and recommendations of the Report are the sole responsibility of its author. The purpose of the Report is to present recommendations for the enhancement of the operations of the human rights treaty system.

During the course of the study, submissions were solicited from a wide range of interested parties<sup>1</sup>: ECOSOC-accredited non-governmental organizations (NGOs) with human rights interests; permanent missions of states in New York and Geneva; UN agencies and other bodies and programmes; chairpersons of treaty bodies; the OHCHR treaty body secretariat; national institutions; parliamentary human rights bodies; OHCHR field presences; special rapporteurs; International Law Association members; Academic Council on the UN System; academic experts. A list of responses received is attached.<sup>2</sup> Interviews were subsequently conducted with individual treaty body members, representatives of states parties, UN secretariat officials, UN agency/organ representatives, NGO representatives, special rapporteurs, field mission representatives, and representatives of national institutions.

Meetings were conducted with five of six treaty bodies. In the case of the Committee on the Elimination of Discrimination Against Women (CEDAW), meetings were held with individual members including the Chair. Other meetings included participation in the Meeting of Chairpersons of the Treaty Bodies, an NGO consultation during the Commission on Human Rights, and a consultation conducted with individual experts from a wide range of parties: former treaty body members, the UN secretariat, participants in regional human rights bodies, special rapporteurs, UN agencies/organs, working groups, and the Sub-Commission on the Promotion and Protection of Human Rights. Solicitation of information was also done at the annual meetings of National Institutions and of Field Presences.

In addition, a national impact study was designed to evaluate the effect of the human rights treaties at the national level. Twenty national reports were prepared<sup>3</sup> on the basis of a questionnaire<sup>4</sup> and local interviews. Twenty countries were studied in depth, four from each of the five geographical regions: Australia, Brazil, Canada, Colombia, Czech Republic, Egypt, Estonia, Finland, India, Iran, Jamaica, Japan, Mexico, Philippines, Senegal, South Africa, Spain, Romania, Russia, Zambia. The national reports, along with an overview of results, will be published by Professors Christof Heyns and Franz Viljoen through Kluwer Law International.

The contributions of a number of important studies and in-depth examinations of the human rights treaty system over the past decade were the subject of particular attention: Reports of the Independent Expert on Enhancing the Long-term Effectiveness of the United Nations Human Rights Treaty System in 1989, 1993 and 1997<sup>5</sup>, comments invited by the Commission on Human Rights on the 1997 Final Report of the Independent Expert<sup>6</sup>, submissions to the Vienna World Conference on Human Rights<sup>7</sup>, and a Report of the International Law Association's Committee on International Human Rights Law and Practice<sup>8</sup>. In addition, the twelve Reports issued by the Meetings of Chairpersons of the Human Rights Treaty Bodies have considered many of the major issues over a sixteen-year period.<sup>9</sup>

## **II. Report**

### **1. Introduction**

The 2001 Annual Appeal of the Office of the High Commissioner for Human Rights declares: “The human rights treaties are at the core of the international system for the promotion and protection of human rights.” (*Box 1*) Every UN member state is a party to one or more of the six major human rights treaties. 80% of states have ratified four or more of these treaties. It is a universal human rights legal system which applies to virtually every child, woman or man in the world - more than six billion people. Yet human rights violations are rampant. There is still slavery, and torture, and subjugation of women around the globe. The challenge is, as one submission to the study pressed: How does the trafficked woman, traumatized and disoriented in a country whose language is unknown, seek redress? The need is to make the human rights treaties effective in the lives of everyday people.<sup>10</sup>

*Box 1*

#### **The Standards**

The human rights treaty system encompasses six major treaties:

- the Convention on the Elimination of all forms of Racial Discrimination (in force 4 January 1969)
- the International Covenant on Civil and Political Rights (CCPR) (in force 23 March 1976)
- the International Covenant on Economic, Social and Cultural Rights (in force 23 March 1976)
- the Convention on the Elimination of Discrimination Against Women (in force 3 September 1981)
- the Convention Against Torture (in force 26 June 1987)
- the Convention on the Rights of the Child (in force 2 September 1990).

The problem, however, is that the implementation scheme (*Box 2*) accompanying the core human rights standards was drafted during a period of time when effective international monitoring was neither intended nor achievable.

*Box 2*

#### **The Treaty Bodies**

The six treaties are associated with six treaty bodies which have the task of monitoring the implementation of treaty obligations. Five of the six treaty bodies meet primarily in Geneva, and are serviced by the OHCHR. These are:

1. the Committee on the Elimination of Racial Discrimination (CERD)
2. the Human Rights Committee (HRC)
3. the Committee on Economic, Social and Cultural Rights (CESCR)
4. the Committee Against Torture (CAT)
5. the Committee on the Rights of the Child (CRC).

One treaty body meets in New York and is serviced by the UN Division for the Advancement of Women:

6. the Committee on the Elimination of Discrimination Against Women (CEDAW).

The treaty bodies are composed of members who are elected by each group of states parties (or through ECOSOC in the case of CESCR).

The post of UN High Commissioner for Human Rights was constituted decades after most of the human rights treaties were adopted. Over a 35-year period, treaty body after treaty body was created, without a relationship to a High Commissioner and without a relationship to each other. The Chairpersons of these bodies began to meet, but as independent experts they have had little incentive or desire to introduce common strategies for reducing general duplication, harmonizing their procedures, or ensuring consistency among their substantive outcomes. They also have had little real opportunity to reduce the burgeoning overall reporting burden. The treaty bodies also struggled to preserve their independent expert status in a highly politicized UN environment, which kept a tight rein on their power and authority - populating their numbers with many government surrogates, and grossly underfinancing their work. (*Box 3*)

*Box 3*

### The Functions of the Treaty Bodies

Meeting periodically throughout the year, the treaty bodies fulfill their monitoring function through one or more of three different methods.

**First**, all states parties are required by the treaties to produce **state reports** on the compliance of domestic standards and practices with treaty rights. These reports are reviewed at various intervals by the treaty bodies, normally in the presence of state representatives. Concluding observations, commenting on the adequacy of state compliance with treaty obligations, are issued by the treaty bodies following the review.

**Second**, in the case of four treaties **individuals may complain** of violations of their rights under the treaty (the Civil and Political Covenant, the Racial Discrimination Convention, the Convention Against Torture, and the Women's Discrimination Convention). These complaints are considered by the treaty body which expresses a view as to the presence or absence of a violation.

**Third**, in the case of CAT and CEDAW, their work includes another procedure. This is an **inquiry procedure** which provides for missions to states parties in the context of concerns about systematic or grave violations of treaty rights.

In addition, the treaty bodies contribute to the development and understanding of international human rights standards through the process of writing **General Comments or Recommendations**. These are commentaries on the nature of obligations associated with particular treaty rights and freedoms.

At the same time, the extent of participation in the UN human rights treaty system expanded enormously. (Box 4)

<i>Box 4</i>					
<b><u>The Growth</u></b>					
	<b>1980</b>	<b>1985</b>	<b>1990</b>	<b>1995</b>	<b>2000</b>
the cumulative number of ratifications	243	366	533	840	926
total number of weeks the treaty bodies meet annually (including pre-sessional weeks)	17	20	25.6	45.6	52
the cumulative number of reports considered	372	620	905	1244	1721
the total number of reports considered annually	46	49	75	74	108
the number of individual complaint procedures in force	1	2	3	3	4
the cumulative number of states ratifying individual complaint procedures	31	47	89	144	186
the cumulative number of General Comments /Recommendations	5	21	46	71	95

Statistical Analysis of the Human Rights Treaty System, Annex (1), Graphs 9,

Over the last decade ratifications in the treaty system have risen by 75%.<sup>11</sup> Acceptance of communication procedures has risen by 92%.<sup>12</sup> The number of state reports received has risen by 84%, and the number considered has risen 78%.<sup>13</sup> The number of final views adopted on individual communications by the Human Rights Committee alone has risen 215%. The meeting time of the treaty bodies has tripled in the last two decades and doubled in the last decade.<sup>14</sup> What began as an assertion of a few, is now a global proclamation of entitlements of the victims of human rights abuse.

Furthermore, this participation by states has been voluntary. The obligations of the human rights treaties have been freely assumed. It is the legal character of these rights which places them at the core of the international system of human rights protection. For these rights generate corresponding legal duties upon state actors, to protect against, prevent, and remedy human rights violations.

**Box 5**

**The Goals**

The primary aims of the treaty system are to:

- encourage a culture of human rights
- focus the human rights system on standards and obligations
- engage all states in the treaty system
- interpret the treaties through reporting and communications
- identify benchmarks through general comments and recommendations
- provide an accurate, pragmatic, quality end product in the form of concluding observations for each state
- provide a remedial forum for individual complaints
- encourage a serious national process of review and reform through partnerships at the national level
- operationalize standards
- mainstream human rights in the UN system and mobilize the UN community to assist with implementation and the dissemination of the message of rights and obligations

The treaty system definitively establishes the legitimacy of international interest in the protection of human rights. It is undisputed that sovereignty is limited with respect to human rights. International supervision is valid and states are accountable to international authorities for domestic acts affecting human rights. The treaty standards are the benchmark for assessment and concern. (*Box 5*)

Significantly, the international system has had implications at the national level. A multitude of domestic legal systems have been affected by the treaties. The treaties form the basis of a significant number of the world's bills of rights. There are also

numerous instances of legal reform prompted by the treaties. NGOs and national human rights institutions have invoked the treaty standards in relation to proposed government legislation and policies. Legislative committees have used treaty standards as reference points. The treaties have sometimes been incorporated into national law, had direct application through constitutional provisions to national law, and been used to interpret domestic law through judicial intervention.

In theory, the subsidiary nature of international implementation to national mechanisms should permit a reduction of the burdens at the international level. In our time, however, this programme remains unachieved. Firstly, there remain lingering lacunae in participation. (*Box 6*)

Secondly, participation is neither synonymous with adherence to the procedures or substance of the treaty, nor with uniformity in substantive obligations. The key problem areas in the effective implementation of the human rights treaties are considerable:

- lack of access to the treaty procedures
- ignorance of the treaty provisions and processes
- failure to create national vehicles for implementation
- failure to produce state reports
- failure to remove impermissible reservations
- substantive inadequacy of state reports
- failure by the treaty bodies to consider reports submitted in a timely manner
- lack of access to reliable, comprehensive information by the treaty bodies
- inadequate concluding observations
- failure to follow-up concluding observations and views on communications
- failure to encourage individual complaints
- failure to professionalize the complaint process
- lack of resources for the treaty bodies and their secretariat
- duplication and lack of coordination among treaty bodies
- lack of coordination and streaming of individual cases within OHCHR
- lack of information-sharing or exchange on country situations between the treaty bodies and elements of OHCHR as well as other UN actors
- lack of expertise and independence of treaty body members
- wide discrepancy in the actual degree of engagement by states in the treaty system and a negative backlash from those actively involved.

*Box 6*

**Non-participation**

- The percentage of UN member states which have not ratified each of the human rights treaties is: **1%** in the case of CRC, **13%** for CEDAW, **19%** for CERD, **23%** for CCPR, **25%** for CESC, **35%** for CAT,
- The percentage of states which have ratified one of the human rights treaties without ratifying the complaint procedures associated with them: **33%** in the case of the CCPR (Optional Protocol), **66%** for CAT (individual, Art. 22), **79%** for CERD (Art. 14), **92%** for CEDAW (Optional Protocol).
- The Asian regional group has fewer ratifications for every human rights treaty, except the Convention on the Rights of the Child, than any other regional group. **44%** of its members have ratified CAT, **48%** CCPR, **50%** CESC, **69%** CEDAW, and **71%** CERD. It also has the least rate of participation in the individual complaint procedures than any other regional group. **2%** of its members have ratified the individual complaint procedure associated with CAT Article 22, **4%** CERD Article 14, **4%** the CEDAW Optional Protocol, **19%** the CCPR Optional Protocol.

Statistical Analysis of the Human Rights Treaty System, Annex (1), Graphs 117, 137, 138.

The shortfalls in the original implementation scheme, and the resulting gap between universal right and remedy are arresting:

- an average of 70% of states parties to every treaty have overdue reports<sup>15</sup>
- 25% have initial overdue reports<sup>16</sup>
- there are twelve hundred reports overdue, but only sixteen hundred have ever been considered over 30 years of treaty body history<sup>17</sup>
- four of six treaty bodies have two-year backlogs of submitted reports awaiting consideration<sup>18</sup>
- about 100 states permit individual complaints of violations of a broad range of rights from discrimination on any ground, to freedom of religion, association, expression, fair trial, but 30% of those states have never been the subject of a single complaint, and only 60 complaints are registered annually from a potential 1.4 billion people<sup>19</sup>
- there are facilities to submit human rights complaints to the United Nations, practically-speaking, in only three or four languages
- in only 20% of individual cases disclosing a violation, have states parties been prepared to provide a remedy.<sup>20</sup>

If rights are not followed by remedies, and standards have little to do with reality, then the rule of law is at risk. The extent of the shortfalls in the implementation of the treaties now threatens the integrity of the international legal regime. Ratification for a very large number of participants in the treaty system has become an end in itself. The large numbers of ratifications reflect the widely-held view by states parties that there are not serious consequences associated with ratification. The price of joining has generally been appearing relatively infrequently, before a small number of individuals, in comparatively remote sites in Geneva and New York, for a brief period of time taken up by frequent monologues by state representatives or committee members. Many states parties ratified precisely because the international scheme was evidently dysfunctional and the lack of democratic institutions at home made the likelihood of national consequences comfortably remote.

At the national level, the quality of the outcomes of the international monitoring bodies has been insufficient to induce substantial human rights programming by national partners. The resources available to the Office of the High Commissioner for Human Rights have been insufficient to undertake by itself the follow-up to ratification of human rights treaties. On the other hand, many of the UN agencies/organs with resources, are only slowly accepting responsibility for follow-up and remain reluctant to become involved in the sensitive world of monitoring and implementation.

This Report formulates recommendations for reform on the basis of a number of methodological and other assumptions:

- Responsibility for shortfalls in implementation lies with a multiplicity of parties, and recommendations concerning the improved implementation of the human rights treaties must properly be directed to a number of actors, not least of which are the human rights violators themselves. Specific targets have therefore been identified.

- Reform at the international level may proceed in phases, and improvements which can be made without formal amendment to the treaties, are more easily accomplished.
- The recommendations generally assume a six treaty body regime, and focus primarily on offering concrete suggestions for improvements in working methods of the treaty bodies and procedures at OHCHR. The proposals for bolstering national level partnerships are also made in the context of the current conditions of overlap and a multiplicity of treaty bodies. Follow-up is a key missing component of the implementation regime, and therefore recommendations in this context are developed at some length.
- Detailed recommendations are made in light of existing working methods. The Report presumes some familiarity with those working methods, which are therefore summarized in Annex (2).
- Current operations have been assessed as objectively as possible, and hence, where possible the actual performance has been expressed in statistical terms. The statistical analysis appears in Annex (1). The uniform cutoff date for statistical information is 1 January 2000, unless otherwise stated.

Taken alone, however, these recommendations are inevitably bandaid solutions. Lasting solutions demand a reorganization of the implementation mechanism at the international level, as well as a substantial strengthening of the partnerships with many other actors at the national level. The system will remain inefficient and inadequate in the absence of consolidation of the treaty bodies, and consolidation will require amendment. This major reform is addressed in the final section of the Report. Most of the specific recommendations concerning working methods and OHCHR processes remain relevant to a consolidated treaty regime.

Consolidation is not a panacea. If UN states are unprepared to accept the equally fundamental need for an independent and expert membership of monitoring bodies, coupled with the provision of adequate resources, the core of the international system for protection and promotion of human rights will remain impoverished and irrelevant to literally billions of persons in need.

## **2. Overdue Reports**<sup>21</sup>

The number of overdue reports in the human rights treaty system is of overwhelming proportions. Precise statistics indicate the following. There are 1203 overdue reports, although only 1613 reports have ever been considered in the thirty-year history of the treaty system.<sup>22</sup> An average of 71 percent of all states parties to each treaty have overdue reports.<sup>23</sup> One-hundred and ten states have five or more overdue reports.<sup>24</sup> The mean length of time those reports are overdue is five years.<sup>25</sup> An average of 27 percent of states parties have initial overdue reports to each treaty.<sup>26</sup> CEDAW has 242 overdue reports in theory,<sup>27</sup> but only considers approximately 15 reports a year.

In attempting to answer the question why there are so many overdue reports, consideration was given to a number of possible factors. Statistical evaluation revealed a relationship between the

number of overdue reports and a few indices, although there was not a strict correlation. To a limited extent, the number of overdue reports increases:

- for states ranked lower in the Human Development Index (2000)<sup>28</sup>
- the lower the Human Development Index Value<sup>29</sup>
- the lower the Gender Related Development Index Value<sup>30</sup>
- the lower the GDP per Capita.<sup>31</sup>

States receiving official development assistance are more likely to have overdue reports than donor states.<sup>32</sup> States from the African regional group account for the largest percentage of overdue reports in relation to every treaty, on average 38% of all overdue reports.<sup>33</sup> Variations in population size or geographic size in relation to overdue reports are not statistically significant.<sup>34</sup>

The statistics suggest that the burden of state reporting is borne more poorly by developing countries. At the same time, factors pointing to a reduced level of human rights protection to some extent also increase the number of overdue reports, such as lower female literacy rates, female school enrolment, and female GDP per capita.

Solutions to the problem of overdue reports are suggested in this Report in stages, beginning with shorter-term recommendations. The problem as a whole in the context of more substantial reform is addressed in the final section on Amendment.

In the first instance, the treaty bodies have sought to address the fundamental problem of the number of overdue reports in the development of their working methods. Initially, they send out reminders to states parties at regular intervals. Even this limited response, however, is now problematic.

Calculating the date upon which an individual state has an overdue report has become increasingly complex. In practice, whenever a state submits a report any legacy of past overdue reports, or the lateness of the incoming report, is effectively ignored. The date for future reports is individually set based on the date considered. Given the backlog in four of six committees between submission and reporting, states do not even need to start counting the time span for the next report until their submitted report is actually scheduled and considered. With respect to the Human Rights Committee, the situation is now even less certain. A new rule adopted in November 2000 provides a shorter (unspecified) deadline for a follow-up report and longer (unspecified) one for the next periodic report. But it is unclear what kind of follow-up report will satisfy the shorter-term deadline. The result is that reminders of overdue reports based on a largely irrelevant, theoretical timetable are of little significance in encouraging states to comply with their reporting obligations.

It is important to have a transparent and easily comparative record of the extent of each state's compliance with reporting obligations. This must be developed for the existing regime which has so drastically changed the timetable based on the treaties themselves (or the rules of procedure). The significant figures which should be clearly reported are three:

- a) the number of times the state has had reports considered

- b) the date at which the state's report was last considered
- c) for those states which have never reported, the date at which the state ratified the treaty.

At the same time, written reminders and blacklists given to the General Assembly have had little impact. The Human Rights Committee has appointed a focal point or Special Rapporteur for particular tasks (New Communications and Follow-Up). All committees could extend this example by charging a specific member with the responsibility of dealing with non-reporting states and implementing a programme of action for follow-up with non-reporting states.

## **RECOMMENDATIONS**

### **Treaty bodies**

***Treaty bodies should each appoint a Special Rapporteur on Input, or the initial phase of State Reporting. That individual should***

- ***regularly meet with government representatives concerning the failure to report***
- ***write accounts in annual reports of such meetings***
- ***recommend to the committee that targeted invitations be issued to specific governments to appear before the Committee in public session for the purpose of discussing the failure to report, reasons for the delays and possible action to be taken (including offers of support in the drafting of reports). (See also infra section 21. The Dialogue)***

***Letters of reminder should be sent annually by individual committees to those states with particularly egregious reporting records.***

### **Treaty Bodies and OHCHR**

***Letters of reminder should be sent annually by the High Commissioner for Human Rights to all states parties highlighting their particular reporting record.***

***In addition to the global record currently produced on the detailed reporting history of each state party, a new global report should be created with the following two tables.***

**Table 1: Compliance with Reporting Obligations**

<i>state party</i>	<i>treaty body</i>	<i>date of ratification</i>	<i>number of reports submitted</i>	<i>number of reports considered</i>	<i>date at which report was last considered</i>	<i>date set by treaty body for next report; if there has been no date set (because of non-reporting or no consideration) this will be the date set by the treaty or the rules of procedure</i>
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*This table should be in alphabetical order of states parties.*

**Note:**

*Number of reports considered should refer to the number of distinct occasions at which a state “report” was considered. If a state submitted a so-called combined report (sometimes artificially referred to as more than one report), this would count as one report considered. There are also a few situations in which a state report was held over for one or two sessions, which would still be counted as a single consideration.*

*There will be states which have had their situation with respect to the treaty considered in the absence of a report, but this will not be relevant to a table of compliance with reporting obligations, although it may be the subject matter of a footnote or separate table.*

**Table 2**

<i>state party</i>	<i>treaty body</i>	<i>length of time since ratification</i>	<i>number of state reports considered</i>	<i>length of time since report was last considered [or in square brackets the length of time since ratification if no report has ever been considered]</i>	<i>date set by treaty body for next report; if there has been no date set (because of non-reporting or no consideration) this will be the date set by the treaty or the rules of procedure</i>
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*This table should be in order of the largest numbers in the fifth column, namely, states parties with the longest time since a report was last considered (per treaty) or if this is null, then the length of time since ratification.*

*Note:*

*There are states which submit reports, but continually delay their consideration, hence the need to emphasize the date considered. It will, however, incorporate the backlog between submission and consideration.*

*These tables should be provided to the General Assembly and the Commission on Human Rights on a regular basis.*

*The practice of including in annual reports a variety of different tables concerning reporting history, or lists of overdue reports, can be discontinued. Instead, a table highlighting those states with particularly egregious records (based on the tables above) in the context of an individual treaty should be developed and included in annual reports.*

### **OHCHR**

*OHCHR should offer assistance to states parties in preparing reports, stressing in particular:*

- *the development of national strategies for drafting reports (for example, the kinds of governmental structure, or committees, and cooperation required; relationships with NGOs)*
- *technical advice or assistance on collecting statistics*
- *guidance in identifying legislation, policies, judicial decisions which should be monitored.*

### **3. The Consideration of a State Party's Record in the Absence of a Report**<sup>35</sup>

There is no doubt that states with very poor human rights records have attempted, and largely succeeded in, eluding the monitoring system by failing to produce reports.

The working methods of some of the treaty bodies to long-outstanding reports have included the consideration of a state in the absence of a report. The HRC and CESCR are at the initial stages of this approach. CERD has been considering states in the absence of a report for many years and has done so on 65 occasions.<sup>36</sup> However, CERD's practice has somewhat been determined by the proclivities of the Chair and in the last few years it has not invoked the practice nearly as often as in the past.

The production of a report, in theory, is intended to generate a dialogue within civil society about the requirements of the treaty, the application of the standards to local conditions, the shortfalls in compliance, priorities for redress, and the design of a plan of action. A cycle of pre-report consultation followed by post-report planning at the national level is supposed to be created via the periodic drafting of state reports.<sup>37</sup>

The consideration of a state in the absence of a report, has a different set of goals, including:

- a) encouraging the production of a report in the future
- b) highlighting the states' record of compliance for the international community and providing an international forum for a human rights review in the absence of a national arena
- c) producing a set of recommendations which might encourage reform
- d) equal treatment of ratifying parties to the treaty.

The fact that the latter goals are different from the theoretical underpinnings of the reporting system, does not undermine their legitimacy. States do send delegations to engage in a dialogue with the committee in the absence of a report when their states' record is scheduled. States do submit reports when threatened with consideration of their record in the absence of a report. Participation is required to realize the promise of international human rights law. Sound recommendations can serve as vehicles for constructive change through actors at the national level. A perception of equal treatment of states parties encourages those states which do report to continue to take the process seriously.

At the same time, there are disadvantages of considering a state in the absence of a report. These include the practical problem of the treaty body familiarizing itself with the country situation without a report, the inability to engage in a dialogue with the state party in its absence, and the tendency to produce substantively weak or scant concluding observations (which to date have emerged from many of these absentee considerations). Only a well-prepared set of background material, coupled with well-documented, current external information will allow for a solid set of reliable and potentially effective recommendations. Hence, the commitment to prepare adequately must be part of any decision to conduct the consideration of a state in the absence of a report.

## ***RECOMMENDATIONS***

### ***Treaty Bodies***

***States parties which do not report for a specified number of years following ratification, or a specified number of years after the consideration of a previous report, should nevertheless have their record of compliance with the treaty's obligations considered by the treaty bodies. The number of years of non-reporting may vary by treaty body and depend on the body's backlog or the anticipated date of the actual consideration of a report. In any case, the number of years initiating this procedure should not be considerably different from the time between consideration of states parties which do submit reports.***

#### **4. Periodicity of Reports**<sup>38</sup>

In most cases, the treaties specify the period of time between successive reports. Changes have sometimes been introduced through the committees' rules of procedure. However, despite the language of the treaties and/or the rules of procedure, the practice is often quite different.

The current provisions of the treaties or the treaty bodies' rules of procedure are as follows:

##### **CERD**

###### Article 9.1

States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of the Convention:

- a) within one year after the entry into force of the Convention for the State concerned; and
- b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.

##### **CCPR**

###### Article 40.1

The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

- (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
- (b) Thereafter whenever the Committee so requests.

###### Rule 70A (November 2000)

Where the Committee has specified for priority, under rule 70.4, certain aspects of its concluding observations on a State party's report, it shall establish a procedure to consider replies by the State party on those aspects and to decide what consequent action, including the date set for the next periodic report, as may be appropriate.

###### CCPR/C/70/INFORMAL/2 (November 2000)

In the last paragraph of the concluding observations, in addition to the determination of the date for the submission of the next report, the Committee may request the State party to report to the Committee within a specified period of time, by way of response to certain specific observations of the Committee, setting out the steps the State party has taken to meet these considerations.

After the lapse of this period of time a group of Committee members will study any such response received from the State party, report to the Committee and suggest:

- (i) a new date by which the next report is due, taking into account the assessment it has

made with regard to any response of the State party, and  
(ii) on which points that report should specifically focus.

Where no response is received, the Committee will confirm the date it has fixed at the end of its concluding observations.

## **CESCR**

### Article 17.1

The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

### Rule 58.2 rules of procedure

In accordance with article 17 of the Covenant and Council resolution 1988/4, the States parties shall submit their initial reports within two years of the entry into force of the Covenant for the State party concerned and thereafter periodic reports at five-year intervals.

(resolution 1988/4 of the Economic and Social Council)

On 30 November 2001, the Committee resolved that, as a general rule, a State party's next periodic report should be submitted five years after the Committee's consideration of the State's preceding report, but that the Committee may reduce this five-year period on the basis of the following criteria and taking into account all relevant circumstances:

- I. the timeliness of the State party's submission of its reports in relation to the implementation of the International Covenant on Economic, Social and Cultural Rights;
- II. the quality of all the information, such as reports and replies to lists of issues, submitted by the State party;
- III. the quality of the constructive dialogue between the Committee and the State party;
- IV. the adequacy of the State party's response to the Committee's Concluding Observations;
- V. the State party's actual record, in practice, regarding implementation of the International Covenant on Economic, Social and Cultural Rights in relation to all individuals and groups within its jurisdiction.

## **CEDAW**

### Article 18.1

States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

- a) Within one year after the entry into force for the State concerned;
- b) Thereafter at least every four years and further whenever the Committee so requests.

Rule 49 (3)

The Committee may allow States parties to submit a combined report comprising no more than two overdue reports.

**CAT**

Article 19.1

The States Parties to the Convention shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

Rule 64.1

The States parties shall submit to the Committee, through the Secretary-General, reports on the measures they have taken to give effect to their undertakings under the Convention, within one year after the entry into force of the Convention for the State party concerned. Thereafter the States parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

**CRC**

Article 44.1

States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of these rights:

- (a) Within two years after the entry into force of the Convention of the State Party concerned;
- (b) Thereafter every five years.

Rule 66.2

States parties shall submit such reports within two years after the entry into force of the Convention of the State Party concerned and thereafter they shall submit subsequent reports every five years and such additional reports or information in the intervening period as the Committee may request.

In practice, all treaty bodies have abandoned the practice of applying uniform reporting deadlines to all states parties. Current practice regarding the due dates of reports is therefore most often at odds with the strict substance of the treaty provisions (or many of the rules of procedure which are usually changed after-the-fact). Uniform application of deadlines was, however, a central tenet of the treaty system. Treaty body decisions to forego these deadlines occurred on an haphazard, reactive basis, with very little consultation or attempt by the treaty bodies to seek a common approach to a similar, and fundamental challenge to the system of state reporting.

For three of the treaty bodies, states which do not report regularly or as anticipated by the treaties, in practice encounter roughly the same deadlines for subsequent reports as do other states. In practice, the overdue record - regardless of size - is eliminated as soon as one report is produced. There is therefore, little incentive to report in a timely manner. This is most evident from the practice of CERD, which was the first treaty body to collapse reports. If all overdue reports to CERD were actually to be submitted and considered (along with the few reports currently awaiting consideration (backlogged reports)), it would take CERD 18.1 years to review them all.<sup>39</sup> But if a single report which was submitted could wipe the slate clean, then it would take, instead, 5.6 years to such submitted reports (along with the backlog).<sup>40</sup> This represents a saving of 12 years of reporting work accomplished by disregarding the treaty's deadlines. The effect is illustrated in the 2000 CERD annual report which reads: "The Committee considered the seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth and fourteenth periodic reports of Lesotho", (for reports due December 1984 - December 1998). In other words, the number of overdue reports has become so large that the treaty bodies have simply ignored the deadlines and kept their fingers crossed about future receipt of reports.

On the other hand, HRC, CESCR and CAT now suggest dates be set for the next report farther into the future for states with good records of compliance (in process and substance) than others. Or they will impose a shorter time period for states with poor reporting records. However, in principle no state, regardless of good faith or a strong, human rights protection record, is entitled to less international scrutiny under the international legal system than any other. Undoubtedly, certain features of the process will vary depending on the quality of the dialogue, the states' willingness to make improvements, and the actual human rights conditions. Variations will appear, for example, in the substance of concluding observations and the design of follow-up strategies. Nevertheless, the underlying principle is that all states have room for improvement and international participation can positively enhance the process of advancement in all states. This principle has now been directly challenged, for example, by the new practice of the Human Rights Committee, which aims to grant considerably longer deadlines to states having a superior record of compliance with treaty obligations. Such a practice raises concerns that these states will diminish their interaction or engagement with the treaty body.

Not only could the committees not cope with the number of reports due in theory if they were to be submitted, four of six cannot cope in a timely manner with the reports that are in fact submitted. The backlog is now approximately two years for HRC, CESCR, CEDAW and CAT,<sup>41</sup> and is getting worse. While improvements occur immediately following the periodic addition of more meeting time, the gains tend to be temporary. The extent of the backlog seriously undermines the effective functioning of the treaty system. Where considerable efforts have been made to report, states parties resent the treaty bodies' inability to indicate an early interest in the results. The burden to states is also increased by the necessity of updated reports at the time of the dialogue. The incentive to follow deadlines of the treaty bodies in the future is clearly diminished.

The challenge therefore is to institute a system of reporting in the face of a significant backlog and an overwhelming number of overdue reports which:

- does not reward flagrant disregard of treaty obligations
- does not overcompensate compliance with reporting or substantive requirements, and
- is practical.

## **RECOMMENDATIONS**

### **Treaty Bodies**

*Treaty bodies should insist on regular reporting deadlines consistent with the spirit of engagement undertaken by states parties in each of the treaties.*

*Failure to produce a report on schedule should result in a consideration of the state's compliance with treaty obligations in the absence of a report.*

*The reports due for each state to all treaty bodies should be consolidated into a single report. (See infra section 5. Focussed and Consolidated Reporting)*

*A timetable should be delineated for the periodic production of consolidated reports, and its introduction coordinated among the treaty bodies.*

### **Treaty Bodies and OHCHR**

*On an experimental basis, OHCHR should deliberately organize and schedule overlapping meeting times for treaty bodies, at the same time in the same venue.*

*The treaty bodies should be provided with the opportunity to take advantage of overlapping, for instance, by scheduling one state before more than one treaty body during overlapping meeting times.*

#### **Note:**

*(1) Consolidated reporting varies the strict reporting schedule in the treaties themselves, and it might be argued would require an amendment to CERD, CEDAW, CAT and CRC, and an ECOSOC resolution for CESC. However, the variation from the treaty commitments currently in practice has been instituted in the absence of formal amendment or resolution and has not been the subject of objection by states parties.*

*(2) This recommendation must be coordinated with the consideration of reports, since there is little point submitting a single report which is taken up by different treaty bodies over an extended period of time - thereby requiring significant and multiple updates at the times of consideration.*

*(3) The effectiveness of this recommendation is closely related to a timely consideration of reports, and this in turn raises the issue of a greater degree of consolidation. (See infra section 35. Amendment)*

## **5. Focussed and Consolidated Reporting**<sup>42</sup>

The extent of the reporting burden currently on states parties is significant:

- Over the past ten years since the last major treaty body (CRC) came into operation, states parties have produced reports on average every 1.1 years,<sup>43</sup> and had reports considered every 1.2 years.<sup>44</sup>
- For states generally meeting their reporting obligations, over the past ten years they have had as many as four reports considered in one year.<sup>45</sup>

In addition, there is repetition. Many of the rights in one treaty overlap with provisions in other treaties. There are many crosscutting themes such as discrimination, education, and inhuman or degrading treatment or punishment. Consequently, states parties discuss similar questions and concerns with different treaty bodies.

For these reasons, and others, it is increasingly argued that individual treaty bodies should focus their reporting requirements on a subset of issues under their respective treaties. Here focussing means a subset of issues tailored to the committee's concerns with respect to a particular state. How is this subset of issues to be identified? Suggestions include limiting subsequent reports to the matters raised in the prior concluding observations of a treaty body, and eliminating issues which have already been dealt with (in a recent period) by another treaty body.

At the moment, four of the six treaty bodies produce a list of issues which is intended to focus the dialogue with the state party. Having received a comprehensive report, or in the case of periodic reports, a report on the changes and events since the report was last considered, the dialogue itself can be focussed. The focussing is based on: (a) the committee's preliminary assessment of the report, (b) a wide range of information gathered by the UN and through the OHCHR secretariat, and (c) NGO information.

Is focussed reporting a suitable way of further reducing the reporting obligations of states parties? The answer is positive if by focussing is meant limiting periodic reports to updates of developments since the last report. There is clearly no need to repeat information previously provided concerning laws, policies, practices, and actual conditions which remain the same as previous reports. The answer is also yes, if by focussing is meant an assessment, at the time the report is submitted, of the most important issues affecting a country in light of all current information available (through a combination of a list of issues, written responses, and a pointed and disciplined inquiry during the dialogue itself). This is more properly described as a focussed dialogue, rather than focussed reporting.

However, focussing is more often suggested as the identification of a subset of issues to be addressed in a future report. In this case a number of factors militate against such a proposal. (1) There are a significant number of occasions when treaty bodies do not have a sufficient depth of knowledge of a country situation to be able to accurately identify a small number of issues of primary importance to a state's treaty obligations. (2) Any attempt to identify accurately such issues for the subsequent report will be impeded by the large number of years between the consideration of reports. (3) The treaty bodies have found difficulty in narrowing definitively the

list of issues which should be directed to a state party without considering NGO submissions, input which is largely associated with the dialogue itself. (4) The treaty bodies have not exhibited an ability to confine themselves even to the list of issues identified usually within 3-4 months preceding the dialogue. In other words, relieving the reporting burden by limiting the scope of future reports without diminishing the quality of the reporting system depends on a number of conditions that are currently not present. These conditions are: (a) substantially improved knowledge and depth of understanding of country situations, (b) the facility to monitor ongoing developments, (c) NGO submissions input earlier into the process, (d) reporting time frames closely followed. When these conditions apply, future focussed reporting will be consistent with responsible monitoring.

At the same time, duplication of reporting obligations for overlapping themes and provisions is clearly a waste of resources. Rather than focussed reports, this could be avoided by consolidation of reports through a thematic approach to reporting. Thematic reports can respond to a number of concerns:

(1) Many of the substantive rights are repeated in more than one treaty. The CRC itself groups rights in the Convention under substantive themes. The Human Rights Committee often groups rights on a thematic basis in the Lists of Issues posed to states parties. This approach could be expanded to cover more than one treaty, by identifying crosscutting themes and overlap across the treaty system. For example:

#### ADEQUATE OR DECENT STANDARD OF LIVING

##### *GENERAL*

Article 7(a)(ii), ICESCR  
Article 11.1, ICESCR  
Article 14.2(h), CEDAW  
Article 27, CRC

##### *FOOD, CLOTHING, SHELTER*

Article 5(e)(iii), CERD  
Article 11, ICESCR  
Article 12, CEDAW  
Article 14.2(h), CEDAW  
Articles 24.2(c) and (e), CRC  
Article 27.3, CRC

#### FREEDOM OF ASSOCIATION

##### *GENERAL*

Article 4(b), CERD  
Article 5(d)(ix), CERD  
Article 22, ICCPR  
Article 14.2(e), CEDAW  
Article 15, CRC

##### *TRADE UNIONS*

Article 5(e)(ii), CERD  
Article 22, ICCPR  
Article 8, ICESCR

Crosscutting issues could be further clustered into related themes already identified by some of the treaty bodies in their lists of issues or concluding observations. A list of themes suggested by the text of the treaties and the language of general comments and concluding observations, (which includes all articles of all of the treaties), can be found in Annex 3.<sup>46</sup>

(2) A greater comprehension of the nature, meaning and application of rights can be gained by considering all the treaty rights (and their elaboration by the treaty bodies through general comments, individual cases or inquiries, and concluding observations) on a thematic basis.

(3) At the national level there is frequently a lack of symmetry between the compartmentalization of the six treaties and the domestic agencies responsible for the substantive areas covered in the treaties. Reporting and follow-up is inhibited by the fact that the organizational structure of government branches often does not correspond to the organization of the treaties. Facilitating a holistic and rights-based approach to a broad range of thematic issues will assist states to implement the treaties at the national level.

(4) Differences of scope of similar thematic rights as between the treaties (like torture in CAT and CCPR) can be noted, and the application of standards by the treaty bodies to states parties in concrete circumstances can take those differences into account.

(5) Those states which have not ratified all six of the treaties would still be able to produce reports on the themes and provisions in relation to the treaties which they have ratified.

(6) Follow-up information on the steps taken to implement prior concluding observations should be included and highlighted in any report as a matter of course.

## ***RECOMMENDATIONS***

### ***Treaty Bodies***

***The states parties should be requested to submit one consolidated report applicable to all treaties which they have ratified, and which has been organized on a thematic basis.***

***The treaty bodies should prepare consolidated guidelines for the preparation of a single report, organized on a thematic basis and clearly identifying overlapping provisions of the treaties (in addition to those which remain unique). (See Thematic List and Index of Treaty Rights and Freedoms, Annex (3))***

### ***OHCHR***

***OHCHR should assist the treaty bodies by identifying overlapping substantive themes among the treaties.***

***A model report based on a thematic clustering of treaty articles should be prepared for interested states parties, who could be encouraged to prepare such a report as a single submission to all treaty bodies.***

*Note:*

*Consolidated reporting should be coordinated with the consideration of reports. (See supra section 4. Periodicity of Reports and infra section 35. Amendment)*

## **6. Inadequate Reports**<sup>47</sup>

The burden of state reporting alone, however, does not explain either the extent of overdue reports and in particular initial reports, or the poor quality of many reports.

In theory, state reports are intended to be a candid self-evaluation of the degree of a state's compliance with its treaty obligations in a public, international setting, in order to initiate a process of constructive criticism with treaty bodies. The theory strains credulity, particularly for non-democratic states. In fact, state reports in recent years have often taken some of the following forms:

(a) a mere recitation of the provisions of the constitution or other legislation

(b) three or four page reports

(b) the inclusion of claims such as:

- “There is no problem of minorities...the population being fully integrated socially.”<sup>48</sup>
- “The State of Emergency Act, which was promulgated in...22 December 1962...and which is currently in force [19 January 2000]...is an exceptional constitutional regime...”<sup>49</sup>
- “The phenomenon of racial discrimination is unknown in our history and totally alien to our society in which any behaviour or act manifesting or implying racism is regarded as highly reprehensible...The absence of the phenomenon of racial discrimination in the history of our society explains why the...legislature has not promulgated any laws, decrees or judicial or other directives concerning this phenomenon.”<sup>50</sup>
- “...legislation is based on the principle that persecuted persons and freedom fighters may not be extradited.”<sup>51</sup>
- “Article 11. Employment: From childhood, young...girls are trained to undertake work in and around the house....Article 16. [Upon divorce] where the husband and wife stand in the relation of supporter and dependent, the supporter gets two thirds and the dependent one third of their joint property.”<sup>52</sup>
- “[T]here are no existing practices based on the idea of the inferiority or superiority of either of the sexes. Instead, [the state] continues to be governed by customs and traditions where the man is the head of the family and where men have one role and women another...Moreover, there are certain acts which, being within the domain of men, are unacceptable for women to carry out...With respect to a profession or occupation, [our religion] permits women to pursue any respectable profession, provided her husband agrees, and that it does not interfere with the performance of her duties as a mother and mistress of the home.”<sup>53</sup>

These are not isolated phenomena. Such reports, considered within the last two years, highlight a number of features of the state reporting system as a monitoring regime:

- the gulf in understanding (let alone implementing) international human rights standards

- has yet to be bridged,
- the importance of alternative sources of information prior to a report's consideration, and
- accountability beyond the confines of treaty body meeting rooms is an essential condition for success.

Four of the six treaty bodies allow the secretariat, usually in consultation with a member(s) of the treaty body, to work with states parties and encourage revision of reports which do not meet reporting guidelines to a significant extent. The experience has sometimes been the re-submission of a much-improved report.

## ***RECOMMENDATIONS***

### ***Treaty Bodies and OHCHR***

***Treaty bodies should encourage the OHCHR secretariat to identify incoming reports which may be wholly unsatisfactory in their failure to follow reporting guidelines (in length, form, or absence of statistics), and to permit them to suggest informally to the states parties ways and means to resubmit an improved report prior to consideration.***

### **7. Special Reports**<sup>54</sup>

Requests for special reports on what are called urgent matters are routine only for CERD. CESCR periodically has made exceptional requests, although it fails to identify them as such. It has made requests for the specific inclusion of newly-identified information in a forthcoming report. It has selected states with reports overdue by comparatively much smaller margins than others, and requested of them the prompt submission of a report. Special reports have very rarely been requested by the Human Rights Committee, CAT, and CEDAW. Only CRC has never requested a special report.

This exceptional role for the treaty bodies has had different labels: “early warning”, “urgent action”, “prevention”. The scope of this “preventive” function has not been clarified, although it has received some limited endorsement by the General Assembly.<sup>55</sup> It has been linked by CERD to actions of the Security Council and representations by CERD to the Security Council.<sup>56</sup>

The wisdom of requesting special reports has to be directly questioned. The requests come in the context of a massive number of overdue reports - and hence a large number of states which have rarely, if ever, been considered. It is also at odds with a significant backlog of reports waiting to be considered in the case of four of the committees. Urgent human rights matters are taken up by a wide range of UN actors and the involvement of the treaty bodies does not significantly add to visibility. The strength of the treaty system is its equal application to all ratifying parties, or the regular consideration of human rights conditions in every ratifying state. Deviations from this

intent invite a double-standard. This is particularly true in light of the weakly-defined criteria for making such requests in the case of most of the committees, and the indications that such decisions have been made in a non-transparent manner, and on the basis of personal or political proclivities, or selective media interest.

## ***RECOMMENDATION***

### ***Treaty Bodies***

***Treaty bodies should not engage in the practice of requesting special or exceptional reports.***

### **8. Order of Considering Reports**<sup>57</sup>

Two of the committees do not consider reports in the order in which they are received. CEDAW believes that geographic considerations should influence when reports are considered and CESCR has varied the order on the basis of information received from others, such as NGOs. Three other committees engage in some limited reordering of reports from the order of receipt. Only CRC systematically considers reports in the order they are received, in the sense that reports are not moved forward for any reason. (However, the committee considers some initial reports and some periodic reports at each session, and only retains chronological order within these categories.) The fundamental principle of equal treatment of states parties, minimizing any perception of bias, would suggest that the treaty bodies should follow a strict chronological order of taking up state party reports. That rule would also provide clear notice to states parties and all other interested actors of the consideration of reports, and allow for adequate planning in accordance with a fixed timetable.

Until very recently, CEDAW has regularly permitted states to refuse to engage in a dialogue with the committee on the basis of reports already submitted. Some state reports have not been considered for considerable periods of time as a result. In the case of some of the other committees there have been a persistent number of states which, having submitted a report, have refused to attend the dialogue very close to the scheduled date. This has resulted in significant disruption of the committees' time. Reasons for states pulling out include changes of government and objections to the submitted report, as well as other commitments (of varying degrees of importance) of the relevant government department. Three of the committees will shortly be taking up reports regardless of whether a state chooses to attend the dialogue. The benefits of a fixed and foreseeable timetable of the consideration of reports would require that the treaty bodies routinely take up reports as scheduled, regardless of state party requests for postponement for whatever reason.

## **RECOMMENDATIONS**

### **Treaty Bodies**

*Treaty bodies should take up state party reports in the order in which they are received.*

*Treaty bodies should take up reports as scheduled when states parties refuse to attend the consideration of their reports.*

### **9. The Timing of the Consideration of Individual Communications**<sup>58</sup>

The Human Rights Committee, which has the greatest number of individual communications, does not consider cases in the order in which they are received, nor the order in which they are ready for decision. There is no rule for expediting cases,<sup>59</sup> and hence no way of applying for such consideration, or of knowing whether it has been used in the case of others in such a way as to affect the timing of the consideration of an author's own case. Unofficially, priority is given to death row cases, cases in which interim measures have been requested (that is, where a state has been asked prior to a committee decision to cease an action which could give rise to irreparable harm), cases submitted from persons in detention, or by older persons.

The Committee receives cases alleging very different forms of violations of the Covenant, particularly since cases come from both well-established democracies and non-democracies. For example, the former often involve various kinds of discrimination in many different contexts, and the latter often involve violations of personal liberty and security issues. The Committee should ensure that the cases of victims from all states are treated with equal concern. This is especially important because of the (largely untapped) preventive, educational and catalytic value of decisions relating to countries with a vocal and independent media. These decisions often have a spillover effect for a much broader range of affected persons than the individual complainant.

The concern for a timely consideration of all cases relates to the problems of delay experienced in the committee's handling of communications. The average time between the initial submission and the determination of final views for the Human Rights Committee is four years.<sup>60</sup> The average time between initial submission and a decision that a case is inadmissible is 2.5 years.<sup>61</sup> There are numerous reasons for delays. These include some which are not resource-dependent, such as:

- Procedural rules indicating time limits for submissions are often not met by governments (and occasionally authors).
- Time limits on states parties are not strictly imposed.
- States parties commonly request extensions of time limits.
- Authors are normally not informed of these requests for extensions, and hence have no opportunity to object.
- States parties requests for extensions are usually granted.

- Efforts by states parties to avoid determination of the merits by repeated submissions which fail to contain significant new information are tolerated by the committee, giving rise to further delays.

## ***RECOMMENDATIONS***

### ***Treaty Bodies***

***The Committee should introduce a rule of procedure which requires it to deal with applications in the order in which they become ready for examination. Decisions to give priority to a particular application should be made on an exceptional basis.***

***Delays resulting from state party efforts to avoid prompt consideration of a case (including unjustified requests for time extensions, for separating the consideration of admissibility from the merits, repetitive submissions) should not be tolerated by committee practices. The author should be kept fully informed of all state party communications with the committee, including all efforts to delay the prompt consideration of a case.***

***Time limits should be more rigorously enforced. A clear timetable should be articulated for reminders for different stages of the proceedings. Consequences should be identified for failures, by either the state party or complainant, to adhere to time limits. Reminders should be sent as required. The treaty bodies should regularly be kept up-to-date on the timetable and status of each case - incorporating a “consequence/bring forward” methodology.***

### **10. Considering Individual Communications**<sup>62</sup>

CAT does not have a significant backlog of state reports,<sup>63</sup> and in that context spends about 20% of its time considering communications. In the 2000 annual report year, it took decisions in 25 cases (inadmissibility, discontinued, admissibility, final views).<sup>64</sup> Cases (both for inadmissibility and final views) are decided in less than two years,<sup>65</sup> and the time spent with respect to final views, that is, a determination on the merits, has not increased over time.<sup>66</sup> Thirty-nine cases were outstanding as of May 2000. Fifty-six percent of states parties permitting complaints to CAT have never been the subject of a single complaint.<sup>67</sup>

Few cases are submitted to CERD,<sup>68</sup> which spends less than 10% of its time on communications.

On the other hand, the Human Rights Committee has a backlog of state reports awaiting consideration of two years,<sup>69</sup> and in that context spends 30-35% of its meeting time on the consideration of communications. In the 2000 annual report year, it took decisions in 41 cases (decisions on inadmissibility, discontinued, admissibility, final views).<sup>70</sup> On average, inadmissibility decisions are taken in two and a half years, and final views take four years. As of

April 2000, 177 cases were pending ((127 not transmitted to the government for comments, 16 transmitted to the government for response on admissibility and/or merits), and 34 ready for decision by the Committee (on admissibility and/or merits)).<sup>71</sup> Thirty-two percent of states parties permitting complaints have never been the subject of single complaint.<sup>72</sup>

There will be additional cases added to the workload of the Human Rights Committee which have not been processed either because they were submitted in a language which until recently the secretariat had no capacity to read (particularly Russian), or which are backlogged due to the volume of incoming correspondence. Estimates of unprocessed mail are currently around 3,000, of which it is estimated that on average 10% will become registered cases. At the moment, the committee registers about 60 cases per year, an average which has not substantially varied in the past five years.<sup>73</sup>

At the same time, these figures are very likely to increase. There are approximately 1.4 billion people in the 98 states which have ratified the Optional Protocol. There are 30 states (32% of states parties) which have ratified the Protocol but not been the subject of a single complaint.<sup>74</sup> As indicated, the total caseload is 60 registered cases a year, 177 pending cases, and perhaps an additional 300 cases (from 10% of the 3,000 correspondence backlog). There is some speculation that after the backlog has been cleared, staff will be better able to engage in more detailed correspondence with authors which might assist in the development of more cases. In this scenario, 250-300 new cases a year might be registered (based on the rate of 1,700 - 2,000 new letters annually and a 15% likelihood of a letter revealing a case for registration). Even on this scenario, however, the numbers indicate that the Covenant mechanism has not yet become a viable option for the vast majority of potential victims, and handles at the moment a tiny fraction of the possible load.

Suggestions for ensuring expeditious treatment of individual cases include the introduction of procedures which would permit the Committee to deal with all dimensions of individual cases in working groups or chambers. These would be subset(s) of the Committee which could work simultaneously with other working groups or chambers, or the Committee as a whole.

Objections to this procedure include:

- (a) the working group or chamber could not finally decide the merits of cases because the Protocol and Covenant speak of the views of the Committee and indicate a quorum of 12 members,
- (b) the working group or chamber will be unrepresentative of legal regimes and regional experiences,
- (c) there are not enough legal experts on the committee to staff more than one working group or chamber,
- (d) legal expertise and geographic representativeness may not coincide,
- (e) all individual Committee members will be unable to make their opinions heard in every case.

In response, the working group or chamber could propose final decisions which could be formally adopted by the Committee as a whole with little or no discussion in most circumstances.

Conditions of increased involvement of the Committee in reviewing outcomes from the working group or chamber could be specified. It seems clear that two or three working groups or chambers considering the merits of cases, whose decisions are normally undisturbed by the plenary, would process cases more expeditiously than at present. In fact, at the moment 90% of the recommendations of the working group on the merits of communications are accepted by the plenary (albeit after lengthy discussions).

Furthermore, the assumption that all committee members must have the same voice in every case inhibits effective decision-making and tends to have a negative effect on substantive outcomes. It encourages an unnecessary and unhelpful multiplicity of individual opinions. It also frequently leaves very thin reasoning on the merits of the case, as members often agree on very little except the outcome.

None of these suggestions, however, deal with the fundamental and inevitable inability of a single, part-time treaty body to deal expeditiously with the range of tasks demanded. It is unrealistic to expect that such a body can both handle individual cases in a timely manner from a broad range of states, with an even wider range of problems, and at the same time consider state reports in a timely manner, as well as states in the absence of reports. For longer-term solutions see final section 35 of the Report on Amendment.

In terms of the organization of the OHCHR secretariat in a manner which handles communications most efficiently, the recent creation of a “Petitions Team” is a positive development. There is substantive overlap in the kinds of cases which can go to CAT or to CERD with the jurisdiction of the Human Rights Committee, (as well as overlap in the procedures and expertise required of staff members). Similarly, there is overlap on a substantive level between CEDAW and the jurisdiction of the Human Rights Committee (particularly CCPR Articles 3 and 26). Individuals themselves are frequently unfamiliar with all of the potential fora. The separation of the secretariat handling CEDAW cases from those handling Human Rights Committee, CAT and CERD cases reduces the ability to stream cases efficiently and appropriately, avoid inconsistent jurisprudential developments, and maximize the benefits of procedural experience on a daily basis.

## ***RECOMMENDATIONS***

### ***Treaty Bodies***

***The Human Rights Committee should designate two to three working groups or chambers, taking into account legal skills and geographic considerations. These groups should meet simultaneously and be able to deal with all aspects of communications. Working groups should be enabled and encouraged to make recommendations to the Committee on all matters, including final views. The Committee should normally adopt those recommendations, without discussion, except in narrowly-defined circumstances.***

***The basis of the Committee Views should be transparent and well-reasoned. Decisions should***

*contribute to the understanding and development of international law and enable domestic courts to invoke and apply international treaty obligations.*

### **OHCHR**

*The secretariat of CEDAW dealing with individual communications should be merged with the Petitions Team at OHCHR.*

*The secretariat should assist in the development of Committee jurisprudence by providing, upon request, analytical assistance in the form of substantive and comparative research concerning treaty rights.*

## **11. Working Groups**<sup>75</sup>

All the treaty bodies except CAT and CERD have pre-sessional working groups, which adopt the list of issues for state reports. These groups have a range of other tasks including: preparing drafts of general comments, handling preliminary stages of the communication procedure (such as admissibility, interim measures), reviewing additional information submitted between reports, and considering procedural (working methods) reforms. Drafting the list of issues has meant that the working group has become an important context for NGO, UN agency/organ, and OHCHR (usually the desk officer), input into the work of the treaty bodies. The extent of the exchange at the working group level varies among committees. As the time pressures have increased, working groups have been given greater responsibilities, such as the final adoption of lists of issues. In-session working groups have also functioned to perform important committee responsibilities. This is particularly important in the case of CEDAW where, in the past, simultaneous (in-session) working groups dealt with working methods and general comments.

Therefore, over time the treaty bodies have increasingly delegated responsibilities to smaller numbers of members and accommodated concerns about exclusivity or expertise by one or more of the following techniques: (a) making membership voluntary and open-ended, (b) requiring geographic representation from regional groups (CESCR, CEDAW), and (c) varying the degree of finality of decisions taken.

At the same time, the following difficulties have been expressed or associated with working groups. Some treaty body members are wary of the authority of working groups and retain a concern that the input of individual members will be curtailed if they do not participate. Participation in working groups requires a substantial further time commitment from members, up to three additional weeks per year. Those external partners wishing to interact with the treaty body often worry that limited authority and limited participation in the working group means that external input is still best provided at the plenary stage. CAT and CERD have so far resisted the creation of working groups on the view, among other things, that the narrower range of issues covered by CAT, and the frequency of the reporting period in the case of CERD, reduces the necessity of a list of issues.

On the other hand, there are frustrations that recommendations from working groups do not carry a greater degree of finality in a number of circumstances, for example on the lists of issues - which may serve in practice only as a rough guideline for the committee-state party dialogue. Participation is voluntary and a failure to participate in its substantive operation is therefore an individual committee member decision. UN agencies/organs complain that exchange of information to CAT and CERD members is inhibited by the lack of a working group or regular forum for closed and focussed exchanges.

## **RECOMMENDATION**

### **Treaty Bodies**

*Efficient management of the treaty bodies' time suggests that all treaty bodies should create working groups, charged with a broad range of responsibilities: identifying lists of issues, considering additional information supplied between reporting schedules, a potentially enhanced follow-up role, consideration of working methods, and consideration of draft general comments. Given the current nature of the job of treaty body member (part-time, largely unremunerated, 5-9 in-session weeks annually), participation should be voluntary. Nevertheless, efficiency requires that a significant degree of deference be paid to decisions emanating from the working group on whatever it addresses.*

### **OHCHR**

*A background paper should be drafted concerning information on the operation of chambers and their potential uses in other international or regional human rights bodies or courts, and provided to the treaty bodies for consideration.*

## **12. The Special Rapporteur on New Communications**<sup>76</sup>

The Special Rapporteur on New Communications was a position created by the Human Rights Committee in 1989 to assist the secretariat and the Committee in dealing with cases at preliminary stages. Large amounts of correspondence sent to the Committee clearly fail to meet the minimal criteria of admissibility under the Covenant. The Committee does not register all complaints. Instead, the secretariat, with the assistance of the Special Rapporteur, plays a filtering role.

Some cases contain insufficient information by which to determine their relevance to the Committee's work. In about half the number of cases which are eventually registered, the secretariat writes to authors prior to registration to request various kinds of clarification. In 25% of correspondence the object of the communication is unclear (Rule of Procedure 80(c)); in 50% of the correspondence the article of the Covenant alleged to be violated is unclear (Rule 80(d)); 50% are unclear about the facts of the claim (Rule 80(e)); and 75% say nothing about domestic

remedies (Rule 80(f)). Hence, the secretariat must frequently request further information before the decision on whether to register is made.

The pre-registration phase can be resource intensive since it includes:

- reading all of the correspondence,
- making a preliminary assessment as to its relevance to the Protocol and the Covenant rights,
- assessing whether further information is required from the author of the submission in order to determine admissibility or the merits,
- writing the author in order to request specific information (where necessary),
- writing the author to indicate that no action will be taken where the case clearly does not satisfy admissibility requirements (for example, does not relate to a state party to the Covenant), and
- assisting in the preparation of a file through suggestions for further information, in a limited number of ill-prepared cases revealing serious and important issues.

The ability of the secretariat to filter efficiently where warranted, but assist in preparation where necessary, will depend on a number of factors, including: time, linguistic ability, and familiarity with the national legal system. In the context of the European Convention on Human Rights, at least one member of the secretariat is familiar with the principal language and legal system of every state party. In the OHCHR, however, the only Russian-speaking employee involved in the Petitions Team is on a short-term contract, and there is no Arabic-speaker. Cases are only permitted to be submitted in the three working languages of the Committee (not the six official languages of the UN). Cases in Russian are now handled in the initial stages by the Russian staff member and sent to translation only when ready to be dealt with by the Committee. Colleagues from other departments are asked to read any incoming Arabic correspondence on an ad-hoc basis. (There are very few such cases, although 44 million individuals live in states which have ratified the Protocol and have Arabic as the official language). The handful of staff can in no way have the breadth of familiarity with the legal systems of the states from which communications arise.

Even the preliminary filtering role of the secretariat, in conjunction with the Special Rapporteur, is therefore significantly impeded by the lack of resources and expertise to read incoming correspondence and make a timely assessment of the degree to which the facts indicate the satisfaction of conditions of admissibility.

The recent steps to introduce a central registry for communications are intended to include the ability to track all incoming correspondence directed to the treaty bodies. This should permit the Petitions Team to know how many provisional files are opened and to ensure a response is made (including through relevant form letters where applicable) to all those who submit letters of complaint.

Cases will not be registered which manifestly do not meet the admissibility criteria set out in the Protocol, and elaborated in the Rules of Procedure. The most often used ground of inadmissibility is Article 2 of the Protocol which states that communications must “claim that...their rights enumerated in the Covenant have been violated”. The Rules of Procedure interpret this to mean that an individual must claim “in a manner sufficiently substantiated, to be a victim of a violation...of the rights set forth in the Covenant.” In other words, a case must sufficiently substantiate that a right has been violated for the purposes of admissibility. In practice this criterion serves a similar function to the “manifestly ill-founded” criteria of the European Convention on Human Rights system.

A decision of the Special Rapporteur not to register a case is not final in the sense that an author of a communication may insist that their case be registered and the Special Rapporteur will not refuse. In these circumstances, following registration the Special Rapporteur will usually send the case directly to the Committee with a recommendation that the case be declared inadmissible. Although the Rapporteur’s decision not to register a case is not final if contested, many cases are filtered out this way without being dealt with substantively by the Committee as a whole. A detailed description of the functions of the Rapporteur, however, is not found in the Committee’s Rules of Procedure.

Since 1995, one of the other functions of the Special Rapporteur is to request states parties to take interim measures where they are warranted under Rule 86 of the Rules of Procedure. Interim measures may be ordered to avoid irreparable damage to the victim of the alleged violation. While the Annual Report now states the number of occasions in which the Special Rapporteur has made interim measure requests, it does not state how many of these requests have been honoured (although the success rate is reportedly more than 90%).

## ***RECOMMENDATIONS***

### ***Treaty Bodies***

***The functions of the Special Rapporteur on New Communications should be enunciated in the Committee’s Rules of Procedure.***

***More precise information on the application of the interim measures procedure should be publicly provided by all committees using such a procedure, including the specific cases in which it has been used (at the time it is invoked), and the responses of states parties to requests.***

## OHCHR

*The secretariat must have sufficient human resources to be able to engage efficiently in the preparatory work required for the proper functioning of the Special Rapporteur and the Working Group on Communications, and ultimately the Committee. In particular, the Petitions Team should include many more lawyers familiar with a wide range of legal systems and languages.*

*The numbers of provisional files opened should be recorded and made public.*

*A manual for prospective users of the petition system should be prepared which explains the process and how to make an effective case based on the experience of the secretariat over the past two decades. The issue of forum-shopping among the treaty bodies, and detailed information concerning the application of the interim measures provision, including practical advice, should be included.*

*Cooperative relationships with appropriate legal assistance services or programmes at the national or international level should be developed to assist lawyers and provide information and assistance concerning the filing of complaints. This could include offers by OHCHR staff to attend or give nationally-based seminars to legal aid clinics, bar admission courses, professional development courses for lawyers, and judicial training.*

### **13. The Special Rapporteur on Follow-up to Individual Communications**<sup>77</sup>

The mandate of the Special Rapporteur on Follow-up to Individual Communications was created in 1990. The purpose was to ensure that the Human Rights Committee properly focussed on the issue of follow-up, particularly in light of the poor record of compliance with the Committee's views. As of July 2000, states parties have submitted satisfactory follow-up replies to the Committee's views in only 21% of cases disclosing a violation of the Covenant.<sup>78</sup>

After the Committee has made a finding on the merits of a violation of a provision of the Covenant, it asks the state party to take appropriate steps to remedy the violation. The recommended remedy may be more or less specific. But in recommending a remedy, the Committee routinely indicates to states parties:

Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views.

In other words, Article 2 of the Covenant legally binds ratifying states to provide an effective remedy for those whose Covenant rights have been violated, and for 25 years the Committee has exercised its competence and responsibility under the Optional Protocol to determine whether there has been a violation. Therefore, although the Optional Protocol refers to the Committee's decisions as "Views", refusal to implement those Views is clearly incompatible with the spirit and purpose of the Protocol.

Of 354 final views adopted over the history of the Optional Protocol, three-quarters have revealed a violation of the Covenant.<sup>79</sup> A significant proportion of registered cases come from a limited number of countries. Of the 98 states currently participating in the Optional Protocol, 35% of all concluded cases have come from five states (Canada, Uruguay, Netherlands, France and Australia - the Uruguayan cases relating to previous historical events). The sentiment is therefore expressed that some states are unfairly targeted. This is not borne out by an examination of the outcomes, either for admissibility or final views.<sup>80</sup> What is disturbing is that the reasonable and foreseeable consequences of ratification are used to excuse noncompliance.

As indicated, the Committee's insistence that a remedy be forthcoming in response to a finding of a violation has been respected in only 21% of cases. In the context of this extremely poor record of compliance, the Committee has performed the task of follow-up with minimal transparency and effort. In theory, the Committee's rules of procedure specifically require that information furnished by the parties within the framework of follow-up, and decisions of the Committee relating to follow-up activities, are "not subject to confidentiality" (unless the Committee takes a special decision to the contrary). (Rule 97) The practice is quite different. With respect to the Committee's annual report section on follow-up:

- the summary list of cases (in respect of which follow-up has been requested) does not state whether a reply from a state party in a specific case is, or is not, satisfactory; it indicates only whether a reply has been received; this is despite the fact that the Committee categorizes 70% of the replies as unsatisfactory
- in many cases the replies of states parties are unpublished
- all meetings held with a state party in the context of follow-up are private
- the results of such meetings, or any comments of the Special Rapporteur or the Committee on whether they are satisfactory, are not reported in substance to the public or to the author (follow-up is not on the agenda of Committee sessions and not reported in press releases)
- the practice of the current Special Rapporteur is to report in detail to the Committee on follow-up meetings that have been conducted with states parties only once a year (at the March session - which may be many months after they took place
- where the annual report provides summaries of meetings with states parties, or of follow-up replies received, it only summarizes the responses of states; it takes no note, and provides no summary, of follow-up information received from authors
- a detailed follow-up paper prepared annually for the Committee is not made into a UN document and published, or put on the OHCHR website
- with respect to the only follow-up mission undertaken to date (to Jamaica) the report on

- the mission was not publicly released
- the three follow-up missions the Committee seeks for 2001 (Colombia, Suriname, Trinidad & Tobago) include no states from the Western European and Other Regional Group, although these states account for the largest number of complaints for current states parties (Canada (96), Uruguay (79), Netherlands (67), France (50), Australia (34) - with the Uruguayan cases emanating from very dated circumstances now overridden by historical events))<sup>81</sup>
- at the moment the only public discussion with a state party on follow-up of an individual case consists of questions to be asked in the next discussion of the state's report, which is likely a considerable number of years after the decision (since the Committee on average currently deals with state reports from the same state in 7-year intervals<sup>82</sup>).

There are some suggestions that the Committee's poor record on follow-up is a result of the absence of a reference to follow-up in the Covenant. This would be in contrast to Article 7 of the Optional Protocol to CEDAW. However, the Committee has not had any legal difficulties instituting visits to states parties as part of follow-up to its responsibilities to deal with communications under the Optional Protocol. Increased vigilance with respect to follow-up in other ways should not be of greater concern. Moreover, just as Article 7 of the CEDAW Protocol ties some follow-up activities back to reporting obligations under the Convention, if necessary, follow-up activities of the Human Rights Committee could be related to Article 40 reporting obligations under the Covenant.

## **RECOMMENDATIONS**

### **Treaty Bodies**

***Follow-up to communications should not be a minor, isolated concern of a single member of the Committee with little connection to, or attention of, the Committee as a whole.***

***Follow-up should be routinely on the agenda (and the published provisional agenda) at every meeting.***

***Follow-up business should be conducted in public meetings.***

***Follow-up procedures for individual communications should be established governing the process after every communication in which a violation is found. The process should incrementally increase the committee's level of engagement with a particular state with respect to follow-up as time goes on, for example:***

- a letter of reminder at the end of the 90-day period***
- further reminders at regular intervals***
- a meeting of the Special Rapporteur with a state party representative***
- public reporting by the Rapporteur of the substance of the meeting and any state party***

- *undertaking*
- *public reporting of any information on follow-up from the author*
- *a clearly stated Committee position on the satisfactory nature of the state party's response to the communication*
- *a public meeting of the committee with the state party on follow-up (for example one or two meetings a session should be set aside to publicly discuss follow-up for 30 minutes with a series of states parties, without the necessity of a written report)*
- *a further view or clearly stated Committee position on the satisfactory nature of the state party's oral response to the communication*
- *a visit to the state party on follow-up*
- *the public release of the mission report on the visit.*

*Follow-up to individual communications should be introduced and applied to the work of CAT and CERD (and eventually CEDAW) on communications, including the appointment of a Special Rapporteur on Follow-Up to Individual Communications, and the regular production of a document on follow-up to communications.*

*A transparent and detailed follow-up practice should be developed with respect to the application of CEDAW's general follow-up Rule of Procedure 18.*

#### States Parties

*States parties have ratified the Optional Protocol in bad faith when refusing to provide a remedy by calling into question the Committee's authority. This behaviour on the part of states undermines the legitimacy of the international protection of human rights and the treaty monitoring process which seeks to make it meaningful. There is no excuse for the lack of state support for the Committee's authority as a response to individuals exercising their treaty rights, and the poor example of those states with democratic institutions in this regard is particularly regrettable. States should honour their obligations to provide an effective and enforceable remedy for victims of violations of the treaty's rights.*

#### 14. Country Rapporteurs<sup>83</sup>

The system of country rapporteurs is another method for delegating responsibility within the treaty bodies that has increased efficiency. The difficulties have been that in some committees certain members refuse to take such responsibility. This is most conspicuous, for example, with CERD where some members refuse to be country rapporteurs. At the same time, the range of abilities and expertise of committee members has made the work produced by some country rapporteurs much poorer than others (to such an extent that observers and participants prefer that some members not take the responsibility of country rapporteur). Since country rapporteurs are responsible for first drafts of concluding observations, this variable aptitude is publicly noticeable in the mixed quality of concluding observations adopted.

Some committees rely to a much lesser extent on research of the OHCHR secretariat on country situations. In these committees, the quality of the committee's work is more dependent on the personal research skills, industry and availability of individuals, in particular country rapporteurs, outside the sessions. This again gives rise to mixed results in terms of the quality of the rapporteur's contribution to the committee's work. The part-time and largely unremunerated nature of committee membership has a negative impact in the treaty bodies' performance in this context.

The committees have a very mixed practice with respect to public knowledge of the identity of the country rapporteur, or public knowledge of the address of the country rapporteur. In the case of CEDAW and the Human Rights Committee, the identity of the country rapporteur is kept confidential. This inhibits the flow of information to the rapporteur. The other four committees have not found that public knowledge of their identity has resulted in any serious impediment or personal threat to the integrity of their work. It has been the case that when their identity is known, both states parties and NGOs have sought to lobby country rapporteurs concerning the various dimensions of considering state reports. But country rapporteurs should be capable of avoiding inappropriate encounters. Furthermore, such lobbying efforts are not confined to members who are country rapporteurs. As long as the process of handling reports depends on the preparation of the country rapporteur to an important extent, procedures should maximize the flow of information to that individual.

At the same time, the country rapporteur system highlights the importance of independence of treaty body members from their own states parties, and their willingness to fully engage in an analysis and critique of a given state party. There have been circumstances where a treaty body member has sought to become a country rapporteur in respect of states having a significant relationship (either negative or positive) to their own. CEDAW seeks to appoint rapporteurs from the same region as the state party. CAT takes linguistic ability into account, in order to read untranslated documents of many kinds.

## **RECOMMENDATIONS**

### **Treaty Bodies**

***The system of country rapporteurs is an efficient way to maximize the committees' ability to comprehend country situations. However, its effective functioning depends on the expertise and initiative of committee members. In theory, all committee members should take an equal role in serving as country rapporteurs. It is therefore incumbent on states parties to elect members who are willing and able to perform the function of country rapporteur.***

***As long as states parties continue to elect non-independent members to treaty bodies, the committees themselves must exercise greater responsibility for ensuring that members are not named as country rapporteurs with respect to states for which their independence and impartiality appear to be in any doubt.***

## **15. List of Issues**<sup>84</sup>

The lists of issues are intended to increase the efficiency of the dialogue with the state party, and to maximize the treaty body's understanding of a specific state situation. They do this by:

- (1) compensating to some extent for poor reports, by specifically directing the state's attention to issues avoided in reports
- (2) allowing an update of the country situation immediately preceding the dialogue, so as to minimize the time in oral discussion required for updates
- (3) focussing the dialogue on major issues of concern to the treaty body which arise from the report (and the secretariat and committee's research)
- (4) providing time for states parties to prepare for the dialogue and anticipating the subjects of discussion
- (5) permitting a written exchange of information of concern to the treaty body, so as to further focus the dialogue itself on the key issues.

Although the preparation and substance of the lists of issues and their usage can be improved, these goals are reasonable and laudable.

CAT and CERD do not adopt lists of issues. One reason suggested is that the more focussed nature of CAT does not require it. CEDAW does not adopt a list of issues for initial reports, on the grounds that it would antagonize states parties and inhibit the development of their relationship with the Committee prior to the commencement of the dialogue process. None of these reasons is cogent. In so far as CAT and CERD extemporaneously can conceive of questions to put to state parties, informing states parties in advance of the nature of their concerns, interests and requests for further information in specific contexts can only assist the exchange of information. CAT provides 24 hours between questions and answers during the dialogue process. CERD provides an overnight. The purpose of the dialogue is not to surprise states, but to permit them to answer as fully as possible, and to maximize and internalize their own thinking and assessment of the national implications of treaty requirements. This is at least encouraged through the adoption of lists of issues.

This applies equally to initial reports to CEDAW, in which the potential benefits apply equally to periodic reports. The absence of a focussed beginning to a dialogue with the committee, encourages expanded "introductions" by states parties which waste time. Non-adoption of a list of issues means that there is no working group consideration of the state party's report. Other members of the committee learn of the country rapporteur's initial assessment of the main issues only 30 minutes prior to the commencement of the dialogue itself. Furthermore, given the five and a half years on average between consideration of reports by CEDAW,<sup>85</sup> the failure to maximize the information exchange during the entire first 'consideration of a report experience' is an important lost opportunity.

Criticism of the list of issues methodology has included a failure to finalize the lists in the working groups. Human Rights Committee members have been most reluctant to cede authority to the working group in this regard. It seems clear, however, that this degree of delegation is

required in order to maximize efficiency. There are concerns that CEDAW's list does not have sufficient input from the country rapporteur, or many other committee members. This has a tendency to manifest itself in the unwillingness to generally confine questioning during the dialogue to what is highlighted in the list of issues. Refusing to limit questions to the broad areas of interest identified in the list of issues should result only from unanticipated or new significant information; unfortunately, this is not the case with most of the treaty bodies. The identification of the list of issues is usually dependent to a large extent on input from the secretariat, emphasizing the need for a thoroughly informed staff behind an effective treaty body operation.

The goal of maximizing the treaty bodies' accurate understanding of a country situation is assisted if interested actors other than the states parties contribute to the dialogue process. This requires other actors to be informed of the list of issues well in advance of the session, in order to provide timely answers that may contrast with those of the state party. Furthermore, the lists assist all interested parties in understanding the application of the treaty to the specific state, and the kinds of concerns that specific application generates. However, in the case of CEDAW the lists of issues are never published or put on line. In the case of CRC they are not published or put on line prior to the dialogue, although there is a very good communication network via the NGO-CRC group.

Written answers to the lists of issues are requested in the case of CESCR and CEDAW. CRC requests written responses to only some questions on their list. The Human Rights Committee does not seek written answers at all apparently on the grounds that individual members object if answers are submitted too late for translation and yet circulated. The failure to solicit written answers diminishes the ability of the lists of issues to accomplish its intended goals: maximal preparation and understanding of the country situation by committee members in advance of the dialogue, focussing of the dialogue, and receipt of additional targeted information from other actors. It also encourages the monotonous reading of answers from the podium as part of the state-treaty body exchange.

At the same time, written answers are not published or put on line. In very limited circumstances they are put on line by CRC. This is very unfortunate. Often, the written answers more precisely apply the provisions of the treaty to the state party concerned than do the state reports. They may be more detailed in many respects than state reports. They are directed to, or often address, specific concerns of the treaty body about the treaty's application in the national context. They contain undertakings and official statements of principle by states parties related to specific international concerns. They are often essential counterparts of state reports which are years out of date by the time the dialogue occurs. Yet they are routinely discarded at the end of the dialogue.

## **RECOMMENDATIONS**

### **Treaty Bodies**

*All treaty bodies, including CAT and CERD, should adopt lists of issues for the consideration of state party reports. CEDAW should adopt lists of issues for initial reports.*

*The lists of issues should be published and put on line prior to the dialogue with the state party.*

*Written answers should be solicited from every state party at least two months in advance of the dialogue.*

*Written replies to lists of issues should be published. The informality of their format can be maintained; they can be published in “unedited” form. If the submission of the replies in an electronic form would assist in their earlier publication or availability on the OHCHR website, states should be requested to submit an electronic version together with hard copies.*

*Treaty body members should confine their questioning to the broad areas of interest and concern identified in the list of issues, except in circumstances of unanticipated, new, and significant information.*

### **NGOs**

*NGOs should increase their input during the drafting stages of the lists of issues.*

## **16. Country Information Within OHCHR<sup>86</sup>**

Four of the six committees now have the secretariat prepare a “country analysis” or “country profile” prior to their consideration of a report. CEDAW and CERD do not. The Human Rights Committee members, however, rarely make use of it. CAT has just started the process (November 2000). The CRC analysis is relied upon heavily by members, who may fail to read the original material, including state reports and written submissions (particularly if the member is not the country rapporteur).

The quality and extent of the country analyses are very uneven. Only the analyses produced by CRC are routinely shared with other treaty bodies (and with other parts of OHCHR). The analyses of CRC include 10-15 pages of general background information on the state. This includes a summary of basic information (like those found in “CORE” documents), and an overview of the human rights situation drawn from a multiplicity of sources. External sources (non-UN human rights reports) are quoted and a summary provided of UN sources (resolutions and reports). The analyses contain another 10-15 pages assessing the state party report.

Omissions are noted, problem areas in the state are highlighted, areas of concern are identified through quotations drawn from NGO, UNICEF, other government reports, and media accounts.

The profile produced by CESCO is about 15 pages. It is not shared in the internal OHCHR database. It provides a brief summary of country facts, and then for 2-6 pages describes facts concerning economic, political, social and legal issues drawn from selected comments in UN reports, regional institution reports and country profiles, other government reports, and media accounts. A second part selects and quotes comments/criticisms from those same kinds of sources, NGO reports, and the concluding observations of other treaty bodies, and organizes them by articles of the Covenant.

The Human Rights Committee analysis of 8-9 pages is of much more limited scope. It puts in table form issues discussed at the previous examination of the report from the state party, the resulting concluding observations, and matches them to selected portions of the current state party report.

There is an explosion of written material relevant to assessing the implementation of the treaties at the national level: UN mechanisms, agencies and bodies, annual and state reports of major international NGOs, annual and state reports from regional international organizations, major in-depth annual reports of governments, concluding comments of all treaty bodies, NGO shadow reports written specifically for the dialogue process, media reports, and academic articles. The amount of information is difficult for committee members to digest.

The treaty bodies consider one report in a dialogue lasting 4.5 - 9.5 hours.<sup>87</sup> They take up anywhere from four to thirteen states - but on average seven to eight different states - at each session (a two or three-week period).<sup>88</sup> They will not consider that same state for another five years on average.<sup>89</sup> In between sessions any work for the committees is unremunerated (members of three committees also receive no remuneration during sessions), and normally have other employment. Of necessity, therefore, they are dependent on the ability of the secretariat to gather information, organize it, and present it in a manageable form.

At the same time, treaty body members have been elected as independent experts. The selection and presentation of information may involve judgmental decisions which are inappropriate for unelected officials. Many of those authoring submissions to the treaty bodies are also sceptical about the ability of the secretariat to select material, and would prefer committee members to read the original submission. On the other hand, if the quantity of information is unmanageable or unread by committee members, reliance on the secretariat will simply surface once again in the drafting of the lists of issues and the concluding observations.

Hence, there are two schools of thought. One encourages the development of a central data base organized by country and containing all human rights information. The information would be from UN sources (official and unofficial documents) and point to, or link to, or even contain, information from external sources. The task of each treaty body member would then be to

research the country situation themselves. As of now, there is no such central country-organized database, even of UN sources. In the meantime, hard copies of many kinds of country-specific information are provided to members individually or in a common country file in the meeting room. The second school of thought encourages (in addition to the eventual development of a central data base) the filtering and organizing of material by the secretariat, who would read through all the source material, select or highlight material of greater relevance to the implementation of the treaty, and connect the material to the relevant provisions of the treaty.

The latter approach, favoured by CRC, is obviously much more resource-intensive on the part of the secretariat. The CRC has more staff members than other treaty bodies (with respect to state reports). It is assisted by an NGO network dedicated to the Committee's work. It is also assisted by UNICEF, which has made the implementation of the Convention and cooperation with the Committee a fundamental part of its operations. If the resources were provided to other treaty bodies, it seems clear that some filtering of the large quantity of information and organizing of source material in relation to the specific provisions of the treaty would benefit all treaty bodies. However, a deliberate effort to avoid duplication of the initial phases of this work - collecting, filtering and some organizing of information from UN and other sources - by the secretariat is required. At the moment, different staff members often prepare background information on the same state for different treaty bodies.

In addition, the usefulness of country analyses will relate to the timeliness of their production and their availability to all treaty body members. There is a tendency to focus on providing information well before the session (or working group) only to the country rapporteur, and in some cases the working group. The country analyses are generally not circulated to all committee members at the same time. If they were well-prepared, and received in advance of the session, it would permit additional research or reveal a potential need to consult background sources in sufficient time for the various stages of the dialogue process (preparation of the list of issues, NGO and UN agency consultations, dialogue with state party). At present a large country file is created for the committee room itself, many of the documents not being provided to members on an individual basis. The contents of the country file become known, and are made available in many cases, only at the session at which the dialogue occurs.

At the same time, a central country-organized information system is an essential component of an efficient treaty system. The secretariat repetitively gathers country-specific information on the same state for different treaty bodies (and for other OHCHR operations). Information from a wide variety of UN sources must be sought on separate occasions from a variety of places. Repeated searches for updates are necessary. In the absence of posting material on a central site, a significant amount of material is never circulated, even within OHCHR itself.

Country-specific information which is relevant to a consideration of reports by treaty bodies is also found in non-electronic form at OHCHR. Hard copies of material flow in to OHCHR from a multitude of different sources on a regular basis and are used by a variety of staff members engaged in a range of operational activities. At various points in time, efforts have been made to

create a “Common Country File” which is intended to contain all of this material in a central place. There have been a number of impediments.

- Country information collected by individual staff members is not routinely given, when it is no longer used, to the staff member attempting to create Common Country Files
- Information coming into different branches of OHCHR (the treaty “support services” branch (SSB) and the “activities and programmes” branch (APB)) is largely retained in separate country files.
- The usefulness of creating common country files for the large numbers of country-specific documents coming into OHCHR, will depend on simultaneously creating a professional bibliography of material (name, author, publisher, date) contained in the files and circulating the bibliography. This has not occurred.
- Similarly, the utility of a common country file will depend on the preparation of professional acquisition updates (name, author, publisher, date) to staff members. This has been undertaken in a preliminary format only. The bibliography and acquisition lists are necessary to keep staff informed of the existence of hard-copy information and permit them to quickly assess its potential relevance to the preparation of a country analyses and the work of the treaty bodies.

Another source of country-specific information for the treaty bodies is the experience and knowledge of OHCHR desk officers. Approximately 30 desk officers are responsible for about 150 states (other states are assigned when necessary or as issues are raised). Their responsibilities include servicing mechanisms of the Commission on Human Rights, and managing technical cooperation projects. As a consequence, they usually find it necessary to focus on a subset of the states to which they have theoretically been assigned.

Nevertheless, for some states the desk officers have considerable familiarity with country situations, (particularly through servicing technical cooperation/advisory services projects or country rapporteurs). Information on all the states they have been assigned is also often channelled to them. However, until recently there has been little exchange of information between desk officers and treaty bodies. Some reasons suggested have been:

- country-specific information is normally not brought to the attention of treaty bodies because they are assumed to be interested in states only on a very intermittent basis
- posting the schedule of treaty body consideration of state reports on a central site is not sufficient to encourage desk officers to draw information to the attention of treaty bodies
- the work of desk officers with states may be compromised by the appearance of testifying against, or informing upon, a state party before a treaty body.

The suggestion that it is inappropriate for OHCHR desk officers to share all their information with treaty bodies is unjustified. If UNHCR and other agencies/organs which are engaged in field operations can provide information to treaty bodies, OHCHR staff (functioning under a common mission statement) can surely be expected to do the same. On the other hand, concerns that treaty body members are not genuinely independent, and hence cannot be trusted with some information gathered by OHCHR, are unlikely to dissipate without a significant change in election behaviour to treaty body membership on the part of states parties.

## **RECOMMENDATIONS**

### **OHCHR**

*A country analysis is in principle a helpful tool for all treaty bodies. The analysis should:*

- *primarily reproduce selected portions of original material rather than offering written summaries,*
- *indicate all sources, and wherever a selected text is included the specific source should be identified on each occasion,*
- *organize information in accordance with the provisions of the treaty,*
- *systematically include:*
  - *findings, decisions and reports of UN mechanisms, bodies and agencies*
  - *concluding observations of other treaty bodies*
  - *NGO information*
  - *reports of regional institutions*
  - *major governmental reports.*

*At the same time, copies of original sources should continue to be provided in a country file available to committee members for consultation. Over time, experience by the committee with particular sources of information may indicate that they are unhelpful, or unreliable and should be omitted, and direction may be provided to the secretariat in that regard. Lists of information not included in the country analysis, but available in the committee room's country file, can be provided to committee members.*

*Country analyses should be sent to all committee members well in advance of the session at which it will be used (the working group, or committee session). A list of source material used in its preparation and available from the secretariat should be provided to members at the same time, so that they will be able to request it in advance of the meeting if necessary. Material received after the production of the country analyses (particularly NGO material) should be circulated in advance of the session as far as possible to all committee members.*

*In the context of a consolidated state report organized on a thematic basis, there would be one common country analysis which organized information on a thematic basis, (thereby considerably reducing the duplication of a secretariat effort to produce country analyses).*

*Current efforts by OHCHR to create a "country information framework" on its internal HURICANE network (Human Rights Computerized Analysis Environment) should be encouraged. The plan should be expanded to incorporate text or links to all relevant country-specific UN reports (such as state analyses from UNDP, UNICEF, UNFPA, WHO). A multiple database search engine which permits a user to access information by country must be introduced. This should connect to the "External sources database" currently under development. Guidelines should be developed for OHCHR staff possessing country-specific documents on the use of HURICANE. These should include identification of the kinds of*

*material which should be posted, the responsibilities of desk officers for posting the material, and the methodologies for restricting access where necessary.*

*Common country files need to be kept on a systematic basis by OHCHR. This includes the preparation of a professional catalogue of existing country-specific material, the integration of material currently separated into SSB and APB files, and the preparation of a regularly distributed acquisition list which provides sufficient details to enable a preliminary assessment of the relevance of the material to the treaty bodies.*

*For those states with which the desk officers have specific expertise (producing reports for a country rapporteur, or participation in a needs-assessment mission, or servicing a technical cooperation project), desk officers should routinely brief the treaty bodies. They should prepare a memorandum or briefing notes for the committee, and meet directly at least with the country rapporteur and working group. For those states with which the desk officer has no specific expertise, they should assist the treaty bodies in identifying sources of information and relevant documents, share information which may have been channelled to them, and be available to meet with the country rapporteur and working group if asked. Overall, there should be a clearly defined set of expectations on the part of all desk officers in relation to the work of the treaty bodies, and a concomitant interest on the part of the treaty bodies in the knowledge and resources of the desk officers. (See also infra section 34. Servicing and Resources)*

## **17. CORE Documents**<sup>90</sup>

One hundred and five states have submitted CORE documents, and 88 states parties have not. Some CORE documents date back almost a decade. Thirty-three states have submitted updating information.

Although CORE documents are on the OHCHR website, they are not accessible in a user-friendly format. There is no single list of CORE documents organized alphabetically by country, so that states which have failed to submit one are not readily discernible.

Although CORE documents are useful to the work of the treaty bodies, the general failure to keep them up-to-date will diminish their usefulness in the future.

## **RECOMMENDATIONS**

### **OHCHR**

*Letters of reminders should be sent to states which have not submitted CORE reports.*

*A list of CORE documents should be clearly catalogued on the OHCHR website by country.*

## States Parties

*CORE documents should be kept up-to-date through the submission of periodic updates by states parties as required.*

### **18. Non-governmental Organizations (NGOs)**<sup>91</sup>

The treaty bodies have been heavily dependent on information from NGOs in preparing for the dialogue with states parties. State reports are self-serving documents which rarely knowingly disclose violations of treaty rights. Improvements in the provision of country-specific information to treaty body members, such as country analyses, or briefings by desk officers, and electronic means of gathering information from a variety of sources, have also been relatively recent developments. Furthermore, NGOs from the national level continue to have unique information on the application of the treaties to the domestic context. This dependence has led to a close working relationship between NGOs and most of the treaty bodies.

At the same time, links between NGOs and treaty bodies vary among the committees. Neither CERD nor CAT has pre-sessional working groups that meet with NGOs, nor (formal or informal) meetings with NGOs scheduled during the time period of the session. They meet NGOs on an ad-hoc basis, either as individual members in the case of CAT, or in the case of CERD over lunch-times when few members attend and others refuse to go systematically. CERD has also ceased its former practice of soliciting information from NGOs.

CESCR permits NGOs to speak at an open meeting on the first day of the session for which there are no summary records. The Committee permits NGOs to use the time to speak about states which are not on the agenda for the session, and outside the context of a state report. In the past, states parties have sometimes not been informed such submissions have been scheduled, although such submissions have led to specific requests from the Committee to states parties.

While CEDAW does not formally solicit information from NGOs, it sets aside time to meet with NGOs both during the pre-sessional working group and on the second day of the session. It also has a close working relationship with a number of international women's NGOs which closely follow the work of the Committee, and with UNIFEM which has characterized the Convention as a fundamental charter for its own work. NGOs routinely submit shadow reports which relate to Convention articles, and women from the national level frequently attend the actual dialogue, with the assistance of leading international NGOs, such as IWRAW-Asia Pacific, together with UNIFEM.

The CRC has the closest working relationship with NGOs, and this has been true since the Convention came into force. An NGO coalition, based in Geneva and devoted to liaison with the Committee (The NGO Group for the Convention on the Rights of the Child), performs a number of important functions:

- contacts NGOs at the national level to advise them of the requirement upon their government to produce a state report
- alerts NGOs to the possibility and importance of preparing a shadow report
- encourages NGOs to work together with other NGOs at the national level in the preparation of a report
- provides guidelines and other assistance on the preparation of shadow reports
- advises NGOs of the forthcoming consideration of reports
- arranges for the participation of small numbers of NGO members from the national level in the pre-sessional working group in Geneva
- assists in the dissemination of the Committee's list of issues
- arranges for small numbers of NGO members from the national level to attend the dialogue with the Committee
- assists in the dissemination of the Committee's concluding observations.

The successful cooperation between the NGO-CRC Group and the Committee is no doubt facilitated by the involvement and financial support of UNICEF, and other bodies.

Despite considerable NGO interest in the work of the treaty bodies, there are, nevertheless, procedural impediments to their participation. These include:

- working group meetings that determine the lists of issues are (and should be) months before the dialogue and NGOs normally cannot afford to come to both working group and committee meetings with the state party; most prefer to attend the committee meeting and hence, new questions for states parties are introduced late in the process
- meetings with the state party are often held over a significant time period with many days in between the question and answer sessions - CEDAW having the longest break between questions and answers (for initial reports); release of concluding observations is also usually some days or weeks past the dialogue; hence, the time necessary for NGOs to monitor the Committee interaction with a single state may amount to a lengthy (and hence expensive) period of two to three weeks
- CEDAW's release of the concluding observations only two to three weeks after the session ends inhibits the ability of NGOs to raise media interest
- insufficient proactive efforts on the part of some treaty bodies to
  - (a) identify relevant national-level NGOs and to invite them to participate in the process,
  - (b) educate them about the optimum nature of the substance and timing of their participation,
  - (c) direct the end products/concluding observations to them at the end of the cycle.
 (There remains a significant lack of familiarity with the treaty standards, their meaning, the state reporting process, and the potential contribution of NGOs, particularly at the national level.)
- difficulty in accessing state reports and concluding observations at the national level, despite growing amounts of information on OHCHR and DAW web sites
- differential access to committee members, as some NGOs know the addresses of members and send their material directly to them prior to the meeting, and others must wait for distribution by the secretariat (which is often at the meeting itself)
- screening or discouraging the use of NGO material by the Chair(s) of CERD.

The committees' dependence on NGO information has its limitations. Since NGO contact with most of the committees is ad-hoc, and for national NGOs, often depends on fortuitous awareness of the process and dates, the information presented to the committees is far from comprehensive or even targeted at the central human rights issues. The Committee's holistic understanding of a country situation may be distorted by information coming from an active, but specialized, NGO which is focussed on a very limited range of matters. The agenda of a particular NGO may not coincide with the committee's interest in knowing the facts and their relative importance in the state's overall implementation record.

In practice, NGO information has been most helpful to the treaty bodies, when:

- it has been prepared through some degree of coordination or coalition-building at the national level
- international NGOs have endeavoured to play a facilitator's role: alerting national NGOs to reporting expectations of the state party, providing information about the treaty's substantive requirements and procedural rules, and encouraging and facilitating the direct participation by national level NGOs
- efforts have been made to follow committee or other guidelines on the preparation of NGO shadow reports, particularly tailoring information to the provisions of the treaty, and suggesting concrete proposals, both with respect to questions for the lists of issues or dialogue and recommendations for specific future national action.

In general, the relationship of the treaty bodies with NGOs should not be an isolated event. Success of the state reporting scheme depends on the state internalizing a process of review and follow-up to concluding observations. NGOs should be recognized as key partners in what is intended to be an ongoing process of (a) **understanding** and awareness of the standards (b) **review** of laws, policies and practices against those standards (c) **planning** or the creation of action plans to improve the shortfalls revealed (d) **monitoring** the implementation of those plans.<sup>92</sup>

IWRAW-Asia Pacific<sup>93</sup> is a classic example of an NGO which moved from a theoretical set of treaty standards to a methodology for implementation at the national level. In so doing, it integrated a dynamic and symbiotic relationship to a treaty body (CEDAW). It began by identifying a gap in the treaty system, namely, needs to:

- mobilize women's groups at the national and regional level to improve accountability of governments in fulfilling treaty obligations
- improve the flow of information from the international level of legal standards to the local level, (including monitoring and facilitating the implementation of the treaty locally)
- enable women to use the treaty to advance their interests.

IWRAW-Asia Pacific then identified strategies at both the national and international level to (a) improve women's ability to claim rights, (b) foster mechanisms of enforcement which implement those rights, and (c) facilitate ongoing monitoring to track progress in compliance. Its programme was built step-by-step:

- enhance understanding of “women’s rights” and “equality” by using the Convention, particularly to emphasize the standard of *de facto* equality; develop the framework for identifying discrimination against women and the nature of state obligations under the Convention
- inspire women’s groups in the region to locate their advocacy within a rights framework, and to be aware of the Convention as a critical tool for advancing their rights
- run training sessions to develop practical, analytical skills for lawyers and non-lawyers in legislative and policy advocacy; train lawyers on filing test cases challenging discriminatory laws, on the use of the international rights instruments in domestic cases, share examples of effective litigation in this context; prepare a practical guide to preparing legal briefs for claiming human rights for women through the domestic application of international human rights standards
- assist campaigns to encourage governments to withdraw reservations
- expand training programmes to a broader range of target sectors than women’s groups, such as human rights groups, human rights commissions, the judiciary and lawyers, government officials, parliamentarians
- provide technical support to women’s groups to facilitate the development and sharing of model legislation, and to comment on proposed bills
- run training the trainers sessions in order to build regional capacity
- establish monitoring networks
- use the outcomes of the monitoring to write alternative reports to be submitted to CEDAW; provide technical support to assist in the production of shadow reports
- attend CEDAW sessions, meet with CEDAW members and provide them with information
- encourage the adoption and ratification of the Optional Protocol to CEDAW
- empower women to use the Optional Protocol to claim their rights.<sup>94</sup>

This integrated approach seeks to maximize national input at the international level, and the use of international standards at the national level. The approach is adaptable to other NGOs and other treaties.

## **RECOMMENDATIONS**

### **Treaty Bodies and OHCHR**

***The treaty bodies and OHCHR should take a proactive approach to engaging NGOs in the reporting process. NGOs should routinely be:***

- ***provided with clear information on the working methods of each treaty body and its relationship and rules with respect to NGOs concerning (a) written submissions, (b) oral interventions and meetings***
- ***informed of the timetable of state reporting in respect of their state***
- ***invited to submit information and to consider working with other national partners to submit information***

- *informed of guidelines for producing useful shadow reports where such guidelines have been issued by the committee, or of practical suggestions for producing useful shadow reports*
- *sent specific concluding observations when they have indicated an interest or submitted information to the treaty bodies.*

### Treaty Bodies

*Clear rules about access to the addresses of treaty body members should be adopted and those rules should be applied uniformly to all NGOs making submissions. Savings in time and costs may dictate that professional addresses should be publicly available.*

*Committee members should not be prevented from viewing any submitted NGO material.*

*NGOs should be provided by all treaty bodies with clearer directions on what the treaty body expects and wants from NGOs, both in terms of written and oral comments, at both the Working Group and informal meetings during the session.*

*The treaty bodies should inform themselves about the sources and expertise of those making submissions as part of their effort to ensure that conclusions are based on reliable information. Committee members should concentrate on producing an accurate analysis of the central issues facing a state party and developing a concomitant set of relevant recommendations, and not on narrow agendas which may be selectively pressed before them.*

*Committees should not permit the use of session time for general submissions from NGOs concerning states parties that are not on the agenda.*

### OHCHR

*OHCHR should identify NGOs interested in the process at the national level in each state; a database of national NGOs should be created including, where relevant, ECOSOC-accredited NGOs, and NGOs that have participated in the treaty system in the past.*

*OHCHR should appoint an NGO-treaty body liaison officer to facilitate various aspects of the NGO-treaty body relationship.*

### NGOs

*NGOs should be encouraged to submit (at least written) information to the working group considering the list of issues, rather than simply making submissions at the time of the consideration of the report. Written information should clearly indicate (a) the relevant article of the treaty related to the specific information submitted, (b) the suggested question to be put to the state party, and (c) the rationale supporting the inclusion of the question.*

*International NGOs should be encouraged to play a facilitative role in familiarizing and engaging national NGOs in the treaty body processes.*

*NGOs should be encouraged to develop an integrated approach to implementing human rights treaties. They should aim to maximize national input at the international level by writing shadow reports, sending representatives to attend treaty body sessions, and sharing information with treaty body members. They also should aim to use international standards at the national level in policy and legal advocacy, through legal and nonlegal channels, the judiciary, human rights groups, human rights commissions, government officials, and parliamentarians.*

#### States parties

*States parties should be encouraged to perceive NGOs as partners in a nationally-focussed and ongoing process of generating awareness, conducting reviews, drafting action plans, and monitoring results.*

### **19. UN Agencies, Bodies and Programmes**<sup>95</sup>

UN agencies/organs have different relationships with the treaty bodies. A few routinely attend the working group sessions of the four committees. The working group context provides the agencies/organs with the ability to provide candid information in closed-session to treaty body members. The failure of CERD to engage in briefings with UN agencies/organs inhibits what is submitted to CERD, because agencies/organs believe that limited distribution of written comments to the members of this Committee cannot be assured. The lack of a forum has also been problematic in the case of CAT. Agencies/organs with the closest links to a broad range of treaty bodies are ILO and UNHCR, and those with close links but to a restricted number of treaty bodies, UNICEF and UNIFEM. Other agencies/organs engage with the treaty bodies sporadically.

Frequently, the information provided by the agencies/organs (such as those of the ILO) is a repetition of what is found in more general reports, but relating to the specific states being considered. The information is most useful when it is a current assessment, not merely from the point of view of the agencies/organs' own standards, but tailored or related to the provisions of the respective human rights treaties. Some form of written submission is important, since not all members of the committees are present at working group sessions. Field officers (for example, normally brought in for the CRC by UNICEF for the express purpose of sharing information with the treaty bodies) are particularly helpful. (In the case of CRC only, this information is in effect transmitted to the whole of the Committee since almost all Committee members attend the meetings of the working group.)

The role of the agencies/organs in relation to the treaty bodies is complex. The agencies/organs want their effort to submit information to have positive results in terms of their own work. In other words, they want the end product of the state reporting process, (the concluding observations), to be a useful contribution for their purposes. Their needs relate to either the field level in terms of designing and implementing a programme, or the interpretation and development of standards which they want, or are required, to apply. Not surprisingly, UNICEF has found that the closer they work with the CRC, and the greater the input of UNICEF from the field level in terms of current, practical information, the more likely the concluding observations will be relevant to the agency in its own work. This potential for mutual support between UN agencies/organs and treaty bodies needs to move beyond UNICEF and CRC.

The relationship of the agencies/organs to the treaty bodies varies.

UNIFEM has said:

“The CEDAW framework can be tremendously useful in working for legal and policy changes at local, national and international levels. We have developed new programming aimed at: (a) achieving universal ratification of the Women’s Convention and removal/narrowing of States’ reservations (b) strengthening awareness of CEDAW and of the capacity of women’s organisations to use it in their advocacy work and, (c) collaborating with other partners to support the work of the CEDAW Committee and strengthening of the Women’s Convention. Indeed, we have pledged to become to CEDAW what UNICEF has been to the Convention on the Rights of the Child.”<sup>96</sup>

UNICEF has said:

“The United Nations Children’s Fund is mandated to advocate for the protection of children’s rights, to help meet their basic needs and to expand their opportunities to reach their full potential. We are guided in doing this by the provisions and principles of the Convention on the Rights of the Child.”<sup>97</sup>

UNDP has said:

“UNDP and HCHR shall closely cooperate with a view to promoting universal ratification and implementation of international human rights treaties.”<sup>98</sup>

UNHCR has said:

“There is a natural complementarity between the protection work of UNHCR and the international system for the protection of human rights....Human rights law is a prime source of existing refugee protection principles and structures...”<sup>99</sup>

“UNHCR has continued to strengthen linkages between refugee law, human rights law and international humanitarian law, so that they can be better used for the protection of refugees and other persons of concern to UNHCR. The Office has done so by following closely the work of [among others]...the six human rights treaty monitoring bodies.”<sup>100</sup>

Evidently, the agencies/organs take different views of the role of the treaty standards in relation to their work. For UNICEF, and increasingly UNIFEM, the implementation of the respective treaties is at the core of their perceived mandates. UNDP can be said to have a growing belief - still largely theoretical - in the centrality of the treaty standards, and their implementation, to their work. For UNHCR, the treaty standards complement their own refugee protection scheme, with the treaty bodies offering additional means for furthering refugee protection.

The agencies/organs which work closely with the treaty bodies frequently list the following factors as impediments to their relationship with one or more of the committees:

- the quality of the members of the treaty bodies
- their lack of confidence that some members will maintain the confidentiality of sources since many members are government employees
- the absence of pre-sessional closed meetings where information can be exchanged on a confidential basis
- the quality of concluding observations, their failure to accurately reflect conditions, or their inability to serve as the basis of concrete national programming
- the lack of OHCHR resources to enable the treaty bodies or their secretariat to take advantage of offers to share and examine agency/organ country-specific files.

The treaties themselves do encourage a connection between the agencies/organs and the treaty bodies in terms of reporting.<sup>101</sup> This is particularly true of the CRC and CEDAW conventions.

#### CRC

##### Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

- (a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;
- (b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

#### CEDAW

##### Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

For example, CEDAW routinely invites WHO, FAO, UNESCO, and the ILO to submit information relating to their work which is relevant to the implementation of Convention articles and supplements the state reports. Such reports are regularly submitted and published.

Overall, the willingness of the agencies/organs, with their considerable operational resources and practical experience, to be closely involved in the work of the treaty bodies and directly concerned in the implementation of the treaty standards can have a dramatic effect on the functioning of the treaty system. With field offices in 131 states, UNICEF does the following with respect to the Convention on the Rights of the Child:

- presses governments to submit reports
- encourages workshops with members of civil society to begin the process of report writing
- provides financial and other assistance to help with report writing
- supports NGOs writing shadow reports
- solicits information from the field which it sends to the CRC
- almost always sends someone from the field to pre-sessional meetings to meet directly with members
- half the time sends someone from the field again for the dialogue itself
- helps the Committee with its work (assists in improving coordination among members (avoid repetition in questioning states parties, agree on priorities, and work together as a team); provides assistance in identifying the list of issues)
- engages in follow-up at the field level (the field person who attended the session has seen where there is consensus and where the opportunities lie; this is much clearer than from reading summary records)
- translates concluding observations into local languages
- distributes the concluding observations locally
- uses the Convention at the field level to do programming beginning with its situation analysis.

The benefit for UNICEF is that the quality of concluding observations is improved and is consequently much more useful, improving UNICEF's ability to influence the national agenda. It also helps field officers in their dealings with government to speak in terms of "obligations". UNICEF no longer sponsors Committee visits to the region, believing these to have had little positive impact, but continues to sponsor participation in selected events on an individual basis.

UNHCR provides information to most of the treaty bodies, attending the pre-sessional meetings, and attempting to meet CAT or CERD members in the halls. Their methodology is to take note that a particular state is to be considered at one of the treaty body sessions, seek information from UNHCR field offices on the state party, and provide the information to the treaty bodies. They hope that the treaty body will reflect the concerns of UNHCR in their concluding observations, and that these, in turn, will reinforce their refugee protection work by becoming a shared concern.

UNIFEM has a much smaller operational capacity than UNICEF, with 12 regional offices and 12 gender advisors in the field. In January 1999 it created a "CEDAW advisor". It has moved from specific CEDAW-related projects, such as providing translations of CEDAW and general human rights training in the regions, to programming around the Convention with the specific goal of operationalizing the Convention at the national level. In this capacity it has sponsored various meetings in states bringing together CEDAW members, government representatives and members of civil society. Its work includes encouraging training NGOs and producing manuals.

It engages in a programme, together with IWRAW-Asia Pacific, in which NGOs from states parties that are to be considered are brought to the CEDAW session, provided training on Convention and CEDAW procedures, provided an opportunity to speak directly to the Committee, and prepared for follow-up when the concluding observations are received. UNIFEM is keen to improve the precision and programmatic capacity of concluding observations. At the same time, it emphasizes that the goal is to facilitate the ability of actors at the national level to mobilize and programme around CEDAW, which if accomplished by local actors, might reduce the relative importance of the quality of the concluding observations.

UNDP is a key organization in the UN structure. UNDP chairs one of four UN Executive Committees (UNDG - the UN Development Group), which among other things, develops important guidelines for the implementation of UN policies. UNDP is responsible for UN systemwide coordination of operational activities at the country level. UN country teams at the field level are usually chaired by the UNDP Resident Representative. With offices in more than 130 states, it has tremendous potential to act as a catalyst in integrating human rights treaty standards into national programming, and to follow-up outcomes of treaty body work.

In March of 1998 OHCHR and UNDP entered into a Memorandum of Understanding. At regular intervals the effectiveness of this MOU is monitored by a Joint UNDP-OHCHR Task Force. The process is still at the early stages, with UNDP taking an interest almost exclusively in the work of CESCR, offering some training programmes, as well as some limited assistance to governments in report writing and follow-up. There are also suggestions for a more advanced exchange of information from UNDP to CESCR (including the provision of UNDP National Human Rights Development Reports and country statistics and analysis, either in writing or through briefings). There are also internal directives to UNDP Resident Representatives to “play a catalytic role in bringing together all relevant national actors in the preparation of the State party reports to the human rights treaty bodies...includ[ing] assessing the human rights situation at the national level and conducting a comparative review of national legislation and international human rights standards to identify gaps and contradictions.”<sup>102</sup>

UNDP and OHCHR have commenced a joint programme called HURIST (Human Rights Strengthening), which among other things, identifies specific operational activities to be supported. Such projects include the development of national human rights plans, the translation and dissemination of human rights texts, and regional conferences on a variety of subjects. HURIST is meant to assist in the identification or integration of human rights into UNDP programming. It remains to be seen how closely these activities will be tied to the treaty standards and their implementation.

However, the statement of UNDP to the June 2000 Meeting of Chairperson’s cautions: “it cannot be taken for granted that the entire organisation is familiar with the specificity of the human rights treaty monitoring bodies...[T]here is a certain hesitation towards UNDP engaging in possible sensitive issues as UNDP’s work at the country level is carried out in consultation with the respective government. [W]e should recognize the limited capacity of the organisation to be

seriously involved in the full range of activities of the human rights treaty bodies.”<sup>103</sup> In fact, UNDP has strong ties to government and it is concerned that conducting human rights assessments will jeopardize the status and work of country offices. The issue is framed as one of whether human rights information can be collected and passed on to the treaty bodies without imperiling their work. This is despite the fact that a rights-based approach to development will require the preparation of an independent situational analysis. Hence, UNDP both (1) evidences “a certain hesitation” in a greater level of engagement, and (2) voices concern about the treaty bodies’ lack of familiarity with country situations and the fact that concluding observations are often not useful or programmatic.

Although major operational agencies or programmes such as UNICEF and UNDP have the potential to make a tremendous difference to the efficacy of the treaty bodies and the implementation of standards, there is an important caveat. They usually do not have similar operational functions or field offices in developed countries. In the remaining 60 states the catalyst and operational forces are normally NGOs, the media, and democratic institutions, all of which are often assumed in the context of a developed country to have the means and the will to translate the human rights treaties and the treaty body processes into action. This claim is often not borne out by the facts.

## **RECOMMENDATIONS**

### **Treaty Bodies and OHCHR**

*The UN agencies, bodies and programmes are key partners in the effective functioning of the human rights treaty system. Neither OHCHR, nor the treaty bodies, has the capacity to engage as broad a constituency in the treaty system as these agencies/organs. The culture of the UN should promote the genuine integration of human rights into the functions and operations of existing mechanisms. Efforts should be made by OHCHR and the treaty bodies to maximize the involvement of the agencies/organs in the treaty system. This should envisage the participation of these agencies/organs in a number of ways:*

- *encouraging the drafting of state reports and the development of national coalitions and partners*
- *providing solid information from the field*
- *contributing suggestions for the drafting of practical and accurate conclusions*
- *following-up and applying standards to specific states in their own work.*

### **Treaty Bodies**

*The treaty bodies should adopt a more proactive approach to soliciting input from UN agencies, bodies and programmes, beginning with specific invitations and personal contacts with a broader range of agencies/organs, with a view to their operational capacities. Invitations should solicit input into the preparation of country analysis, and initiate meetings with treaty body members.*

*Greater efforts should be made specifically to engage hitherto uninvolved and important agencies such as the World Bank and the International Monetary Fund.*

*Treaty bodies should conduct a detailed discussion with individual agencies/organs concerning the information that would be most useful to receive from the field, and in turn listen to their accounts of the form and content of useful concluding observations. (The brief statements and limited interaction at the Chairperson's meeting have not served this purpose.)*

*Treaty bodies should develop practical guidelines tailored to the work and mandate of individual agencies/organs, on the most useful form of submissions or contact, and suggested follow-up strategies.*

*CAT and CERD should institute pre-sessional working groups.*

*Treaty bodies should draft concluding observations which are cognizant of programmatic requirements.*

### **OHCHR**

*Greater numbers of MOUs should be signed between OHCHR and UN agencies/organs (in addition to those currently with UNFPA, UNDP, FAO, and UNESCO). MOUs between OHCHR and UN agencies/organs should stress that assessment and planning in light of human rights treaty standards (and their application by the treaty bodies), is a necessary part of the agencies/organs' work, consistent with legal obligations of all UN member states. Divisions of responsibilities should be clearly articulated in MOUs, and modified and developed through experiences in the subsequent follow-up process. These divisions, or the details of a framework of complementarity, should bear in mind concerns for operational effectiveness including safety, access, resources and visibility. Ongoing monitoring of the contribution of the MOUs with UN agencies/organs should be an important priority for OHCHR, and cooperation with the treaty bodies should be integrated and supported throughout the process.*

*OHCHR should expand its provision of training sessions for UN agency/organ personnel on the requirements and substance of the human rights treaties.*

*OHCHR should consider attaching small numbers of staff, or hiring local people to be attached, to existing UN agency/organ field offices, or field offices of other actors as appropriate, for the purposes of monitoring and reporting, providing advice, or disseminating information to government and NGOs at the local level.*

### **UN Agencies, Bodies and Programmes**

*The human rights treaties should be a reference point for the UN agencies/organs, and the standards should be integrated into their operations.*

*UN agencies/organs should send targeted information to the treaty bodies, not simply copies of reports for other purposes without some effort to relate these reports to the treaty standards.*

*UNDP should significantly deepen the extent and form of its cooperation with the treaty bodies, as envisaged in a number of reports from regional workshops and statements made in the MOU Review and HURIST context. These include using the preparation of state party reports as an opportunity to encourage dialogue with many actors at the national level. HURIST should facilitate not only ratification, but also follow-up of treaty body conclusions. Its success should primarily be measured by follow-up programming initiated, and improved implementation, utilizing the treaty bodies' lists of issues and concluding observations as benchmarks.*

*(See also agency involvement through the UN Development Assistance Framework (UNDAF) infra section 24.(b)(ii) Follow-Up: UN Agencies, Bodies and Programmes)*

## **20. The Special Procedures/Mechanisms**<sup>104</sup>

Most of the Special Procedures of the Commission on Human Rights were created following the creation of the treaty bodies. The scope and mandates of the special procedures have greatly expanded over the past decade. There are now fourteen country rapporteurs/representatives/independent experts, nineteen thematic rapporteurs/representatives/independent experts, and two thematic working groups. In recent years the Special Procedures have conducted approximately sixty field missions, and issued 800-900 urgent appeals annually.

The Special Procedures have more flexibility in relation to a number of functions as compared with the treaty bodies. The mandates or operation of the rapporteurs is not strictly associated with ratification of the human rights treaty standards. The Special Procedures therefore cover states which have so far avoided the treaty system, or avoid some dimension of its operation (a particular treaty, individual communications, inquiries). The range of states targeted by the thematic Special Procedures is therefore broader than those subject to the complaints procedures associated with the treaties. The issuing of urgent appeals also does not depend on any likelihood of satisfaction of conditions of admissibility, such as the exhaustion of domestic remedies. The Special Procedures normal *modus operandi* is to visit the relevant state(s) concerned, in contrast to the treaty bodies which essentially engage in written and oral dialogue with states outside the state concerned.

The limited range of states targeted by country mandates is clearly a product of political considerations - a restriction which the goal of universal ratification of treaty standards seeks to avoid. However, at least as long as universal ratification of both substantive rights and the accompanying individual complaint mechanisms has not occurred, mechanisms which extend the principles of international human rights protection beyond participation in the treaty system will be necessary.

At the same time there is overlap. Some states are subject to the attention of both special procedures and the treaty bodies. Sometimes this overlap is not strictly-speaking duplication. Treaty bodies have little capacity to deal with emergencies or to focus on systemic human rights violations or violators for sustained periods of time. There is little faith in the ability of the treaty bodies to deal with urgent actions in individual cases, although this reluctance is not necessarily justified. On the other hand, there are situations where individual cases are first sent to the special procedures and later to the treaty bodies on substantially the same issues. To date, the treaty bodies have tended not to count these initial entreaties as running afoul of the provisions in CAT, the Optional Protocol to CCPR to a more limited extent, and CEDAW's Optional Protocol, that disallow communications relating to matters which have been examined, or are being examined, under another procedure of international investigation or settlement.

In many ways, the work of the special procedures is more visible. Their work often involves on-the-spot investigations or high profile visits, they have more direct media contact, and they usually report to the Commission on Human Rights, and/or the General Assembly in person. There is also an immediacy associated with their work that is frequently not affiliated with the methodical examination of reports, or the lengthy written examinations of a relatively small number of individual cases by the treaty bodies. This perceived immediacy and higher profile has a clear tendency to draw resources, which in a fixed pool may be at the expense of the operation of the treaty bodies. The proliferation of international mechanisms has also diverted attention from the centrality of legal standards for the international protection of human rights. The expansion of the operation of Special Procedures, the concomitant secretariat resources and the emphasis placed on their functions, clearly has had implications for the functioning of the treaty bodies.

Many of the servicing issues associated with Special Procedures duplicate the servicing issues associated with the treaty bodies. Both require of the secretariat: knowledge and research of country human rights situations, liaison with NGOs (both national and international) and UN agencies/organs in relation to country situations, as well as the handling and organizing of individual communications. Even the standards applied by the special procedures in their work are often the human rights treaties, (although they also utilize non-treaty provisions such as the Universal Declaration on Human Rights, and the Standard Minimum Rules for the Treatment of Prisoners).

Nevertheless, the servicing of treaty bodies and special procedures are divided within OHCHR. The consequences of this division have included the following. Desk officers engaged in ongoing monitoring of country situations relate almost entirely to the work of the special procedures. At the same time, the preparation of country analysis for the consideration of state party reports is done by the treaty body secretariat. Each of the desk officers and treaty body secretaries create their own lists of external sources and partners, including international and national NGOs. Country files for each branch are largely separate. Suspicions that treaty body members are not genuinely independent of governments have inhibited the sharing of information received by desk officers. Individual communications received by the desk officers tend to remain with either country or thematic rapporteurs, although a prior analysis of the ability

of the treaty bodies to consider them has often not occurred. No set of clear, transparent priorities in terms of the most appropriate venue for complaints exists.

On the issue of communications, there is a growing bifurcation of complaints into so-called urgent appeals which are directed essentially to the special procedures, and substantive complaints without an urgent dimension that may, or may not, end up in the treaty bodies' communication procedures. The main focus of attention is on channelling urgent appeals to the relevant country or thematic rapporteurs or working groups, and coordinating joint urgent appeals when appropriate. Little attention is given to directing the appeal instead to a treaty body, on the assumption that they cannot act quickly, will refuse to become involved if there is no sign domestic remedies have been tried, let alone exhausted, and the criterion for their invocation (namely, irreparable damage) is much narrower than those which apply to the special procedures. It may be, however, that the ability of the treaty bodies to act has been underestimated. The Human Rights Committee normally acts through one person - the Special Rapporteur on New Communications - and is not held back by a bureaucracy. In about 95% of the cases in which the Human Rights Committee has used its interim measures procedure states have followed them, and their rules of procedure state specifically that a request for interim measures does not imply a positive or final decision on admissibility (although capricious disregard of the conditions underlying the request would not be consistent with the treaty's intent). At the same time, there is criticism that the use of the urgent appeals process by the special procedures has been done without sufficient screening of the source of the information or corroboration of the facts.

The special procedures (rapporteurs, representatives, independent experts, working groups) and the treaty bodies connect: (1) through the conclusions they each draw on specific country situations, and (2) in relation to thematic work (the drafting of general comments or treaty body thematic days of discussion). Each is generally provided with their respective reports and concluding observations. However, there are complaints that this information exchange is incomplete, and information about missions and outcomes, or concluding observations, is not routinely forthcoming. At the same time, there is minimal personal contact. Many of the treaty bodies are not briefed by special rapporteurs, even those closely connected with their work. There is considerable dissatisfaction on the part of treaty bodies such as CEDAW and CERD with the little connection they have with thematic rapporteurs. There are exceptions, such as the relationship of the Special Rapporteur on Torture with CAT, or the Special Rapporteur on the Sale of Children with CRC. Country rapporteurs are rarely, if ever, seen by treaty bodies. Treaty bodies have issued some invitations, but in general, there are no resources for rapporteurs to attend the relevant treaty body sessions (either pre-sessional working groups or committee meetings). The link is, in theory, largely expected to be the desk officer who services the rapporteur and does not require travel funds for treaty body meetings in Geneva. The chairpersons of the treaty bodies have an opportunity to discuss issues of general concern with the special procedures during their overlapping annual meetings, but the session is complicated by some mutual distrust of genuine independence and serious human rights expertise.

## **RECOMMENDATIONS**

### **Treaty Bodies**

*The treaty bodies should consult country-specific rapporteurs when their respective state is being considered, and thematic rapporteurs more generally. Future reports organized on a thematic basis will also benefit from the input of thematic rapporteurs concerning observable trends, the nature of rights and their application to states parties.*

*The treaty bodies should consult relevant thematic rapporteurs in the formulation of general comments or recommendations.*

### **OHCHR**

*The temptation to give priority in planning, development, fund-raising, and resource management to the higher profile special procedures at the expense of the treaty bodies should be avoided. On the contrary, the overall framework should be that of a partnership between (a) the methodical examination of country conditions on the basis of legal obligations, with the goal of developing national plans of action and sets of imperatives, and (b) more intensive focussed examination of a state, or of a thematic human rights issue, where conditions warrant.*

*In the long term, there should be sufficient numbers of desk officers to cover every member state of the United Nations, each of which has ratified one or more of the human rights treaties. These desk officers would be the focal point of all country-specific information within OHCHR. They would both prepare country analysis for treaty bodies and briefing papers for special procedures. While their preparatory work for treaty bodies could be subject to a legal review ensuring the connection between the country information and treaty provisions, substantive familiarity with specific states would be the primary responsibility of desk officers.*

*In the shorter term, a central database (with internal controls over access), accompanied by clear directives and organizational strategies for posting country-specific information, should house all information coming into OHCHR from a wide variety of directions (treaty bodies or special procedures). Internal reports produced for either treaty bodies or special procedures must be readily organized by state. Search engines should permit the identification of country-specific information within thematic reports. Desk officers familiar with a country situation should routinely provide briefings to treaty bodies prior to their consideration of relevant state reports.*

*A central database of NGO partners of both the treaty bodies and special procedures should include notes on information flow and active participation (posted and shared by treaty body staff and desk officers). (See supra section 18. NGOs)*

*There should be only one common country file holding hard copies of submitted information (in the absence of the technology to convert all submissions to electronic format), both for the special procedures and the treaty bodies. A bibliography of everything kept in a common country file should be created and regularly updated. A professional report concerning the handling of these sources of information should be commissioned, and include a comparative analysis of methodologies of other international or regional bodies, or foreign affairs' libraries.*

*A coherent, principled and transparent set of guidelines must be developed to channel or stream communications to treaty bodies and/or special procedures. This includes the streaming of all urgent appeals. A central complaints desk must be administered to implement these guidelines. This should be closely followed by the development of a user-oriented handbook for the submission of complaints by victims of human rights violations.*

*All special procedures should be routinely provided with the output of the treaty bodies as part of the preparation of any mission.*

### *Special Procedures/Mechanisms*

*Country-specific rapporteurs should be provided sufficient resources to brief treaty bodies when their state is being considered.*

*The treaty standards should inform the work of all special procedures. Special procedures should aim to reinforce the universality of human rights and fundamental freedoms and foster universal ratification of human rights treaty obligations.*

*Special procedures should seek input from treaty bodies and their secretariat in the planning stages of a mission in order to identify possible opportunities for (i) fact-finding, (ii) information exchange about state reporting requirements, or (iii) follow-up of concluding observations.*

*Special procedures should consider inviting a member of a treaty body to accompany them on mission in appropriate circumstances.*

## **21. The Dialogue**<sup>105</sup>

States parties notoriously manipulate the dialogue process to run out the clock and minimize the extent of the question and answer process. Introductions are often lengthy and uninformative. Chairs of the treaty bodies are frequently reluctant to interrupt, even if the state party has clearly been provided with information concerning time frames beforehand. Answers to questions often involve minimal efforts to respond substantively, and frequent promises of answers at an unspecified time in the future. Other answers are clearly intended to simply waste time. Many

responses also indicate either a profound ignorance of the substantive meaning of human rights, or intense disdain and disrespect for the forum.

On the other hand, for states which seek a genuine exchange, the process is also infamously poorly managed. Treaty body members frequently repeat each other's questions. For a variety of reasons, they do not limit themselves to the questions in the lists of issues. The lists of issues is sometimes extremely lengthy. Diplomatic formalities and comments are continually repeated. Members make extended interventions which shorten the time available for answers. Observers have the impression that some members are primarily speaking for the sake of the summary records. The interventions of colleagues, not uncommonly, have had soporific results on members, if they are not working on other matters altogether. Reasons for media disinterest in the proceedings, and the frequent minimalist external audience, are readily apparent. In the case of CERD, the Chair encourages states parties to finish before the morning meeting time has expired, resulting in the shortest dialogue times of all.<sup>106</sup>

CESCR takes the most time in its dialogue with states parties almost a full meeting more than other committees. It also takes as long with periodic reports as initial reports, which is not the case with four of the other treaty bodies.<sup>107</sup> It therefore considers fewer reports proportionately to the meeting time available than other committees, with the exception of the Human Rights Committee which spends 30% of its time on individual communications.<sup>108</sup> It does not appear that the additional time considerably alters the nature or depth of recommendations in concluding observations as compared to some of the other treaty bodies, such as CRC and the Human Rights Committee.

The quality of the dialogue is affected by the expertise of the state representatives with the subject matter of the meeting. The committees seek a dialogue with the individuals responsible for decision-making and implementation at the national level in the substantive areas covered by the treaties. In order to make this point, CESCR and HRC report the names and status of state representatives in attendance. The Human Rights Committee has, on occasion, responded to situations of unqualified representatives unwilling or unable to answer questions by refusing to continue the dialogue and rescheduling the meeting at the earliest opportunity.

The quality of the dialogue suggests to some that it should be abandoned altogether, or reserved for a few of the most intransigent states with whom written exchanges cannot suffice. NGOs, however, firmly express the view that in every case the oral process is an important contribution to the better protection of human rights. They argue:

- (1) with respect to undemocratic states, it is a unique opportunity to publicly confront their governments with direct questions on their human rights record (via committee members),
- (2) for states in the course of developing relationships with NGOs at the national level, the involvement and presence of those NGOs at the dialogue bolsters their importance, and encourages dialogue with those same officials upon their return home,
- (3) it is an incentive for the production of better reports,

(4) it serves an educative value to particular national officials about the substance and application of treaty rights.

The reach of the dialogue itself, however, depends not only on the authority and interest of the officials who attend, or the influence of the national-level NGOs involved. These exchanges are all recorded. In theory, summary records are to be produced shortly thereafter and broadly disseminated. Summary records predated the introduction of concluding observations, and for many years, aside from summaries of the exchange in the annual reports, were all that remained of the dialogue. Summary records, when produced, often reveal insufficient answers, answers wholly incompatible with the letter and spirit of the treaty, as well as concerns of individual members (along with their political biases). They are not complete records. They are said to retain about one-third of an actual transcript. They are edited for content. Embarrassing or controversial remarks by states or committee members are often omitted. They are also very difficult to get. Meetings are originally translated by rotation in English and French. Since many treaty bodies deal with one state in consecutive meetings, a set of meetings with a single state party will often result in summary records in one language only years later. Summary records for CEDAW have not been available for some years. Production of summary records for other committees is also uneven for another reason. While the Committee is in-session, the production of documentation for that session is a priority for Conference Services. Summary records are therefore produced (in alternating languages) relatively quickly during the meeting. But as soon as the meeting is over the documentation is no longer a priority. Summary records for meetings that were not produced during the session (a significant proportion) will frequently be many months away. Recently issued translations of summary records have concerned meetings two to three years ago. For all these reasons, therefore, in practice summary records do not serve the purpose for which they were intended.

Confidential summary records are also produced for the closed sessions of the committee, which in the case of some committees, is a significant proportion of the time. In these cases, the summary records (which are produced during the session) appear to be a costly set of notes for country rapporteurs or staff writing concluding observations or individual communications. The existence of tapes in cases of significant dispute should suffice.

The inaccessibility of the dialogue in Geneva or New York, and its potential to subject unaccountable governments to a public exchange, are reasons some suggest for the treaty bodies to conduct the dialogue either in the state party itself or in the region. However, logistical difficulties have constantly plagued the Human Rights Committee sessions in New York, (the only treaty body meetings to take place outside the secretariat's home base), even though they occur at UN headquarters. Holding every meeting on-site in the respective state party is impractical. It is not clear that regional meetings would hold any more likelihood of media or NGO interest than meetings in New York or Geneva, since meetings in those two venues have not garnered more interest in the case of states in the vicinity than any other states. (See *infra* section 25. Treaty Body Visits or Missions to States Parties)

## RECOMMENDATIONS

### Treaty Bodies

*Committee sessions should be divided into states at different stages of the process:*

- (a) states engaged in an initial dialogue concerning their report,*
- (b) states engaged in a second (briefer) dialogue concerning unanswered questions, or unsatisfactory responses to requests for additional information, (See also infra section 24.(a) Follow-Up: The Treaty Bodies)*
- (c) consideration of states failing to submit reports, and*
- (d) states providing unsatisfactory follow-up replies on individual communications in private meetings with the Special Rapporteur on Follow-Up to Communications.*

*The value of the dialogue outweighs its dysfunctional dimensions. Many of the regrettable features of the dialogue are avoidable. The goal should be to hone in on the key set of issues and concerns for that state, and become sufficiently familiar with them to permit programmatic concluding observations, through a series of preparatory steps taken in advance of the meeting.*

*Short and reasonable deadlines for introductory statements, answers of states parties, and interventions of members, should be set, communicated in advance, and strictly enforced by the Chair.*

*Lists of issues should be drafted by all treaty bodies and communicated to states parties well in advance of the session. Written answers should be requested in advance of the session (including HRC), in electronic and hard copy, and disseminated. Reminders should be given when deadlines for written responses have not been met. Members should generally be required to confine their questions to areas addressed by the lists of issues or raised by written responses, except in cases of unanticipated directions raised by the answers or significant new information. (See supra section 15. Lists of Issues)*

*The delay between meetings considering a report from one state party during a session, should not be greater than two days.*

*States which refuse to answer the questions posed during the dialogue should be met with:*

- (a) a request to receive a written response,*
- (b) within a specified period, and*
- (c) notice that an unsatisfactory response will be met by resumption of the dialogue at an early session of the Committee.*

*In exceptional circumstances, the dialogue should be suspended with representatives unable or unwilling to answer questions and the state party asked to resume the dialogue at the earliest opportunity with appropriate alternative representatives.*

*Treaty body meetings (currently only HRC) should not rotate between Geneva and New York.*

### **Treaty Bodies and OHCHR**

*Summary records should not be produced for closed meetings of the treaty bodies.*

*Unless summary records for open meetings of the treaty bodies with states parties can be produced in a complete set, in one working language (and here the priority should be the working language of most value to nationals of the state party concerned), within four months of the dialogue they should be discontinued.*

### **NGOs**

*NGOs should be encouraged, or redirected, to submit information to a much greater extent at the session at which lists of issues are drafted (like the CRC). (See supra section 18. NGOs)*

### **States Parties**

*States should be clearly informed of the importance of sending qualified representatives to the dialogue and should be directly contacted by the secretariat to reinforce the matter. Failures to do so should be the subject of commentary in concluding observations. Names of the delegates should appear in annual reports.*

## **22. Concluding Observations**<sup>109</sup>

Concluding observations are the key outcome of the state reporting process. The credibility of the state reporting system largely depends on their quality. In the early years of the development of the reporting process, the dialogue was the central feature and there were no concluding observations. Individual committee members made critical or constructive comments and sometimes these were recorded in the annual report summaries of the dialogue. Some members were reluctant to move to a system of committee concluding observations on the grounds that they would become a minimum common denominator. Now the annual reports no longer include summaries of the dialogue or individual comments. Summary records which may, or may not, reveal individual conclusions are often not available in practice. The unanimous conclusions of all members of the committee are all that is left.

The concluding observations are meant to serve as an expert committee's carefully considered conclusion about whether a state party has satisfied the legal obligations it assumed upon ratification of the treaty. In general, they do not address individual circumstances, although these have been used to probe issues of compliance. These conclusions have two functions: (a) direct public attention to shortfalls in compliance, and (b) identify specific programmatic activities to improve implementation. The success of concluding observations therefore depends on two

elements: (a) their accuracy, as rigorous assessments of human rights conditions, and (b) their functionality, as perceptive evaluations of needs and priorities.

The fulfilment of these two conditions will in turn depend, most important, on access to reliable and knowledgeable sources of information, and the independence and experience of committee members. The subsequent use of the concluding observations will also require excellent means of dissemination and a systematic follow-up strategy.

Currently, the concluding observations meet the conditions of accuracy and functionality to widely varying degrees. The quality has been impeded by a number of factors, in particular: barriers to the submission of information, lack of human resources to sift and analyse information, impediments to an effective dialogue, and the lack of independence or expertise of significant numbers of treaty body members.

The quality of the concluding observations is reduced in the absence of state party reports. Only CERD has undertaken the consideration of a significant number of states in the absence of reports, and overall its concluding observations exhibit a reluctance and inability to draw specific and forceful conclusions. In general, CERD has the least developed concluding observations. CAT concluding observations, dealing with a narrower range of substantive issues, are the briefest, and recommendations are only five or six sentences long. Those of the CRC are more than twice as long as other treaty bodies, a level of detail which directly reflects the input of UNICEF and the NGO-CRC Group, and the staffing resources of the treaty body.

Overall, concluding observations are often extremely general, thereby frustrating all participants interested in using them to advocate, or plan, or implement reforms at the national level. Too often they identify areas of concern without specifying specific laws or practices, or connecting those concerns to specific recommendations. Examples from 2000 annual reports include:

“The Committee requests the State party to provide more data in its second periodic report on the problem of poverty...and urges the Government to take all remedial measures in order to combat poverty”

“...[T]he Committee recommends that the State party monitor all tendencies which may give rise to racial or ethnic segregation and counter the negative consequences of such tendencies.”

“The Committee urges the Government to develop a policy and legislation to prevent and eliminate domestic violence, and sexual violence, including rape, against women and girls, and to prosecute violators.”

This is a major impediment to the operation of the treaty system. The system has moved in stages:

- no concluding observations, and the inclusion in reports of self-serving and uninformative statements by government officials
- very brief analytical or critical statements by individual members
- introductory and selective praise for positive developments by the committee
- more precise articulation of concerns by the committee

- the identification of recommendations by the committee related to those concerns. The last dimension varies significantly among the treaty bodies, but are key to the value of concluding observations. The unwillingness to be more specific arises from two primary factors: (a) the political bias of treaty body members, and (b) their limited knowledge of the country situation, and the resulting concern that errors in the identification of policies, laws or practices will bring their work into disrepute.

Concluding observations have integrated political biases, in everything from opening remarks, to the identification of so-called “positive aspects”, the language used, and the substance of specific recommendations. The “introduction” and “positive aspects” portions often commend trivial or small steps in some states, while focussing immediately on a negative assessment in other states with similar human rights records. While “grave concern” is expressed in some contexts, “regret” and “noting the challenges” are expressed with respect to others in the absence of discernible factual grounds for the differential treatment. This is most evident in the concluding observations of CERD. Political bias is sometimes evident in the differential depth of treatment of some states (in the absence of corresponding justification in terms of human rights conditions). To some extent, the quality of concluding observations depends on the committee member assigned as country rapporteur. The extent or detail of the consideration of state reports is, however, also affected by political biases of other members. Concluding observations have also occasionally clearly stepped beyond the boundaries of the treaty provisions.

Other matters affecting the quality concluding observations are:

- The introductory portion of concluding observations frequently includes extraneous language of congratulations instead of getting to the point. The introduction does not clearly state at the outset what information the committee had before it such as: written replies, supplemental information, CORE document, NGO submissions, oral presentations.
- It is not clear in the case of CERD, CEDAW, CAT and CRC, with whom the Committee is meeting (the names and responsibilities of members of the delegation). This inhibits follow-up at the national level.
- Concerns are not always connected with recommendations. “Concerns” and “recommendations” are combined in the case of CERD, CCPR and CEDAW in such a way as to detract from the clear identification of recommendations.
- Often recommendations are ad-hoc and apparently driven by whatever external source spoke the loudest. Recommendations are not organized thematically or in terms of priorities. The problems with translating such selective results into national implementation strategies bode ill for the ability or advisability of “focussing” future reports.
- Although treaty bodies purportedly take cognizance of each other’s concluding observations, they have dealt with the same state and the same subject, closely connected in time, concluded there were different factual conditions, and sent discordant signals to the same state.

Despite the fact that states parties voice considerable criticism of the quality of concluding observations, a fundamental limiting factor is the persons who write and approve them. States are responsible for the selection of treaty body members, and in the absence of failing to elect truly independent experts, are directly responsible for the quality of concluding observations. This is reinforced by severe limitations on resources, largely controlled by states, which clearly have a direct impact on the treaty bodies' output.

The next stage in the development of concluding observations must be a deliberate effort to author conclusions of direct programmatic value. From the perspective of operational partners, the "value-added" from the input of the treaty bodies into the planning of reforms at the national level, is their collective expertise and understanding of the normative standards, and their insights gained from applying most of these standards to all UN member states. From the point of view of the treaty bodies, which are not operational entities, the "value-added" in taking programmatic considerations into account when drafting, is the tremendous increase in the potential for implementation.

## **RECOMMENDATIONS**

### **Treaty Bodies**

*Concluding observations should be adopted in closed-session, with members uninhibited by observers.*

*The committee member charged with the development of an initial draft and with the incorporation of members comments into subsequent drafts, must be willing and able to undertake the task.*

*Concluding observations should be released as soon as they are adopted, which may be prior to the end of the session. All the treaty bodies, including CEDAW, should release concluding observations no later than the last day of the session.*

*The introductory remarks of governments should not be included in concluding observations (CEDAW).*

*The portions of concluding observations entitled "Positive Aspects" and "Factors and difficulties impeding implementation" have already been highly attenuated, are generally not useful, and should be discontinued.*

*Concluding observations should include the following information:*

*(a) introductory information*

- *due date of the report*
- *submission date of the report (and symbol number)*

- *dates and meetings at which the report was considered*
- *the kind of report (additional information, special, initial, more than one report)*
- *names and positions of the members of the delegation which presented it*
- *committee's views about the composition of the delegates in terms of their positions and expertise*
- *whether written replies to the list of issues were submitted (symbol number)*
- *(if so) when written replies were submitted (as compared to the consideration of the report)*
- *the level of cooperation of the delegation in responding to oral questions; whether questions were left unanswered*
- *promises made about the future submission of information*
- *how the report was prepared (by whom, over what period of time, consultations held)*

**(b) concerns and recommendations**

- *the concluding observations should then proceed directly to a consideration of concerns and recommendations*
- *concerns should be clearly connected to recommendations*
- *recommendations should concentrate on concrete proposals; they should be practical and as precise as possible*
- *recommendations should clarify whether they relate to policies, practices, or legislation and identify them*
- *recommendations should be grouped thematically and provide some indication of priorities*
- *recommendations based on concerns about human rights violations caused by third parties should clearly indicate the treaty bodies' expectations of government action and responsibility, and the foundation of these expectations*
- *references to any kind of external documentation required to understand the content of recommendations should be avoided; necessary references or substantive documentation referred to should be footnoted; the recommendations should be self-explanatory*

**(c) concluding information**

- *additional information promised and/or requested*
- *deadlines for the submission of additional information*
- *plans for the dissemination of the concluding observations*
- *processes the state should have for the dissemination of the concluding observations*
- *languages into which concluding observations should be translated*
- *processes or structures the state party should institute for follow-up to the concluding observations; concrete proposals can be made about best practices for ongoing monitoring of the treaty's implementation (including the preparation of the next report)*

*All interested parties should be given the concluding observations at the same time.*

***Government comments or responses on concluding observations should be posted on the web and published as separate documents at the discretion of the Committee. All such submissions received should be noted in the Annual Report.***

***Concluding observations finalized in the absence of the participation of a state party must be preceded by a careful compilation and analysis of information from a wide variety of sources. It will sometimes be preferable in the absence of the participation of a state party to identify only “preliminary” concluding observations, to be revisited upon full participation. (See supra section 3. The Consideration of a State Party’s Record in the Absence of a Report)***

### **OHCHR**

***Concluding observations should specifically be sent to all parties submitting information for the consideration of a state report. (It is not sufficient to post them on the web.) They should also be specifically sent to UN Country Teams, and the individuals responsible for implementing MOUs between OHCHR and UN agencies/organs.***

### **23. Reservations**<sup>110</sup>

The major human rights treaties have achieved a very high degree of ratification. Every member state of the UN has ratified at least one of these treaties. More than 50% have ratified all six, and only 5% have ratified just one.<sup>111</sup> These results, however, have come at a price. One of the largest costs has been the number and extent of reservations.

Taking reservations, declarations and interpretative statements together, (in view of the large number of declarations and interpretative statements that on a substantive basis are mostly likely reservations), the number of reservations is as follows:

CERD has 101,<sup>112</sup> 36% of which are normative,<sup>113</sup> from 43 (or 28% of) states parties,<sup>114</sup>

CCPR has 181,<sup>115</sup> 88% of which are normative,<sup>116</sup> from 52 (or 35% of) states parties,<sup>117</sup>

CESCR has 83,<sup>118</sup> 82% of which are normative,<sup>119</sup> from 39 (or 27% of) states parties,<sup>120</sup>

CEDAW has 132,<sup>121</sup> 76% of which are normative,<sup>122</sup> from 49 (or 30% of) states parties,<sup>123</sup>

CAT has 45,<sup>124</sup> 38% of which are normative,<sup>125</sup> from 28 (or 23% of) states parties,<sup>126</sup>

CRC has 204,<sup>127</sup> 99.5% of which are normative,<sup>128</sup> from 61 (or 32% of) states parties.<sup>129</sup>

CRC, the convention with the largest number of ratifications, is also the one with the largest number of normative reservations.

The number of general reservations and reservations to the central articles of the treaties, in particular, undercuts the apparent degree of universality inferred by statistics on ratification alone. An example of a recent ratification which clearly purports to affect the reach of the entire

treaty to the state concerned is the following:

“In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention.”<sup>130</sup>

For the CEDAW Convention, for example, there are five general reservations, another eight normative general declarations and interpretative statements, twelve reservations to article 2, and twenty-five reservations to article 16, from 32 states parties.<sup>131</sup> For the CRC Convention, there are nine general reservations, and fifteen normative general declarations and interpretative statements, from 18 states parties.<sup>132</sup>

Some of the treaties themselves specifically refer to the impermissibility of reservations which are incompatible with the object and purpose of the treaty.

CERD, Article 20

1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary-General that it does not accept it.
2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two thirds of the States Parties to this Convention object to it.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

CEDAW, Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

CRC, Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.<sup>133</sup>

The question arises as to who will determine the compatibility of a reservation with the object and purpose of the treaty. The Human Rights Committee has expressed the view that “[i]t necessarily falls to the Committee to determine whether a specific reservation is compatible with the object and purpose of the Covenant. This is in part, because...it is an inappropriate task for States parties in relation to human rights treaties, and in part because it is a task that the Committee cannot avoid in the performance of its functions.”<sup>134</sup> Some states parties to the CCPR, specifically, the United States, United Kingdom and France objected to this determinative role for the Committee. A working paper of the Sub-Commission supported the Human Rights Committee: “...enforcement/monitoring bodies have the authority to determine what comes within their competence. That must, logically, include the authority to determine the validity of a reservation which would affect the scope of their competence or jurisdiction.”<sup>135</sup> Preliminary conclusions of an ILC study on reservations were more cautious: “The Commission also considers that...the monitoring bodies...are competent to comment upon and express recommendations with regard *inter alia*, to the admissibility of reservations by States, in order to carry out the functions assigned to them...”<sup>136</sup> (Subsequently, critical comments on the ILC’s preliminary conclusions were made by treaty bodies.)<sup>137</sup> In theory, only the CERD Convention explicitly provides a formula for determining incompatibility: “a reservation shall be considered incompatible or inhibitive if at least two thirds of the States Parties to this Convention object to it.”

It is clear that states parties have no intention of undertaking the role of determining the compatibility of a reservation with the object and purpose of the treaty themselves. If states were interested in becoming involved in evaluating each other’s reservations, a far greater number would have exercised their right to object to reservations they believe to be incompatible with the object and purpose of the treaty. At the moment very few have done so. Moreover, such objections are also usually accompanied by the caveat that the objection does “not preclude the entry into force of the Convention between” the objecting state and the reserving state.

	number of objections made to reservations <sup>138</sup>	percentage of reservations objected to	number of states making objections <sup>139</sup>	number of states objected to <sup>140</sup>
CERD	14	3%	14	3
CCPR	55	12%	12	9
CESCR	48	18%	8	4
CEDAW	231	45%	12	23
CAT	13	25%	6	3
CRC	433	42%	12	22

As the ILC Rapporteur pointed out, objections would both exert some pressure on states to withdraw reservations, and provide the treaty body with a source of guidance when considering the permissibility of a reservation.

While the legal authority of the treaty bodies to make final determinations as to whether specific reservations are compatible with the object and purpose of the treaty may be controversial, there is no doubt that their knowledge and experience of the treaties' purposes and objectives, leave them well placed to express their considered expert opinion on this subject. The treaty bodies have adopted different approaches to this potential. The Human Rights Committee and CEDAW have directly told states parties their views as to whether a reservation is incompatible with the object and purpose of the Convention. CRC has stated that the reservation "raises concerns as to its compatibility with the object and purpose of the Convention." CERD, CESC, and CAT have not directly made a statement about the incompatibility of reservations with their respective treaties.

At the same time, there are a significant number of actors which have put on the record their concern with the compatibility of general reservations which, from the outset, purport to render ineffective all treaty rights which would require any change in national law. In effect, no international rights or obligations would thereby have been assumed. In addition to the limited number of objections which have been made, States parties and treaty bodies have made, for example, the following comments:

"...[W]idely formulated reservations" which preserve complete freedom of action and render uncertain a State Party's obligations as a whole, e.g., that the Covenant is generally subordinated to the full unspecified range of national law. This, of course, would neither be appropriate nor lawful."<sup>141</sup>

"...individual reservations may on occasion be so widely drawn as to cast doubt on whether their maintenance is compatible with being a Party to the Covenant."<sup>142</sup>

"Articles 2 and 16 are considered by the Committee to be core provisions of the Convention....[R]eservations...which challenge the central principles of the Convention are contrary to the provisions of the Convention and to general international law.

...Reservations to articles 2 and 16 perpetuate the myth of women's inferiority and reinforce the inequalities in the lives of millions of women throughout the world. The Committee holds the view that article 2 is central to the objects and purpose of the Convention. ...[R]eservations to article 16, whether lodged for national, traditional, religious or cultural reasons, are incompatible with the Convention and therefore impermissible..."<sup>143</sup>

"Reservations must be specific and transparent, so that the Committee, those living in the territory of the reserving State and other States parties may be clear as to what obligations of human rights compliance have or have not been undertaken. Reservations may thus not be general, but must refer to a particular provision of the Covenant and indicate in precise terms its scope in relation thereto."<sup>144</sup>

To date, no state having such reservations, regardless of an explicit statement by the treaty bodies as to incompatibility, has ever faced a suggestion that the treaty is not in effect for the state party. On the contrary, in practice reservations have not precluded questions by the treaty body concerning the subject matter of the reservation. The treaty bodies have routinely sought to address the issue of reservations in their dialogue with a state party. States have not tended to refuse to answer such questions on the basis of the existence of reservations. Guidelines for reporting include requests for information specifically about reservations.<sup>145</sup> The treaty bodies claim, furthermore, that the existence of reservations also has not inhibited their substantive comments in concluding observations.

The treaty bodies routinely request states to withdraw reservations. However, to date the rate of withdrawal has been poor. The percentages of reservations which have been withdrawn are:

CERD	13% (80% of which were procedural reservations) <sup>146</sup>
CCPR	10% completely (5% of which were procedural) and 4% in part <sup>147</sup>
CESCR	2% <sup>148</sup>
CEDAW	26% completely (21% of which were procedural) and 5% in part <sup>149</sup>
CAT	34% (83% of which were procedural) <sup>150</sup>
CRC	6% completely and 1% in part <sup>151</sup>

Legal impediments exist to modifying reservations as opposed to withdrawing them.

Reservations are permitted to be made only at the time of ratification or accession. While they can be withdrawn, their subsequent modification is problematic in a contractual context. If a state seeks to modify a reservation to one of the human rights treaties, the Secretary-General will receive the modification for deposit only in the absence of any objection on the part of any of the contracting states within a period of 90 days from the date of its notification. For example, in 1998 Malaysia sought to modify its broad reservations to the CEDAW Convention, but France objected on the grounds that the modification was still incompatible with the object and purpose of the treaty. As a result, the modification was not accepted.

The consequences for a state making any kind of reservation to the human rights treaties have been limited to objections from other states parties (which have been few in number), remonstrations by the treaty bodies, (including infrequent statements that the reservation is incompatible with the object and purpose of the treaty), and requests by treaty bodies to withdraw such reservations. In addition, world conferences have had galvanizing effects on grassroots organizations which have subsequently pressed for withdrawal, as happened to some extent in the wake of the Beijing World Conference on Women.

The suggestion has been made, including in the Meetings of Chairpersons of the Treaty Bodies, that the treaty bodies should seek the Economic and Social Council, or the General Assembly, to request an advisory opinion from the International Court of Justice on the validity and legal effect of reservations to the human rights treaties.<sup>152</sup> The idea would benefit from a joint initiative on the part of the treaty bodies. Such collaboration, however, is not in sight, and previous interest

on the part of CEDAW tended to isolate it in the absence of coordination and support. In the meantime, the subject matter of reservations is under consideration by the Sub-Commission on the Promotion and Protection of Human Rights<sup>153</sup> and the International Law Commission.<sup>154</sup>

## **RECOMMENDATIONS**

### **Treaty Bodies**

*The treaty bodies should use the opportunity of the dialogue to probe the extent to which the requirement to limit reservations to those compatible with the object and purpose of the treaty has been met, and to encourage states to meet these conditions.*

*All treaty bodies should clearly express their reasoned views as to the compatibility of reservations with the object and purpose of the treaty.*

*The treaty bodies should jointly approach the General Assembly to request an advisory opinion from the International Court of Justice on the validity and legal effect of reservations to the human rights treaties. The cooperation of the Sub-Commission and the ILC might be solicited in making this request.*

### **States Parties**

*States should institute procedures to ensure that each and every proposed reservation is compatible with the object and purpose of the treaty.\**

*A state entering a reservation should indicate in precise terms the domestic legislation or practices which it believes to be incompatible with the treaty obligation reserved.\**

*A state entering a reservation should explain the time period it requires to render its own laws and practices compatible with the treaty, or why it is unable to render its own laws and practices compatible with the treaty.\**

*States should also ensure that the necessity for maintaining reservations is periodically reviewed, taking into account any observations and recommendations made by the treaty body during examination of their reports.\**

*Reservations should be withdrawn at the earliest possible moment.\**

*Reports to the treaty body should contain information on what action has been taken to review, reconsider or withdraw reservations.\**

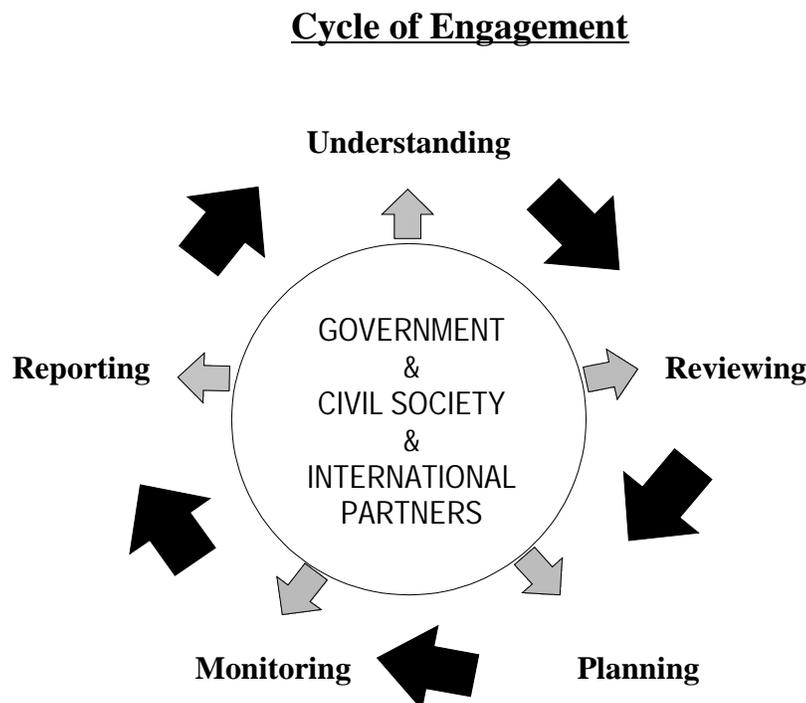
*(\* are from General Comment No. 24, Human Rights Committee, HRI/GEN/1/Rev. 4, para. 20)*

*All states should object to reservations which are incompatible with the object and purpose of the treaty. The task should be understood not only as a privilege, but a responsibility to ensure the integrity of membership in the treaty regime.*

#### **24. Follow-up on State Reporting or Operationalizing the Human Rights Treaties**<sup>155</sup>

Follow-up is a key dimension to the success of the state reporting system. Approximately, six hours of dialogue<sup>156</sup> once every five years,<sup>157</sup> (with a single treaty body) should make it obvious that the dialogue itself is not intended to be the focal point of the process. Success of the state reporting scheme depends on the state internalizing a process of review and follow-up to concluding observations. The treaty standards, the associated production of reports and the periodic dialogue is intended to cultivate a progression largely at the national level from (a) **understanding** and awareness of the standards, to (b) **reviewing** of laws, policies and practices against those standards, to (c) **planning** concrete actions to improve the shortfalls revealed, to (d) **monitoring** the implementation of those plans, to (e) **reporting** and feedback from a dialogue with the treaty bodies. (See Diagram 1) Reporting is then supposed to provide the range of actors at the national level with enhanced understanding of the standards, and the cycle begins again. In actual practice, in many states reporting is divorced from all of the other elements of the desired cycle. Reports are written in isolated circumstances, such as the interior of a government office, and difficulties are encountered in receiving input from other departments, let alone in envisaging the effort as one element in a cycle of engagement with civil society.

*Diagram 1*



### **(a) The Treaty Bodies**

The treaty bodies have a role to play in encouraging such engagement with the treaty standards and their implementation. It begins with the dialogue concerning the initial report. If information is seriously inadequate, if major gaps exist in the understanding of the treaty standards and their application to the state concerned, the role of the treaty bodies is to act as a bridge and advance the cycle. Reporting and feedback should increase understanding of obligations and stimulate review and planning. Unfortunately, most often the treaty bodies exacerbate the interstitial nature of their role. Unsatisfactory reports are submitted. Questions posed are unanswered. Requests for additional information, if they are made, are usually intended to be answered years hence in the next report.

In very few instances have the treaty bodies set up a process: (a) to request additional information, (b) to set a deadline for the receipt of additional information, (c) to send reminders when deadlines are missed, (d) to publish additional information received, (e) to schedule a further, if briefer, oral dialogue upon receipt of the additional information, or when not submitted, a dialogue in its absence. In the early years of operation of the CRC, there was considerable effort to introduce this general kind of plan. A formal document was issued which tracked requests, deadlines, and submissions. Because of the large number of ratifications and the backlog of reports, the Committee was never able to schedule the oral consideration of the information submitted.

Other treaty bodies have not introduced such a system. Recommendations frequently contain apparently immediate requests for further specific additional information relating to current problems, such as the government "...should provide the Committee with information concerning the number and circumstances of deaths in custody over the past five years...". These requests are made without any intention on the part of the treaty body of considering any information submitted orally, or responding in writing, before the next report. Even at the next report, the information is not always brought forward. This of course, does not encourage compliance with their requests by states parties. If additional information is submitted, it is almost never published. There is therefore no way for interested parties to monitor or comment on the submissions. The overall view has been that the numbers of reports submitted and awaiting consideration dictate against any process of having states return in light of additional information or as a result of seriously inadequate reports or presentations.

In the absence of a follow-up procedure, however, there has been little incentive for states to submit additional information between reports. There have been some exceptions. CRC tried to suspend the finalization of concluding observations until the information was submitted, and reconvene at a later session. But after the backlog of reports increased, this practice was discontinued. Additionally, in a very small number of cases, (the grounds for selecting the cases not always being provided), CESCR and CAT published additional information and conducted a further dialogue.

In December 1999 CESCR adopted new procedures for handling requests for additional information. It now outlines steps it plans to take in relation to additional information:

- “(a) request in its concluding observations further data or information with respect to a “pressing specific issue” prior to the next report,
- (b) the pre-sessional working group will consider information provided in response to the request,
- (c) the working group will make recommendations to the Committee to either take note of it, adopt additional concluding observations, or consider it in public session and request the participation of the state party,
- (d) where the information is not submitted or is “patently unsatisfactory” the Chair may be authorized by the Committee to take the matter up with the state party,
- (e) if the information remains unobtainable the Committee may request a mission to the state party,
- (f) the Committee members undertaking the mission will report back to the Committee and the Committee will formulate conclusions.”

The Committee’s first use of this procedure to consider a state between reports (scheduled May 2001) concerns Israel (the same state with which it first exceptionally requested information prior to the submission of an initial report in May 1996). On 30 November 2000 the Committee stated that it required the additional information which was to include information, “concerning the *current* situation”, in light of - among other things - the “*current* crisis”. It stated this information was required “in order to complete the State party’s initial report” which was considered two years previously. Apparently, the “follow-up” procedure will be used by the Committee to consider a state party, at any time, upon request for information that it will attempt to tie to a previous report.

The strength of the state reporting system as an implementation tool of an almost universal system of legal obligations, is its equal application to all states parties. The goal is to better human rights conditions in every state, whatever its stage of development. The treaty bodies are ill-equipped to assess or expound on exceptional circumstances as they arise, and attempts to do so will be at the expense of all states waiting in line to have their aging reports considered or equal consideration of those states which have failed to produce reports at all.

The purpose of “follow-up” is to ensure that a minimalist report, and perfunctory dialogue, revealing a serious lack of effort to meet treaty obligations, are not disregarded, but followed-up by an effort to engage the state party in a cycle of review, planning and monitoring. A follow-up procedure, which introduces a set of steps for increasing involvement and attention to a single state, will only be as good as the ability of the treaty body to apply it evenhandedly. This underscores once again, the fundamental importance of treaty body members who are genuinely independent experts.

Follow-up also has a more general meaning, namely, to assess sometime in the future the progress made in the implementation of treaty obligations in light of the concluding observations. Almost by definition, consideration of the next report **is** follow-up from the perspective of the treaty bodies. But it is clearly interstitial. It is also removed (except when treaty bodies occasionally travel to states parties). It is intended to be a secondary monitoring function - second to the monitoring of the national actors themselves. The interstitial nature of review, combined with the remoteness of the meeting venue from many parts of the world, mean successful follow-up requires a partnership of a number of other actors. The treaty bodies have tended to seek an expansive field-oriented follow-up role for themselves, rather than developing follow-up partnerships within OHCHR and beyond. But partnerships, which may involve selective treaty body visits, are key to a successful follow-up strategy both for the treaty bodies and OHCHR. Follow-up partners are both international and national. (*See Diagram 2*)

*Diagram 2*



## **(b) International Follow-up Partners**

Follow-up at the international level relates primarily to:

- the UN Commission on Human Rights
- ECOSOC
- the General Assembly
- UN agencies, bodies and programmes
- the Office of the High Commissioner for Human Rights.

The treaties themselves indicate that the reports of the treaty bodies, annual or sessional, shall be submitted to the General Assembly (either directly, or through ECOSOC, or through the Secretary-General), or in the case of CESCR, to ECOSOC (by ECOSOC Resolution). CEDAW reports are also sent by the Secretary-General to the Commission on the Status of Women “for information”. Periodic meetings of states parties are generally procedural or confined to the election of treaty body members. Substantive discussion in this context has been avoided on the grounds that it has the potential to threaten the independence and effective functioning of the treaty bodies. This has been borne out by the limited cases in which it has been suggested or tried. The General Assembly has tended to act as a surrogate for political debate or response to treaty body functions, and this may be increasingly justified as universality approaches.

### The Commission on Human Rights, ECOSOC, and the General Assembly

Follow-up by the Commission on Human Rights has consisted of annual or biannual resolutions. Follow-up through ECOSOC has consisted of consideration and approval of financial implications of resolutions adopted by the Commission, or of resolutions resulting from the reports of CESCR. Follow-up by the General Assembly has consisted of annual or biannual resolutions.

Resolutions from the Commission on Human Rights and the General Assembly are usually divided along the lines of the treaties - that is they concern Racial Discrimination, Economic, Social and Cultural Rights, sometimes taking the CESCR and CCPR together, Women, Torture, and Children. A single resolution deals with “Effective Implementation” of all the instruments.<sup>158</sup> The resolutions are general in nature, and do not deal with the substantive conclusions of the treaty bodies in relation to particular states. For example, conclusions by CAT (under its unique inquiry procedure) that found a practice of “systematic torture by security forces”, and “habitual, widespread and deliberate torture in a considerable part of the country”, were not mentioned by either the subsequent General Assembly or Commission resolutions on Torture (which both refer to the Convention and the work of CAT). Instead, the resolutions routinely urge states to ratify treaties, to meet their reporting obligations, to limit or narrow reservations, to disseminate concluding observations, to publish and disseminate the treaties in local languages. With respect to implementing either the concluding observations of the treaty bodies, or their final views on individual communications or inquiries, the resolutions use the following kind of language:

- CESCR and CCPR states are urged to “take duly into account...the observations made at the conclusion of the consideration of their reports...as well as the views adopted by the Human Rights Committee under the Optional Protocol...”<sup>159</sup>

- with respect to CEDAW, the GA “encourages States parties to pay attention to the concluding comments...of the Committee.”<sup>160</sup>
- with respect to CRC, the GA “encourages States parties to take into account the recommendations made by the Committee in the implementation of the provisions of the Convention.”<sup>161</sup>
- in general the CHR and the GA: “encourage(s) States parties to consider carefully the concluding observations of the treaty bodies in identifying their needs for technical assistance” and “urges each state party...to provide adequate follow-up to those observations”<sup>162</sup> or “to provide adequate follow-up to the observations and final comments of the treaty bodies on their reports”<sup>163</sup>

Various general suggestions are made concerning treaty body working methods, with an emphasis on reducing reporting burdens, duplication, and the provision of technical assistance to those states which request it. In other words, these bodies fail to perform a significant follow-up function to the **results** either of reporting or communications. There is, in turn, little response by the committees to resolutions of the General Assembly and Human Rights Commission.

#### UN Agencies, Bodies and Programmes

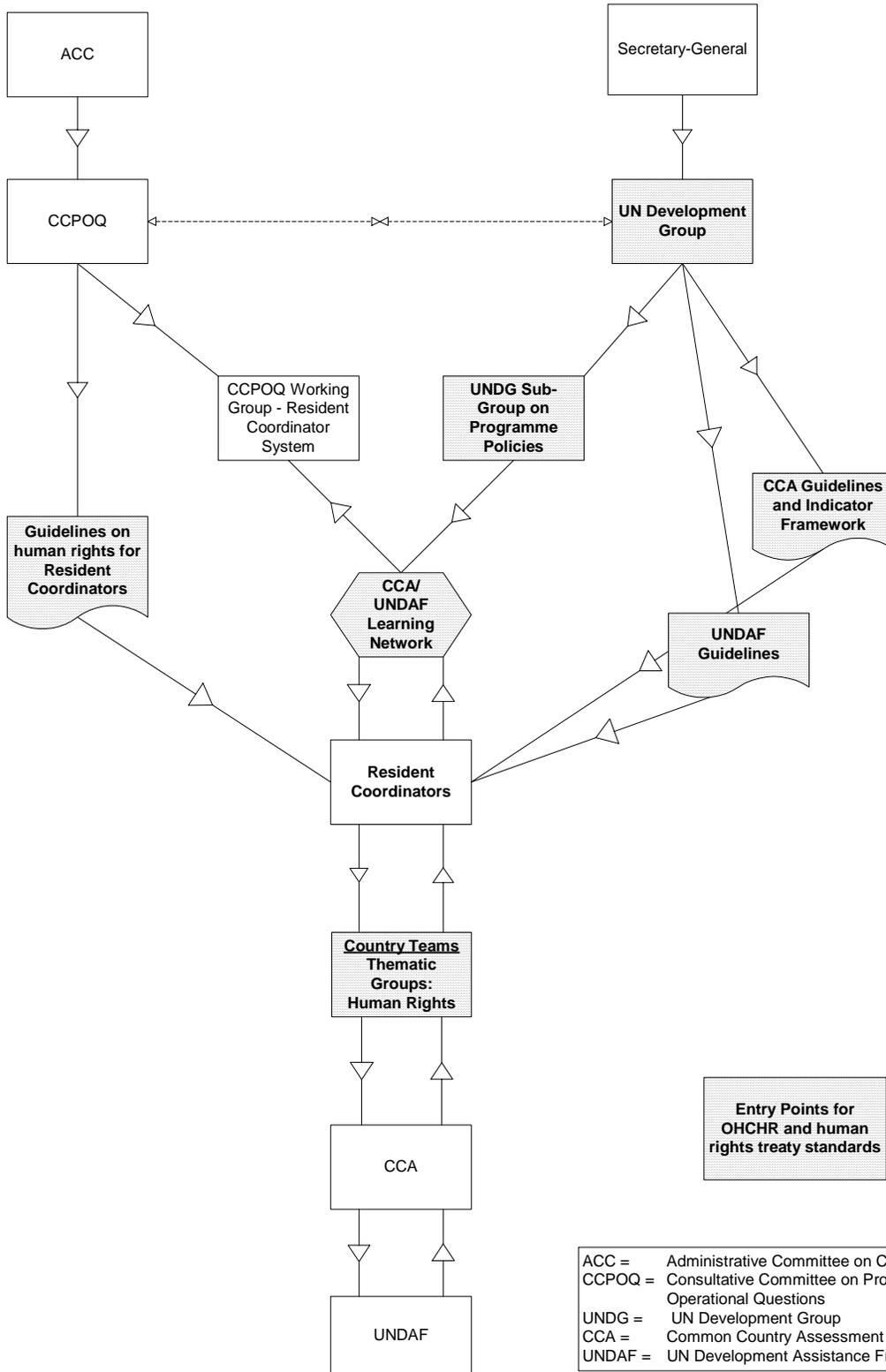
UN agencies/organs, particularly those with substantial operations in many states, can play a very important role in follow-up. Their individual current activities with respect to the range of treaty procedures have been discussed earlier. (See *supra* section 19. UN Agencies, Bodies and Programmes)

In addition, the overall UN system is theoretically engaged in an effort to integrate human rights across the work of the Organization as a whole. In July 1997 the Secretary-General set out a UN reform plan which was said to aim at fully integrating the human rights programme into the broad range of the Organization's activities.<sup>164</sup> In this set of proposals, human rights were designated “as cutting across each of the four substantive fields of the Secretariat's work programme (peace and security; economic and social affairs; development cooperation; and humanitarian affairs).” At the same time, the reform plan maintained that development activities also required a more integrated collaborative approach, and hence, created the UN Development Group (UNDG). It was a single group comprising the major United Nations development programmes and was intended to facilitate joint policy formation and decision making, and encourage programmatic cooperation. This orientation was to be reflected at the regional and country levels, where all United Nations programmes would be integrated within a UN Development Assistance Framework (UNDAF). Consequently, integrating the human rights treaty standards and the outcomes of the treaty bodies work into UNDAF, has become an important potential vehicle for follow-up.

More particularly, the UN system, including a multiplicity of UN agencies/organs, has a special role in countries receiving development assistance - now the case with more than 130 UN states (or 70% of UN members). Provision of development assistance of necessity engages the UN in an assessment of country situations and identification of preferred projects consistent with UN standards and principles. Design and implementation of development assistance, in a manner

which is related to the requirements and goals of the treaties' human rights standards, offers a very important framework and practical context for follow-up of treaty body concluding observations and the results of their work more generally. Sometimes, developing countries resist what is said to be a "form of conditionality", on the premise that it seeks to impose externally-identified conditions on the receipt of much-needed assistance. The attempt to undermine the legitimacy of fact-finding and monitoring of local conditions following the voluntary assumption of legal obligations, is incompatible with the accurate identification of a country's real needs and development potential. "Monitoring" in this context is directed to the provision of development assistance. Furthermore, most human rights standards are adopted and shared voluntarily by all UN member states (the majority having ratified all six human rights treaties, and all members having ratified at least one). They are not externally imposed.

There are a few specific entry points for OHCHR and the human rights treaty standards into the UNDAF process. (*See Diagram 3*)



In theory these entry points are as follows:

- *OHCHR membership in the UN executive committee, **UNDG (the UN Development Group)***. UNDG is charged with responsibility to elaborate the UNDAF, or in other words, to produce a coherent approach to UN development assistance programmes at the country level.
- *the development of **Common Country Assessment Guidelines** by UNDG in April 1999*. The Common Country Assessment (CCA) is a country-based review and analysis of the national development situation in a specific state. The production of the CCA requires the compilation of information around selected “themes” in the first instance. The process should include the gathering of human rights information, an assessment of the status of the implementation of the human rights treaties, and hence, in effect, follow-up to concluding observations.<sup>165</sup>
- *the development of the **CCA Indicator Framework**, in April 1999, which is an Annex to the CCA Guidelines*. It is an instrument to assist the UN country team in the preparation of the CCA. It highlights potential major issues in a country and focuses attention, and encourages progress, in specific areas. One indicator is explicitly “status of follow-up to concluding observations of UN human rights treaty bodies”. Indicators permit field operators unfamiliar with the treaty standards to translate events which they witness and process in development terms, into human rights obligations. Indicators are a major entry point for human rights in the development sphere because all development programming or assistance relates to indicators.<sup>166</sup>
- *the **CCA/UNDAF Learning Network***. This is a source of advice from headquarters on the preparation of the CCA, and then the UNDAF. If country teams seek advice from headquarters through the Learning Network, then OHCHR can comment on the human rights dimensions of draft CCA/UNDAF documents.<sup>167</sup>
- *the development of **Guidelines and Information for the Resident Coordinators on human rights** (adopted March 2000)*. Resident Coordinators head the UN country team at the national level. These guidelines are key human rights directives relating to the human rights treaties. They encourage the dissemination of conclusions and recommendations of the treaty bodies by the Resident Coordinator system. They encourage Resident Coordinators and other UN staff in the field to explain complaints procedures and requirements to individuals at the field level and to ensure complaints reach OHCHR. They ask Resident Coordinators to encourage host governments to ratify human rights treaties, to withdraw reservations, and to implement their obligations.<sup>168</sup>
- *the **Country Teams***. This is the group of organizations of the UN system at the national level having operational activities for development. When OHCHR has a field presence in a country, they might be a member of the UN country team. Country teams manage the preparation of the CCA, and develop the UN Development Assistance Framework (UNDAF). In addition, country teams have set up thematic groups in order to conduct their work. Sometimes there will be a thematic group on human rights, and on occasion human rights is perceived as a crosscutting theme related to the work of all thematic groups.<sup>169</sup>

- *the UNDAF Guidelines, adopted by UNDG in April 1999.* The UN Development Assistance Framework (UNDAF) is a single development assistance framework with common objectives and time frames for all UN programmes of assistance in one country. It is based on the CCA or the assessment of the national development situation in the state concerned. Individual agencies/organs will establish their country programmes based on the UNDAF document. The UNDAF is supposed to be informed by human rights treaty standards which are part of the state's obligations to individuals within its jurisdiction. The implementation of programmes on the basis of the UNDAF will require a mechanism for sustained dialogue, planning and review among the government, UN organizations and other development partners. This mechanism has potential to serve as a vehicle for a dialogue between government and other national-level partners concerning reporting and implementation of the human rights treaties.<sup>170</sup>

These are all entry points at which the treaty system and its conclusions could, in theory, plug into national level advocacy, policy development, and programming. However, in practice, they encounter serious impediments:

- Even where OHCHR is in the field, it is not always invited to be a member of the UN country team.<sup>171</sup>
- Of the approximately 130 country teams, thematic groups on human rights are present in only 15 cases, and frequently are not well-integrated as a crosscutting theme.
- The budget for the CCA/UNDAF process comes from the existing budgets of the participating UN organizations, and UNDP is not using its resources to organize analyses of treaty implementation pre- or post-reporting.
- The CCA Indicator Framework is still very general, and efforts to increase its specificity (for example, by identifying specific information such as the number of people in prison) have been rejected. While OHCHR has developed a more detailed list of civil and political rights indicators, they have not been integrated into the Indicator Framework.
- The preparation of the CCAs has not entailed a serious analysis of the status of the implementation of the treaties. In practice, human rights have often been kept out of the CCA.
- The Learning Network has only reviewed 22 CCA or UNDAF proposals, of the 81 CCA and UNDAF proposals completed and 73 in progress.
- Of the 22 either CCA or UNDAF proposals submitted to the Learning Network, OHCHR has commented on the human rights components on only eight occasions (4 CCA (Cambodia, India, Namibia, Syria) and 4 UNDAF (India, Morocco, Mozambique, Vietnam)). Sometimes comments have had to point out simply the total absence of any reference to human rights.
- Even when OHCHR has reviewed CCAs through the Learning Network, pointing out the absence of human rights, or suggestions for the integration for human rights, it has received no feedback from Country Teams. This makes it difficult to maximize the usefulness of contributions.
- Only 19 UNDAF have been developed (and 25 are in progress), so that their success as a vehicle for monitoring implementation of human rights treaties, and sustaining a dialogue at the country level relating to implementation and reporting, is still unclear.

## OHCHR - Advisory Services and Technical Cooperation

To a much more limited extent, (compared to operational agencies/organs such as UNDP, UNICEF or UNHCR), OHCHR is involved in the field. There are currently 29 OHCHR country-specific technical cooperation projects and others with a regional audience. These national-level projects are initiated by a formal request by the government concerned. Technical cooperation projects are not initiated by OHCHR as a consequence of treaty body conclusions. Criticisms abound that they are requested by states in order to forestall more interventionist international human rights machinery, such as the creation by the Commission on Human Rights of a country-specific Rapporteur. Requests from governments have increased significantly over the past few years. In general, they are described as seeking to integrate treaty standards into national laws, policies and practices. Needs assessments of requests by OHCHR consider the feasibility of the project and the definition of priorities in light of the recommendations, among other things, of treaty bodies. At the same time, the extent to which the design of the project relates to results of the treaty body monitoring processes widely varies.

The technical cooperation side of OHCHR can serve a much more direct follow-up role in relation to the work of the treaty bodies. OHCHR could engage in proactive identification of specific programmes originating in concluding observations that would be appropriately implemented by OHCHR with the resources available to it. Proactive engagement would have to be limited in scope, but could permit greater coherence in the relationship of technical cooperation to the treaty system and follow-up. It could encompass the planning of projects which might serve a variety of broader goals of the treaty system, or relate to OHCHR research activities. Design of a project would necessitate close cooperation with other agencies/organs operating in the country concerned, and consultation with the treaty bodies, in addition to the necessary consent and arrangements with the respective government. Great care would have to be taken to develop clear, transparent and nonpartisan criteria for identifying potential projects from the output of the treaty bodies. Such an approach would also have to be clearly distinguished from OHCHR attempting to undertake human rights development projects, which can be accomplished by other actors with the support of OHCHR in terms of advice. OHCHR would have the opportunity to expand follow-up to include developed states. OHCHR does not have an extended operational capacity, and is obliged for the most part to work through operational or national partners. On the other hand, a proactive role through the initiation of selected follow-up activities, following a careful review of concluding observations, would no longer be subject to the inhibitions of some UN agencies/organs to get involved in directly encouraging human rights activities and projects.

The selection of follow-up initiatives would require a specific dedication of time and resources by OHCHR to the management of follow-up to treaty body results. At one time, OHCHR produced an internal paper which distilled the technical cooperation and advisory services recommendations from all treaty body concluding observations. The selection was limited to recommendations that states parties be provided with external assistance. Paragraphs from concluding observations were selected and organized into areas of recommended assistance: “(a)

preparation of reports, (b) legislative review/incorporation of international instruments into domestic legislation, (c) reform of the administration of justice system/judicial system, (d) establishment/strengthening of national coordinating/implementing/investigative bodies on human rights, (e) professional training programmes in human rights, (f) translation/dissemination of the texts of international instruments, (g) data collection and analysis, (h) incorporation of human rights instruction in educational curricula, (i) organization of public awareness campaigns, (j) other areas of assistance.” Within each category recommendations were organized by country, so that the repetitive nature of recommendations by different treaty bodies in the same category (that is, their common concerns) became clear. Production of this document was discontinued. No similar distillation was ever done with respect to the parts of concluding observations which went beyond technical cooperation. It is, however, the kind of initiative that management of follow-up would require. It should therefore be expanded to include the organization of treaty body conclusions by other themes, in order to identify common concerns and recommendations.

A management of follow-up approach by OHCHR should also take into account Views on individual communications from the treaty bodies. Treaty bodies which make individual decisions express concern that doing follow-up to Views themselves is somehow unseemly. It places them in the role of both judge and police/enforcer. In general, they have had very poor results. In some cases, an overall analysis of the Views indicates a systemic problem which might be helped by a concrete follow-up initiative in the form of a practical, specific project on the part of OHCHR. In other cases, the management of follow-up approach might develop alternative strategies for assisting the treaty bodies in ensuring compliance with their Views.

### OHCHR - Field Presences

OHCHR field presences number 24, including the Southern Africa Regional Office. Many of the field presences have essentially technical cooperation mandates. Others combine monitoring and technical cooperation mandates. Beyond technical cooperation, field presences may be: (a) a response to emergency human rights situations, (b) a result of action by an intergovernmental body (Commission on Human Rights, Security Council, General Assembly), (c) the result of an agreement between OHCHR and the government concerned, or (d) human rights components of complex UN missions (peace-keeping and peace-making).

Field presences report at frequent intervals to OHCHR, but their monthly reports are generally not made available to the treaty bodies. Information is normally filtered through the desk officers. It is also the task of the desk officer to seek targeted input from field offices for the purpose of a treaty body’s consideration of a report.

Field officers have mixed conceptions about the nature of their input into the treaty bodies’ work. For example, various field officers

- are concerned that desk officers do not always solicit information in a timely fashion prior to the consideration of state reports
- believe that in cases where the field presence functions in conjunction with Special

(country-specific) Procedures, the formal reports of those mechanisms to the General Assembly or Commission on Human Rights should suffice

- assume that their monthly reports to OHCHR are provided to the treaty bodies
- believe that the conduit for field information to the treaty bodies should be the desk officer, and no direct contact with the treaty bodies is necessary
- are convinced there are advantages in being given the opportunity to meet personally with the treaty body prior to the dialogue
- are concerned that their input is largely irrelevant and “see no advantage in gathering information for treaty bodies that will not contribute to the solution of identified problems”.

Field officers are uniformly of the view that the treaty standards are immediately relevant in their work. They use the standards in many contexts: educating NGOs about state responsibilities for human rights violations, programming activities, and gauging human rights violations. In some cases they indicate that the work of the treaty bodies is much less relevant than the standards themselves. In a limited number of instances, they are more involved in the reporting process, assisting governments in writing reports and anticipating a follow-up role when concluding observations are produced. Some field officers complain that they do not receive concluding observations on their states. Many believe that the relevance of treaty body meetings is seriously diminished by the delay between the submission of a report and its consideration by the treaty body. They have very mixed reactions to potential visits by treaty body members. Some indicate support in the context of advocacy and education. Others believe that visits would likely be unproductive, and are concerned that governments faced with many OHCHR mechanisms would be confused.

### The Role of the High Commissioner for Human Rights

When the treaty system was designed and instituted, no UN High Commissioner for Human Rights existed. The post of High Commissioner postdates all six human rights treaties and treaty bodies. There is therefore no express role for the High Commissioner stated in the treaties themselves. No mention of the post has been made subsequently in any of the treaty bodies’ rules of procedure. The treaty bodies have an ambivalent attitude to the potential involvement of the High Commissioner in follow-up. They perceive a possible threat to their independence, while at the same time, they are sharply critical if the resources available to the Office are not used to promote their work. To date, participation of the High Commissioner in the treaty system has been ad-hoc.

The General Assembly Resolution<sup>172</sup> creating the post of the High Commissioner delineates a series of responsibilities, none of which make explicit reference to the human rights treaties. The High Commissioner’s responsibilities include promotion and protection of the effective enjoyment of human rights, playing an active role in removing obstacles to the full realization of human rights, engaging in a dialogue with governments on securing respect for human rights, supervising the UN human rights secretariat (now OHCHR), and a mandate to “rationalize, adapt, strengthen and streamline the United Nations machinery in the field of human rights with a view to improving its efficiency and effectiveness”. The latter provides an opening for creative

engagement with the treaty system.

The recent release of a Mission Statement of OHCHR (2000) sets the stage for a more developed and coherent approach to the treaty system. It states:

The promotion of universal ratification and implementation of human rights treaties is at the forefront of OHCHR activities. OHCHR aims to ensure the practical implementation of universally recognized human rights norms. It is committed to...providing the United Nations treaty monitoring bodies...with the highest quality support....OHCHR is committed to working with other parts of the United Nations to integrate human rights standards throughout the work of the Organization....A number of OHCHR field presences have been established with a view to ensuring that international human rights standards are progressively implemented and realized at country level, both in law and practice. This is to be accomplished through...[*inter alia*] the follow up to the recommendations of human rights treaty bodies...

These aspirations need to be translated into a concrete action plan for both the involvement of the High Commissioner and of the Office generally in relation to follow-up. This plan should be developed in consultation with the treaty bodies, so that expectations and divisions of labour are clear. It is anomalous for OHCHR to expect national plans of action to be developed for the systematic and sustained monitoring and implementation of the human rights treaties, while there is no such plan for the High Commissioner or the Office. The role of the High Commissioner and the Office in relation to the treaty standards should be more specifically defined. Such a plan will need to take account of the limited operational capacity of the Office and the need to work in many cases through operational partnerships. At the same time, the plan should take advantage of the opportunities provided by the visits of the High Commissioner, who travelled to thirty states, some more than once, in the year 2000 alone. Successful implementation of treaty standards requires OHCHR to adopt a holistic approach, in which states parties find themselves continually confronted with treaty implementation in all their engagement with OHCHR. There should be a commitment by the High Commissioner and the Office to avoiding the isolation of the work of the treaty bodies, so that states parties cannot claim a good relationship with the UN in its human rights efforts or with OHCHR, or define that relationship, in isolation from significant failures in treaty implementation. (*See infra section 34. Servicing and Resources*)

### **(c) National Follow-up Partners**

#### National Institutions

The engagement of national partners in follow-up is even more critical to effective implementation. International institutions should play a secondary role in the protection of international human rights standards. They have neither the resources nor the depth of knowledge of local circumstances to be able to monitor systematically. The standards, including their limitation clauses, were drafted in such a way as to encourage their interpretation and application to local conditions primarily by local authorities. International scrutiny aims at promoting local initiative. It is in the absence of sufficient local concern, or official resistance, or hostility to human rights obligations and their implementation, that requires international

monitoring bodies to take clear positions on the existence of violations of international law. Successful implementation strategies therefore depend on the extent and nature of local machinery, in particular,

- (a) whether international standards are directly applicable in the domestic legal system, or whether they have been incorporated into domestic law, and
- (b) whether there are national institutions which monitor and assess domestic conditions in relation to international human rights obligations.

OHCHR has a National Institutions Team. It encourages governments to create independent national human rights institutions that have the ability to: (1) monitor compliance with the state's human rights treaty obligations, and (2) promote adherence to treaty body procedural requirements. The foundational set of principles used by OHCHR to stimulate the creation of National Human Rights Institutions are the "Principles relating to the status and functioning of national institutions for protection and promotion of human rights", the so-called Paris Principles.<sup>173</sup> The Paris Principles specifically encourage national institutions to relate their work directly to international human rights standards. They state:

3. A national institution shall, *inter alia*, have the following responsibilities:

...

- b) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
- c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and, where necessary, to express an opinion on the subject, with due respect for their independence;
- e) To cooperate with the United Nations and any other agency in the United Nations system...which are competent in the areas of the protection and promotion of human rights.

Through its National Institutions Team, OHCHR seeks to push the operation of national institutions and the implementation of the human rights treaties even closer together. National institutions do, and should, "...advocate for the ratification of international human rights treaties...provide assistance in drafting legislation in compliance with international norms; monitor the implementation of international instruments at the national level; contribute to State compliance with reporting obligations to treaty monitoring bodies; facilitate the follow-up process to the Committee's consideration of national reports and their concluding observations; make contributions under specific plans of action to strengthening the implementation of conventions adopted..."<sup>174</sup> The role of national institutions is facilitated on an increasing scale if:

- (a) human rights are referred to in a constitution,
- (b) reference is made in domestic law to international standards in general,
- (c) reference is made in domestic law to international treaties to which the state is a party,

(d) the treaties are incorporated into domestic law.

To date 35 national institutions have been accredited by the International Coordinating Committee of National Institutions, although some have only been accredited with reservations and closer to twenty meet the Paris Principles' requirement of independence from government.

Promoting the creation of national institutions which have a mandate to monitor the implementation of the state's human rights treaty obligations can have a significant impact on follow-up, provided that those institutions clearly satisfy the Paris Principles. Expanding the jurisdiction of many existing national human rights institutions to include a connection to human rights treaties and the treaty bodies can also be an important contribution to follow-up.

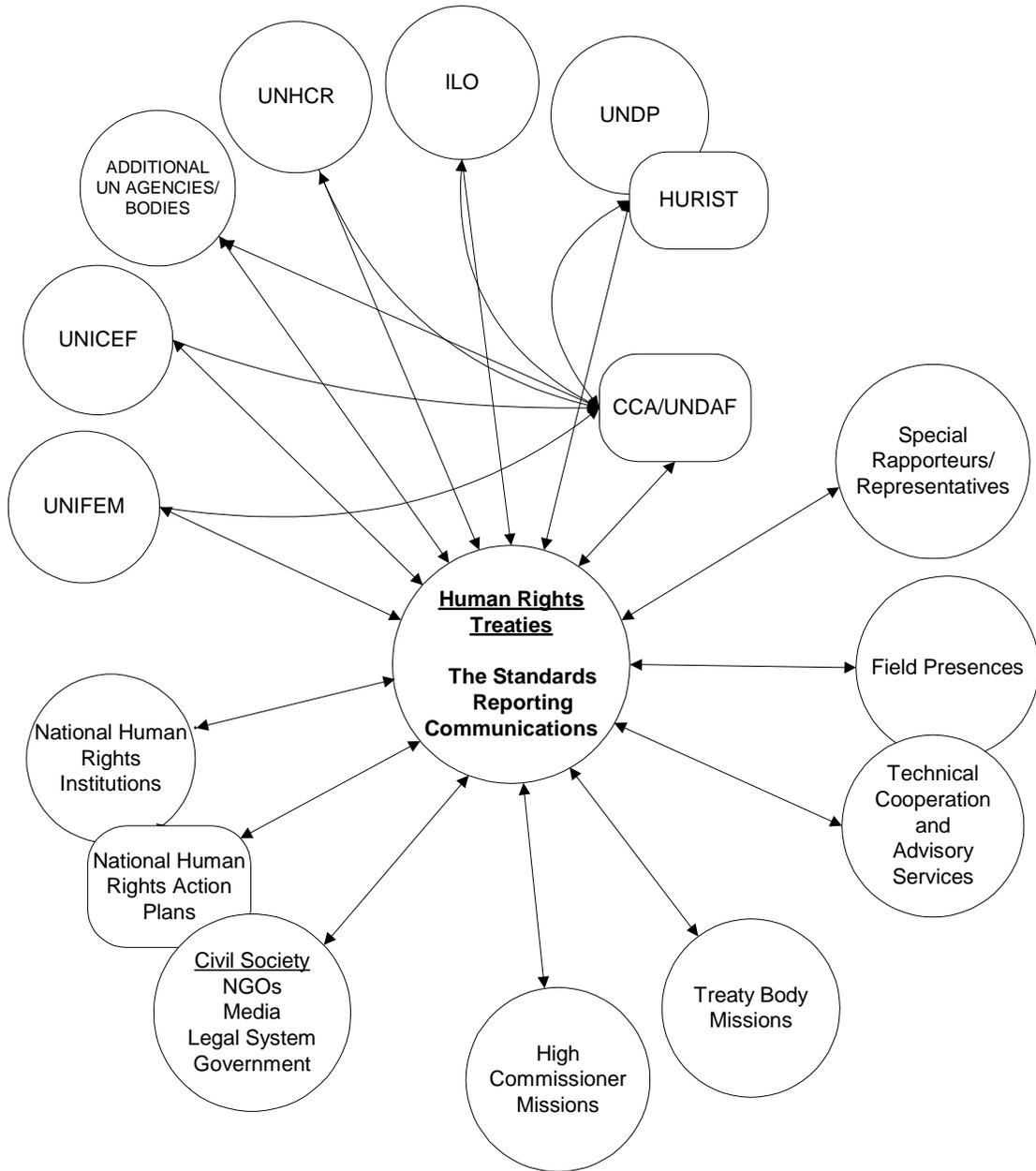
### National Human Rights Plans of Action

National institutions may, or may not be related to national human rights plans of action, another potential vehicle for follow-up at the national level. Sometimes such plans precede national institutions and in fact create them; in other cases national institutions may closely participate in the drafting of the plans. Currently there are at least 12 national human rights action plans. OHCHR has an important role in encouraging their development, and promoting clear references to implementation of human rights treaty standards. Suggestions for such national plans include:

“Purposes: ...(2) Encourage ratification of international human rights instruments; (3) Encourage the treaty reporting by the Governments that have acceded to/ratified international human rights instruments... Step One: Establishing a national coordination committee for the development of the national plan of action...Main functions of the committee: (a) Conducting a baseline study to establish the national human rights context...Step Two: Conducting a baseline study...(1) The areas of the study...(b) Analysis of the implementation of existing international human rights instruments ratified or acceded to by the government, including the question of reservations and possible new ratifications...Step Three: Possible substantive components...(1) The international framework: encouraging ratification of international human rights instruments; implementation and reporting under treaties and instruments...”<sup>175</sup>

Current efforts to design and promote a Handbook on National Human Rights Plans of Action should include detailed suggestions for a national implementation strategy for the human rights treaties. The treaty bodies can encourage the development of a national implementation strategy by routinely raising the issue of the extent of the engagement of civil society in the standards and their application.

In essence, national action plans should encourage ownership at the national level of international standards and their implementation, and the participation of a broad range of members of civil society in the cycle of engagement with the human rights treaties and treaty bodies. Clearly their success would have a pivotal impact on the effectiveness of the treaty system.



## **RECOMMENDATIONS** (See Diagram 4)

### **Treaty Bodies**

***Treaty bodies should appoint a Special Rapporteur(s) for Follow-up on State Reporting. The Special Rapporteur should monitor the process of requests for information following the dialogue, and facilitate the flow of follow-up information which is received to operational partners and within OHCHR itself. Opportunities for follow-up visits should be considered in a broad context, and in light of various operational considerations. (See infra section 25. Treaty Body Visits or Missions to States Parties)***

***Treaty bodies should adopt transparent, procedural rules for follow-up in the case of state reporting, and adhere to them. These should involve a consistent, transparent and evenhanded approach to requests for additional information. There would be an incremental increase in the committee's level of engagement with a particular state as time goes on, including:***

- ***the formulation of a specific request in concluding observations***
- ***deadlines***
- ***reminders***
- ***where necessary meetings between the Chair (or a committee member) with state party representatives to solicit information***
- ***consideration of the information submitted***
- ***where necessary scheduling a public dialogue with the state party about either the information submitted, or the lack thereof***
- ***requests for missions to states parties with the consent of the state concerned.***

***In the application of this follow-up procedure, information submitted from NGOs on follow-up should be accepted.***

***Use of follow-up procedures should be accompanied by commitments to place in the public domain requests made by the treaty body and information received from states parties.***

***The treaty bodies can encourage the development of a national implementation strategy by routinely discussing with states, for example: Who has authored the report? How was it produced? Where has it been sent? Who will discuss it? What happens to concluding observations? Are there government-civil society contacts concerning their implementation? Is Parliament or the legislative assembly involved in the process of monitoring compliance and/or implementing concluding observations? Are the state reports to treaty bodies tabled in the legislature? How is the media informed of the stages of the process?***

## Treaty Bodies and OHCHR

*A follow-up document should be published regularly which tracks requests, and responses to requests, for additional information. It should contain the following: request made (substance, state, date), deadline for receipt of submission, status of request (submission received/not received), symbol number of published submission, date of consideration of submission, outcome of the consideration of submission.*

*Follow-up information received should generally be published, either as addenda to state reports, or to CORE reports, or as a new category of information called follow-up.*

*The receipt by the treaty bodies of unsolicited information from states parties relating to follow-up should be publicly noted. Unsolicited information concerning concluding observations should be accessible throughout OHCHR, and where appropriate be made available upon request by follow-up partners within the UN system or at the national level.*

## OHCHR

*OHCHR should introduce a “management of follow-up” process in-house supported by a clear vision of the role of the High Commissioner and the Office in relation to treaty standards. (See infra Annex (8)). A follow-up analysis of concluding observations should be conducted. Key needs and programmes drawn from the concluding observations and Views should be identified. OHCHR should directly support the substantive outcomes of the treaty bodies by:*

- *analysing the paragraphs of the concluding observations,*
- *identifying a limited number of possible follow-up activities, and*
- *utilising its field missions and technical cooperation capacity to bring about concrete results.*

*Follow-up activities should be selected bearing in mind what the operational UN agencies/organs can do, or should be encouraged to do, themselves. Clear, transparent and nonpartisan criteria for identifying potential projects from the output of the treaty bodies should be developed. The contributions of OHCHR might focus, among other things, on trends or needs identified in relation to a number of states, or across treaty bodies, (such as the recommendation for an ombudsperson for children, or the preparation of a note on how to withdraw reservations). In general, the identification in-house of key programming needs revealed by concluding observations can also better enable OHCHR desk officers to in turn advocate those priorities with their contacts at the national level.*

*The “management of follow-up” process should involve the identification and implementation of a specific set of expectations for the High Commissioner. This should be considered part of the elaboration of a clearer vision of the role of the High Commissioner in relation to the human rights treaties and their implementation, and include:*

- *frequent reference across the High Commissioner’s activities to the treaty standards*

- *and the centrality of implementing or honouring treaty obligations*
- *the development of a list of treaty-related items which should be raised by the High Commissioner with governments on all visits to states parties, such as:*
  - (a) *ratification*
  - (b) *withdrawal of reservations*
  - (c) *timely reporting*
  - (d) *the creation of a national human rights action plan, or the introduction of the substantive elements of such a plan (such as the creation of national or local fora for dialogue with civil society about implementation and its requirements)*
  - (e) *the dissemination of concluding observations*
  - (f) *the implementation of concluding observations and final Views.*
- *the development (in consultation with the treaty bodies) of a detailed list of follow-up actions which should be the responsibility of the High Commissioner, bearing in mind the importance of respecting the independence of the treaty bodies.*

*OHCHR should produce a regular document organizing treaty body conclusions by subject matter of recommendation, and by country. Areas of recommendations would include, for example, (a) preparation of reports, (b) legislative review or the incorporation of international instruments into domestic legislation, (c) reform of the system of the administration of justice or the judicial system, (d) establishment or strengthening of national bodies for coordinating or implementing or investigating in the field of human rights, (e) professional training programmes in human rights, (f) translation or dissemination of the texts of international instruments, (g) data collection and analysis, (h) incorporation of human rights instruction in educational curricula, (i) organization of public awareness campaigns. The paper should not be limited to projects or areas involving technical cooperation. In addition, a thematic organization of concluding observations from all the treaty bodies should be available to states parties to assist in their implementation at the national level. Future concluding observations should themselves connect themes with specific recommendations in order to assist national structures in assigning responsibility for follow-up. Integrated into the management of follow-up review and documentation should be the Follow-up paper on communications produced by the Human Rights Committee.*

*The role of the desk officer as a conduit between the treaty bodies and the field presences needs to be clearly established, in terms of soliciting information, the nature of the incoming information to be provided to the treaty bodies, facilitating direct, personal contacts with field officers at treaty body meetings, forwarding concluding observations to the field, suggesting specific follow-up activities.*

*OHCHR staff in field offices or who undertake missions (for a variety of purposes and mandates, including advisory and technical services, or monitoring missions) should be trained in the requirements or substance of the human rights treaties. This includes:*

- *providing guidance to field officers about how to handle information they receive which is related to communications, and techniques for instructing potential victims on*

- *how to submit communications, and the basic criteria of admissibility*
- *keeping staff informed about treaty body agendas and prompting them for information relevant to treaty body proceedings*
- *requesting information in their reports to OHCHR on compliance with the human rights treaties*
- *providing staff with methodologies for disseminating information about all aspects of the treaty body processes in the field.*

*More precise expectations of the follow-up role of the field presences in relation to concluding observations, Views (where applicable), and possible uses of General Comments and Recommendations, needs to be elaborated by OHCHR.*

*OHCHR should be encouraged to continue to promote the creation of national institutions which clearly satisfy the independence criteria of the Paris Principles and which have a mandate to monitor the implementation of the state's human rights treaty obligations. Efforts should also be directed towards expanding the jurisdiction of many existing national human rights institutions to include explicit connection to human rights treaties and the work and results of the treaty bodies. OHCHR should prepare, on a state-by-state basis, a list of the names and contact numbers of a variety of human rights national institutions and ombudspersons. The list should be used to disseminate information concerning all aspects of the treaty bodies' work. OHCHR should ensure that national institutions, particularly those served by the National Institutions Team as the secretariat for the International Coordinating Committee of National Institutions, are invited to provide input into all considerations of reports from their state by the treaty bodies, and promptly receive the respective concluding observations. Dissemination of concluding observations should include specific suggestions from OHCHR for follow-up activities by national institutions.*

*A standard model national human rights action plan which incorporates a national implementation strategy for human rights treaties should be developed and promoted. Such a step-by-step strategy should include:*

- *ratification of human rights treaties*
- *removal of reservations*
- *reviewing existing legislation, practices and policies for compatibility with treaty obligations, and amending inconsistent domestic standards or practices*
- *enacting implementing legislation, preferably incorporating the treaties into domestic law*
- *developing a transparent group within government with responsibility for drafting state reports, disseminating reports, translating concluding observations*
- *developing a methodology for disseminating concluding observations*
- *designating civil servants or team with responsibility for comparing proposed legislation or policy initiatives with treaty obligations*
- *creating a national forum composed of representatives of different components of civil society, or identifying other regular opportunities, to conduct an ongoing dialogue with*

*government throughout the human rights treaty system's cycle of engagement, namely: understanding and education about the standards, review of existing laws and practices, planning of amendments or future initiatives, monitoring the implementation of those plans, reporting to the treaty bodies, and follow-up to the treaty body conclusions through enhancing local understanding of the meaning and application of the standards to domestic conditions.*

*OHCHR should prepare a more detailed set of model component parts of a national human rights action plan aimed specifically at implementing treaty standards, concluding observations and final views. This would include:*

- *model legislation for incorporating the treaties into national law*
- *a model plan for educating civil society about the treaty system, (directed at primary and secondary schools, law schools, legal professional qualifying programmes, NGOs, government officials, media, judges)*
- *a model plan for the development of a national/local central data base or website, or other appropriate method for systematically disseminating relevant treaty documents*
- *a model plan for tabling state reports and concluding observations before the legislature or distributing them to the relevant legislative committees*
- *a model mechanism for the civil service or relevant government department to routinely review proposed legislation or policies for consistency with treaty obligations*
- *a model strategy for designating a transparent group within government with responsibility for drafting reports*
- *a model national forum for follow-up or implementation.*

*OHCHR should offer to assist at the national level to tailor the model national plan of action to local circumstances, and to assist in its application and implementation.*

*OHCHR should publish an annual report on compliance with treaty standards on a state-by-state basis for all state participants in the treaty system. It would include the reporting record, current reservations and objections, summary of recommendations in concluding observations and findings of violations in individual cases or investigations, follow-up information on implementation of either concluding observations or individual cases obtained by the treaty bodies. It would be for distribution at the national level in local languages and to the Commission on Human Rights and the General Assembly. The extent to which the report went beyond a compilation and included a commentary on the human rights record will require further consideration of the methodology for ensuring accuracy and reliability. Credibility is key. Such a product would need to be highly professional and accurate.*

#### *UN agencies/organs and the CCA/UNDAF process*

*OHCHR should continue to insist that the treaty standards inform the work of the UN in all of its operational dimensions, (such as education, technical services, assistance, peace-keeping).*

*It should continue to press for the mainstreaming of human rights throughout the UN system and on introducing human rights considerations, or a “rights-based approach”, to the work of all relevant UN specialized agencies and other bodies (including the Bretton Woods institutions). This includes continuing insistence on the full integration of human rights at the design level of the UN’s operational activities.*

*Wherever OHCHR has a field presence or office, they should be invited to be a member of the UN Country Team.*

*Where there is no OHCHR field presence or office, a focal point for receipt of information on human rights in the UN country team should be created.*

*All Country Teams should have a human rights thematic group. In addition, human rights should be a crosscutting theme which is integrated into the work of all thematic groups.*

*UNDP should use more of its resources to apply the human rights guidelines of the Resident Coordinator system and specifically organize analyses of treaty implementation pre- and post-reporting.*

*All CCA and UNDAF documents should be required to pass through the Learning Network.*

*OHCHR input into the Learning Network should be a matter of dialogue with country teams, so that both OHCHR and the country teams benefit from a continual refinement of the process of translating human rights treaty standards and concluding observations into programmatic terms.*

*OHCHR should have sufficient resources to review all proposed CCA and UNDAF documents. It should have the resources to provide the methodology and substantive information necessary to ensure that human rights, the treaty standards and the results of treaty body reviews, are integrated into UN programming.*

*The CCA Indicator Framework should include a common and more detailed list of governance, and civil and political rights indicators to be applied as relevant to specific country situations. An adequate list of core indicators for civil and political rights, based upon the treaty standards, should incorporate indicators for (a) the administration of justice, (b) political participation, and (c) personal security.*

*All CCA should include an assessment of the status of the implementation of human rights treaties ratified by the country concerned.*

*Both the design and application of all UNDAF should use human rights treaty standards and concluding observations in the identification of development priorities, and in the design of development programmes by country teams and individual agencies/organs.*

## States Parties

*States parties should develop a national implementation strategy for human rights treaties. It should include a step-by-step programme of action:*

- *review of existing legislation, practices and policies for compatibility with prospective treaty obligations*
- *amendment of inconsistent domestic standards or practices*
- *ratification of the human rights treaties (with or without specific reservations to particular domestic policies or practices which are compatible with the object and purpose of the treaty)*
- *continued review of existing legislation, practices and policies for compatibility with treaty obligations, amendment of inconsistent standards or practices, removal of reservations when no longer necessary*
- *enactment of implementing legislation, preferably through direct incorporation of the treaties into domestic law*
- *the creation of a government department or office with responsibility for drafting state reports, disseminating reports, translating concluding observations*
- *designation of a team of civil servants with specific responsibility for comparing proposed legislation or policy initiatives with treaty obligations*
- *the development and implementation of a national central data base or website, or other appropriate method for systematically disseminating relevant treaty documents, including concluding observations*
- *the development and implementation of a plan for educating civil society about the treaty system, (directed at primary and secondary schools, law schools, legal professional qualifying programmes, NGOs, government officials, media, judges)*
- *the introduction of a method for systematically tabling state reports and concluding observations before the legislature/legislative assembly and distributing them to the relevant legislative committees*
- *the creation of a national forum composed of representatives of different components of civil society and government officials to conduct an ongoing dialogue concerning: the promotion of education about the standards, the review of existing laws and practices, planning of amendments or future initiatives, monitoring the implementation of those plans, reporting to the treaty bodies, and follow-up to the treaty body conclusions.*

## 25. Treaty-body Visits or Missions to State Parties<sup>176</sup>

Treaty bodies have had very limited contact with states parties at the national level. Although many members travel extensively in their individual capacity, and there are 97 members in total, official visits have been minimal. CESCR has visited two states in relation to follow-up to state reporting; CERD has visited two states in the context of good offices combined with follow-up to state reporting; the Human Rights Committee has visited one state in relation to follow-up to

individual communications (and plans three more visits in 2001); CAT has publicly announced to date that it has conducted one visit in the context of an Article 20 inquiry; CEDAW as such has not officially visited a state party (although its members have held various meetings on CEDAW-related business outside of UN venues). For some years CRC conducted informal visits to states parties, funded by UNICEF. These visits did not have specific goals, other than to familiarize the treaty body members with country situations, enhance awareness of the Convention and overall cooperation with states parties. UNICEF believed these visits to be unproductive and discontinued them, although it continues to fund travel of individual members to specific events. More recently, CRC has obtained sufficient funds (through the Plan of Action) to engage in three follow-up activities per year. To date, these activities have consisted of: (a) offering a state assistance in reporting, (b) training, and (c) designing a local project intended to follow-up a specific concluding observation. It is not envisaged that Committee members be personally engaged at the field level in all of these activities.

Currently, there is no uniformity among the treaty bodies about the appropriate purposes or advisability of missions, and the issue remains on the margins in the absence of resources. At the same time, OHCHR is faced with the issue of rationalization of various forms of field contacts or presences, including the mission-oriented approach of the special procedures. A number of factors will arise in this context:

- special rapporteurs should be cognizant of treaty standards, and incorporate dimensions or strategies for treaty implementation in their work
- without universal ratification, special procedures permit monitoring where it would not otherwise occur by way of the treaty bodies; however, as universality is realized, the relevance or role of non-standards-based bodies will be increasingly challenged
- the capacity of the treaty bodies to deal with urgent situations without undermining their perceived neutrality and the equal application of the treaties to all nations large and small (in the language of the UN Charter) has not been demonstrated
- the impact of the treaties at the national level would likely be enhanced by opportunities for national partners (governmental and non-governmental) to interact with the treaty bodies in local or regional conditions.

The treaty bodies have been very dissatisfied with their limited travel. Many have repeatedly sought to expand their ability to conduct missions, but been denied the funds to do so. The rationale for these proposed visits varies considerably: raising awareness about the treaty standards and procedures, generally familiarizing themselves with country conditions, specific follow-up missions concerning inadequate reports or dialogue or the implementation of concluding observations or final Views, and global troubleshooting in the guise of “prevention and early warning”. There has been no systematic analysis of the circumstances in which visits are appropriate, and no comparative planning among the treaty bodies concerning proposed visits. At the same time, NGOs and other civil society actors frequently express the view that a treaty body presence in the state would be beneficial. There is, however, a great deal of imprecision about the purpose of such contact.

(1) Some suggest that the actual dialogue concerning a state report be conducted in states parties, or in the region. This is unrealistic. Treaty body meetings held in New York by the Human Rights Committee, away from the secretariat's home base in Geneva, have encountered considerable technical difficulties even though in UN Headquarters. In the field, one could anticipate further problems, such as translation into UN languages and additional costs of servicing the meeting. Travelling to every country for every dialogue for a six to nine-hour meeting is obviously impractical. Meetings in the region, however, are unlikely to have a significant impact in terms of local interest in neighbouring states, judging from the lack of increased interest in states bordering New York/USA and Geneva/Switzerland. (See *supra* section 21. The Dialogue)

(2) Others suggest that treaty body members conduct missions in order to better familiarize themselves with local conditions. This idea includes both sensitizing members to local circumstances and fact-finding. Many states parties express the view that a sensitizing mission would lend more legitimacy to concluding observations. It is less likely that on-site fact-finding missions would be equally well-received. On a limited scale, in clearly-defined circumstances, such as those in which facts are not otherwise available, both kinds of visits may be appropriate. Consideration might be given to the possibility of treaty body members accompanying, for example, a special rapporteur or the High Commissioner to selected states parties. However, the lessons of the UNICEF-CRC experience should be borne in mind, namely, that it is easy for such visits to be largely unproductive, and even counterproductive, particularly in the absence of careful timing and planning in relation to the reporting phases of the specific state.

(3) There is also a suggestion that a visit from treaty body members would have considerable educational value, and will be particularly useful if targeted, for example, at NGOs writing shadow reports, government officials or legislative committees writing or reviewing reports, editorial boards of key media organizations, or judicial and legal conferences concerned with the interaction between international and domestic law. Again, well-planned and focussed visits can be practical and productive.

(4) Follow-up visits are proposed for both concluding observations and final Views. Treaty body actions here should be considered only in the knowledge of the overall follow-up situation. With respect to final Views, currently few other actors are prepared to press follow-up, and missions of treaty body members may be useful. However, little experience is available in the context of final views, as the report of the only such mission to date (to Jamaica by the Human Rights Committee) was not publicly released. If the treaty bodies are not prepared to make known the outcomes of such visits, they should not be conducted. Planning of visits by the Human Rights Committee for 2001 by the Committee, however, has not entailed such an undertaking. Furthermore, selection of states for the 2001 visits has not taken geographical distribution into account, opening the Committee to charges of bias and irrelevance in the context of some regional groups. A lessons-learned analysis should be immediately conducted at the end of visits. With respect to follow-up of concluding observations, there are a broad number of actors with considerably greater operational capacity and experience than the treaty bodies, and which have in theory committed themselves to engaging in follow-up. Careful consideration needs to be given to the value-added of possible follow-up missions of treaty bodies in this context.

(5) CERD, in particular, has sought to conduct prevention and early warning missions. It is impossible to ignore that this suggestion emanates from the treaty body which is widely viewed as the most driven by political considerations. Attempts by treaty body members to serve as roaming human rights ambassadors in selected emergencies will undermine the fundamental premise of the treaty regime, namely, the equal application of the law to all states parties. Treaty body members have neither the experience, nor the facts, to act in this capacity.

## **RECOMMENDATIONS**

### **Treaty Bodies and OHCHR**

*Visits by treaty body members to states parties should be supported provided the targeted venue has been selected on the basis of a coherent and integrated approach to missions generally. The treaty bodies, together with OHCHR, should develop for all visits (1) a defined set of priorities (such as education, fact-finding, follow-up), and (2) a clear understanding of necessary and sufficient conditions (such as cooperation of the state party, the presence/absence of other UN human rights actors, and so on).*

*Prior to undertaking a visit, the following planning should occur:*

- *the context of the visit should be clear (for example, failure to report/fact-finding prior to a scheduled dialogue/follow-up to Views or concluding observations)*
- *the objective(s) of the visit should be clear*
- *the anticipated product(s) or performance indicator(s) should be identified*
- *a lessons-learned analysis should be conducted following each visit*
- *the value-added of any visit should be established in light of the network of actors in the field, (such as those already participating in follow-up - including other treaty bodies).*

## **26. General Comments and Recommendations**<sup>177</sup>

General Comments or Recommendations have generally provided a very useful analysis and elaboration of the meaning of treaty obligations. To date, 95 General Comments (CCPR, CESCR, CAT, CRC) or Recommendations (CERD, CEDAW) have been adopted by the treaty bodies. The breakdown is as follows: CERD - 27; CCPR - 28; CESCR - 14; CEDAW - 24; CAT - 1; CRC - 1. Some of the Comments/Recommendations are more procedural in nature. The quality of substantive Comments/Recommendations varies both as among, and within, committees. Within committees, much of the variation is said to depend on the quality of work of the individual expert who is given a significant degree of latitude during the drafting stages. As among the treaty bodies, CAT and CRC have made little use of the procedure (although the first Comment from CRC in January 2001 suggests the future will be different). The recommendations of CERD have tended to be short notes, rather than significant substantive

elaboration of the Convention provisions. Some of the treaty bodies have revised General Comments/Recommendations on the identical treaty provisions after years of reporting and/or communications experience.

The process of drafting General Comments/Recommendations varies among the treaty bodies, with some taking a more inclusive approach to consultations than others. Even within treaty bodies, individual members charged with producing initial drafts encourage external consultations to varying degrees. At the same time, little effort is made to seek input from other treaty bodies, even on topics which directly relate to their work. For example, CRC was not consulted about the General Comment on the Right to Education adopted by CESCR in 1999. Some of the topics chosen by the treaty bodies overlap, there being more than one general Comment/Recommendation for example on the right to education, the right to health, and self-determination.

## **RECOMMENDATIONS**

### **Treaty Bodies**

*All treaty bodies should devote time on a regular basis to the drafting of General Comments/Recommendations. They are a valuable contribution to the development and application of international law. They should integrate and build upon the treaty bodies' experience with state reports, communications and inquiries. Specifically, they should provide a substantive elaboration of the meaning of treaty provisions, as well as an in-depth analysis of procedural concerns regarding the human rights treaties (such as reservations or denunciation).*

*Other treaty bodies should be routinely asked for comments during the drafting process with respect to all General Comments/Recommendations.*

*When the subject matter of proposed General Comments/Recommendations overlap, or is of mutual interest, the treaty bodies should make an effort to issue joint Comments/Recommendations.*

*External advice during the drafting process is recommended. The form and extent of external consultations during the drafting process should be regularized, or at least a general opportunity for comment should be provided, in order to avoid a perception of inappropriate exclusivity.*

## **27. Media**<sup>178</sup>

The treaty bodies have a poor record of drawing media attention to significant results of their deliberations. Weaknesses in their communication skills abound:

- CEDAW does not release its concluding observations on state reports until after the session is over, and then they are obtainable weeks later only if contacted directly or through the use of the internet
- the Human Rights Committee does not release its decisions on individual communications until after the session is over, no date is set for the release of decisions; they are obtainable some unspecified time later only if contacted directly or through the use of the internet; authors seeking to publicize the Views are also not informed in advance of the date of the release of their decisions
- the Human Rights Committee issues no press release at the end of the session describing the communications considered or the outcomes of the cases
- CERD, CESCR, CRC and CAT do not hold a press conference at every session, and press conferences are cancelled on a significant number of occasions due to poor attendance
- the provisional agendas do not indicate the timetable for all agenda items of possible interest to the press, such as follow-up to individual communications
- responsibility of treaty body members (and/or the committee secretaries) to speak to the press is not clearly articulated or assigned
- treaty body members are often reluctant to speak to the press, during sessions or between sessions. Much responsibility is left to the Chair to deal with the media and the ability and willingness of a given Chair to engage the media varies considerably. At the same time, the secretaries of the treaty bodies are also often reluctant to speak about the Committees' work in view of the status of the Committees as independent expert bodies.
- treaty bodies do not pay specific attention to media relations, or brief the press officer of the OHCHR so that the officer can (a) highlight their work at OHCHR's regular twice-weekly press conferences, or (b) write focussed press releases on their activities
- treaty bodies make no effort to interest national press sources through the prior identification of major media outlets within states, or dissemination of advance briefing notes directly to such national sources
- heavy reliance is placed on NGOs for reaching national audiences, while the treaty bodies hold no end-of-session briefings for NGOs

### ***RECOMMENDATIONS***

#### ***Treaty Bodies***

***Concluding observations should be released no later than the last day of the session.***

***Final Views should be released no later than the last day of the session (at which they are adopted).***

*Agendas should include the timetable of consideration of all items of possible interest. Revised agendas should be issued whenever significant changes are made.*

*The treaty bodies should clearly identify one or more of their members as responsible for communicating with the media and also clarify the acceptable role of the secretariat in this context. There should be a designated spokesperson and alternate at all times, who is willing and able to answer questions.*

*The treaty bodies should formulate a press strategy at the outset of each meeting, indicating what issues or anticipated outcomes to highlight, and communicate this strategy to the OHCHR press officer. Once a week during the session, or an ad-hoc basis as required, a designated press-liaison treaty body member should update the OHCHR press officer on information or events to highlight at the OHCHR twice-weekly press conferences, or to highlight by means of a focussed press release.*

*Treaty bodies should hold an end-of-session briefing for NGOs, at which copies of concluding observations and final Views are provided.*

### **OHCHR**

*A press release specifically concerning the outcomes of communications should be issued at the end of every session.*

*The OHCHR press officer should meet with each treaty body to explain what media relations tools are available to them.*

*A database of major national media contacts should be developed and available to the treaty bodies. These bodies should directly be sent an advance briefing note on forthcoming treaty body sessions, and an end of session summary of key outcomes, in relation to the state concerned.*

## **28. Meetings of Chairpersons of the Treaty Bodies**<sup>179</sup>

The Meeting of Chairpersons was intended to serve as an important opportunity to discuss and resolve common problems facing the treaty bodies, in consultation with each other, and all interested parties. The number of parties now engaged in some form of exchange with the Chairpersons has expanded and now includes, for example, UN agencies/organs, NGOs, and special rapporteurs/procedures. As a result, there have been important statements of principle and positions taken on overlapping issues and concerns. Furthermore, the documentation produced for the Meetings of Chairpersons has been a positive contribution to coordination, often bringing together for the first time information relating to the different treaty bodies.

However, to a very significant extent the meeting is merely an exchange of views and information on the chosen methods of operation of each committee and no serious attempt is made to coordinate or consolidate responses. Examples include:

- treaty bodies generally do not consult each other during the drafting phase of general comments/recommendations, even on subjects of mutual interest
- responses to dealing with overdue reports have been fashioned by each committee on their own, although the domino effect is sometimes evident - in other words, later committees gave up on insisting on submission of all reports required by the treaties in part because other committees had
- no attempt is made to address coordination of (a) scheduling of reports from the same state party, or (b) the lists of issues posed to the same state
- divergent attitudes have prevailed on a wide range of important procedural matters, such as:
  - the consideration of states in the absence of reports
  - methods of obtaining input from NGOs
  - requests for special/exceptional reports
  - follow-up to concluding observations
  - interest in or usage of country profiles/analyses
  - the production of lists of issues
  - requests for written responses to lists of issues.

The failure to use the opportunity of the Meeting of chairpersons to fashion uniform procedures or develop common responses to similar problems is a result of three main factors: (1) lack of mutual respect for the independence or expertise of other chairs and the members of their respective treaty bodies, (2) a sense of independence mandated by the treaty to each committee over its own procedures, and (3) the unwillingness of treaty body members to delegate responsibility to their chairs to take decisions at the Meeting of Chairpersons. Problems relating to overlap or duplication cannot be dealt with adequately in this environment. The failure to elect genuinely independent experts to the treaty bodies clearly diminishes the potential for cohesive and productive outcomes from the meeting of their Chairs.

## **RECOMMENDATIONS**

### **Treaty Bodies**

***The concept or framework of the Chairpersons' Meeting could be extended to include the creation of subcommittees composed of representatives of all treaty bodies to work on crosscutting issues when the treaty bodies have agreed to collaborative outcomes (such as joint general comments/recommendations).***

***(Concerning a vehicle for discussing a greater degree of consolidation See infra section 34. Servicing and Resources)***

## **29. Treaty Body Members' Performance**<sup>180</sup>

Treaty body membership is a part-time function, and for three of six committees it is unpaid. The annual remuneration for HRC, CEDAW and CRC is \$3,000 for members and \$5,000 for the Chair. The annual time spent at treaty body meetings (including pre-sessional meetings) is as follows: CERD - 7 weeks; HRC - 12 weeks; CESCR - 12 weeks; CEDAW - 8 weeks; CAT - 5 weeks; CRC - 12 weeks.<sup>181</sup> In between sessions, treaty body members (to varying degrees) take on such tasks as drafting general comments/recommendations, preparing draft lists of issues, reading and research of country conditions. Consequently, while the responsibilities, workload and time commitment of treaty body membership have increased, remuneration remains minimal or nonexistent. Most treaty body members, therefore, have other jobs.

The primary jobs of treaty body members have frequently resulted in their missing significant amounts of time during treaty body meetings. They have also had an impact on the willingness of members to take on important responsibilities between sessions. The likelihood of competing claims arising from their primary employment is usually an irrelevant consideration during the election to treaty body membership. Sitting Ambassadors, Foreign Ministers, heads of government departments, and UN Special Rapporteurs, have been nominated and elected. The only consequence for missing time has been the loss of per diem expense allowances. (CEDAW has introduced a new Rule of Procedure (January 2001) for the future calling on a member unable to attend meetings on an "extended basis" to resign, and for the Chair to bring a failure to resign to the attention of the Secretary-General and in turn to the state party.)

In addition to the impact that part-time membership has on the availability of treaty body members, is the impact of their other employment on the independence of members. According to the treaty provisions, members of treaty bodies should be "of high moral character" "recognized competence in the field of human rights" or "in the field covered by the Convention" and "shall serve in their personal capacity". The Racial Discrimination Convention states members shall be of "acknowledged impartiality".

However, examination of the curricula vitae of both nominated persons and those who have been elected over the history of the treaty system (947 curricula vitae) reveals the following:

	nominated	elected
government	51%	48%
non-government	42%	45%
unclear	7%	7%

In other words, an average of 50% of all those persons elected to treaty bodies were employed in some capacity by their governments. (This figure excludes members of the judiciary, tribunals or arms-length commissions and committees). In addition, the curricula vitae indicate:

- a further breakdown of the information by committee gives a range of between 35-60% of all those persons elected to the individual treaty body were employed in some capacity by their governments.
- CRC, CEDAW, CERD and CESCR (the committees which to date deal with very few or no individual cases), have the highest numbers of members employed by government; HRC and CAT have had about 15% fewer members employed by government than the other four committees
- the number of individuals employed by their government is a few percentage points higher with respect to all individuals nominated (both elected and not elected); in other words, there is only a small increased chance of election for those candidates who are not employed by government
- since the establishment of the treaty bodies, there has been only a modest increased tendency (less than five percentage points) to nominate and elect individuals who are not employed in some capacity by government, particularly with respect to the HRC
- as an overall average, 7% of individuals were elected without providing their current occupation, and without their relationship to their government being evident from the information available to states parties at the time of election
- the current occupation (or lack thereof) of many of the individuals nominated is frequently difficult to discern; this is often true of individuals who appear to be retired; many of the curricula vitae contain very little information, no dates, and vague job descriptions; even when current occupations are provided, the independence from government and the nature of institutional affiliations is often difficult to determine
- individuals have been nominated, and elected, in the absence of any curricula vitae at all.

In short, independence from government has not been viewed as a significant qualification for treaty body membership, in direct contradiction to the spirit of the treaty provisions requiring members to serve in their “personal capacity” or evidence “acknowledged impartiality”.

There is no doubt that this large proportion of members with direct government affiliation has affected the work of the treaty bodies. In terms of appearances, members have met socially with government representatives following the dialogue but prior to the adoption of concluding observations; during treaty body sessions some members have offices, or rely on the facilities at the UN missions of their state, or are seen to report to missions at frequent intervals; members serving as country rapporteurs (which have a greater involvement with the production of concluding observations) are not infrequently from states with close ties to the state party being examined. Substantively, the large proportion of the membership with close government ties has affected the consideration of state reports in the context of the questions posed, the selection of states parties for exceptional consideration, and the substance of concluding observations.

This is a situation for which states parties are directly responsible. No regional group is immune from this attempted political manipulation of the outcome of the treaty monitoring process. Key members of committees in terms of expertise, years of experience, membership in the Bureau, are not put forward for reelection because of their perceived independence or changes in the state’s governing party. Candidates are nominated (and elected) who are current Ambassadors,

politicians, and senior government bureaucrats. Curricula vitae are not standardized and are deliberately evasive. Elections are not conducted in a climate of disapproval of politically-active or connected candidates. At the same time, the fact that the position of treaty body member is part-time, and essentially unremunerated, contributes to this phenomenon.

Reliance on inappropriate factors in the selection of candidates reduces the emphasis on important qualities such as human rights expertise. This has not prevented states parties, which bear direct responsibility for the quality of treaty body membership, from heavily criticizing the quality of the output.

Additional expertise, such as legal experience, is specified in the treaties as a desirable quality only for members of the Human Rights Committee and CAT, although the addition of an Optional Protocol for CEDAW and to a lesser extent CERD's Article 14 suggest that legal experience should be an important consideration for membership on those treaty bodies as well. In fact, the two primary tasks of treaty bodies, reviewing state reports and deciding communications, suggest different skills. The latter clearly requires legal experience. The task of reviewing state reports and producing practical, programmatic concluding observations, would benefit from a broad range of professional qualifications and human rights expertise.

Current membership evidences another serious flaw, namely, the very low representation of women (less than 20%) in four of the six committees (CERD, HRC, CESCR, CAT). To a significant extent women's representation is concentrated on the treaty bodies dealing with women and children.

Most of the treaties call for "consideration" in elections to be given to equitable geographical distribution. Election results do not strictly reflect equitable geographic distribution, often as a result of the inability of regional groups to predetermine a limited number of candidates. In general, considerations of geographical distribution govern the operation of some committees much more than others. In the history of the CRC, the chair has been an African on three occasions and an Asian once. On the other hand, CEDAW applies the rule of geographic rotation to the selection of chairs, and geographical considerations to membership in the pre-sessional working group, and even the selection of state reports to be considered.

Some solutions are evident from developments on the part of CRC and the Human Rights Committee. CRC has developed a standard biographical data form that is circulated to states parties in advance of elections for CRC by OHCHR. It seeks to elicit a number of facts from candidates, such as their current position, and main activities in the field relevant to the treaty body mandate. It also draws the attention of candidates to the time commitments expected from CRC meetings. In November 1997 the Human Rights Committee adopted "Guidelines for the Exercise of their Functions by Members", which seek to emphasize behavioural expectations associated with perceived and actual independence and impartiality. They state, among other things: "members of the Committee ...should abstain from engaging in any functions or activities which may appear to be not readily reconcilable with the obligations of an independent expert under the Covenant."<sup>182</sup>

## **RECOMMENDATIONS**

### **OHCHR**

*A standard biographical data form should be circulated by OHCHR to all states parties well in advance of every election. It should be required to be completed and submitted by all candidates at least two months in advance of elections. Failure to complete the form should disqualify individuals from candidature.*

*The standard form should contain the following: (See Annex (4))*

#### **Personal details**

*name*

*date and place of birth*

*nationality*

#### **Education, academic and other professional qualifications**

*degrees, year, location*

#### **Employment History**

*(a) current employment*

*(b) past employment (including dates)*

#### **Activities and experience in the field of human rights, and in the field covered by the treaty (including dates)**

**Public Activities (including dates)** *(government service or employment, elected positions, public appointments)*

**Other Activities (including dates)**

**Publications and other works (books, articles)**

**Languages spoken, read, written and degree of fluency**

*Attached to each standard biographical data form should be a number of explanatory statements. These should also be drawn to the attention of each state party by OHCHR in its Note Verbale inviting nominations in advance of states parties' meetings:*

*(a) Members of the committees shall serve in their personal capacity, and are therefore expected to abstain from engaging in any functions or activities which may appear not to be readily reconcilable with the obligations of an independent expert under the treaty.*

*(b) Members shall be of high moral character, recognized competence in the field of human rights and the field covered by the Convention.*

*(b) The time commitment required for the respective treaty body, (the number of weeks of meetings per year including pre-sessional meeting times) is XXX.*

*(c) The remuneration is XXX.*

#### **States Parties**

*States parties should insist that independence and expertise be prerequisites for election to a treaty body.*

*Individuals who are employed by their governments in any way, or unprepared to terminate such employment upon their election, should not be nominated or elected for treaty body membership.*

*Women's representation on the treaty bodies should not be largely confined to instruments dealing with women and children.*

### **30. Languages**<sup>183</sup>

There is variation among the treaty bodies concerning the number of working languages. Two of the treaty bodies (HRC and CRC) have three working languages (English, French and Spanish), three have four working languages (adding Russian) (CERD, CESCR, CAT), and one has six working languages (CEDAW). The website of the OHCHR essentially has three languages (English, French and Spanish). If a state party seeks to conduct the dialogue in one of the six official languages of the UN which is not a working language of the committee, translation will be provided.

The language of documentation is not consistent. Generally-speaking and in theory, state reports are produced (aside from the UN language of the state party) for all of the committees in English, French and Spanish. They are also produced in Russian for CAT and CERD, and all six languages for CESCR and CEDAW. Summary records, in theory, are produced in five languages (except Chinese) for HRC, English, French and Spanish for CRC and CESCR, and Russian in addition for CERD and CAT. Lists of issues are often only in English and French and sometimes Spanish. Concluding observations are in all working languages, although not Russian for CESCR. Annual reports are in all six official languages.

In practice, many documents with which the treaty bodies work (future UN documents and otherwise) are not translated into all working languages. This includes NGO submissions, annexes to state party reports, answers to written lists of issues, summary records. There have also been failures to translate state reports themselves in a timely manner. At the same time, there are treaty body members who routinely object to the distribution of any material during the treaty body sessions which have not been translated into the working languages. Such objections from some members of the Human Rights Committee, for example, result in the Committee's blanket refusal to request written answers to the lists of issues, since these often are submitted too late for translation.

There is a constant tension between entitlements to certain documentation in all working languages (which may be claimed by members regardless of the ability to comprehend the documentation without translation), and the inability of the UN's translation services to satisfy these demands for many reasons (including those beyond their control). Stresses also arise with respect to entitlements to interpretation when paired with needs to meet in smaller or simultaneous working groups, and limited interpretation facilities. These struggles have had a

negative impact on the effective functioning of the treaty system. Ways around the theoretical rule that documents can only be issued in all languages simultaneously, have included: issuing greater numbers of documents as informal papers, or posting documentation on the website as “advanced, unedited” text. Until such time as technology or resources significantly change, solutions lie in practical answers which focus, not on treaty body members, but those in need of protection.

The language issue extends beyond documentation related to state reporting to the handling of individual communications. Individuals are entitled to submit applications to the European Court of Human Rights in 37 languages.<sup>184</sup> Applicants are entitled to submit applications to OHCHR in only six languages. In practice, this is often reduced to three working languages (English, French and Spanish). A contract employee is now providing assistance with the preliminary examination of incoming correspondence in Russian (which has been backlogged for years). Correspondence submitted in one of the other two official languages may be summarily examined by an OHCHR colleague, or translated as a “favour” by UN facilities if it appears to be an actual case. But in general, unless someone within OHCHR fortuitously understands a language other than the three working languages (and Russian), there is not even the capacity to determine the proper venue for a case which has been submitted in another language or if the matter is urgent.

## ***RECOMMENDATIONS***

### ***Treaty Bodies***

***Consideration should be given to organizing membership in working groups in such a manner as to permit the use of two or three different languages without translation.***

### ***Treaty Bodies and OHCHR***

***Rules concerning translation and interpretation in the context of treaty body practices, and OHCHR’s website, should be guided by the best interests of human rights victims.***

***The flexible application of rules concerning translation should not reduce the kinds of documents which ultimately appear either in official form or on the website; in other words, it should not result in the proliferation of informal papers which are not publicly accessible.***

### ***OHCHR***

***Use of the website to post “advanced, unedited” text should be encouraged, on the understanding that such texts will be replaced with official and multilingual versions once they are issued.***

*Sufficient human resources should be available for OHCHR to read incoming mail in a preliminary manner in order to determine where a case belongs, and whether the matter is urgent. This facility should extend to all six official UN languages, and beyond. Planning of the staff complement in the Petitions Team should take into account the importance of familiarity with the domestic legal systems of all states which have ratified individual complaint procedures, and along with that the facility to read initial submissions in a variety of languages used by correspondents.*

### **31. Streaming Complaints**

Human rights complaints or communications are sent to the United Nations by the thousands every year. Estimates suggest that OHCHR annually receives more than 100,000 individual communications or petitions from persons who claim to be victims of violations of their human rights, or from groups or NGOs who draw the attention of OHCHR to a systematic violation of human rights. Yet the treaty bodies register less than 100 cases annually. This is also despite the breadth of the treaties in terms of substantive rights and the numbers of potential victims (approximately 1.5 billion people in 100 states).<sup>185</sup> By contrast in the year 2000, the European Court of Human Rights received more than 10,000 applications, from a potential clientele of 41 states, and 800 million potential applicants.

Human rights correspondence reaches OHCHR from a variety of sources and the numbers vary widely, particularly depending on mass campaigns. In recent times those sources indicate:

- the New York liaison office (about 20,000 pieces of correspondence per year)
- the Palais des Nations central registry in Geneva (about 10,000 pieces of correspondence per year from individuals and another 13,000 relating to mass communications (each piece of mail in this context usually relates to many others) which together are estimated to correspond to approximately 60,000 persons)
- OHCHR website address (about 12,000 e-mails per year, although mass campaigns alone can raise this figure threefold; one recent mass campaign in the fall of 2000, for example, generated 30,000 e-mails in one month alone although from a very limited number of cites/sources)
- direct correspondence to email addresses of individual desk officers and other OHCHR staff who are known to major international NGOs and legal advocates
- a “hot line” or OHCHR fax address.

Where do the more than 100,000 human rights complaints sent to OHCHR annually go? At OHCHR there is a multiplicity of actors that handle complaints (in addition to the treaty bodies). At the moment they are:

#### Working Groups

The Working Group on Arbitrary Detention

The Working Group on Enforced or Involuntary Disappearances

### Thematic Rapporteurs/Representatives

Special Rapporteur on Extrajudicial, summary or arbitrary executions  
Special Representative of the Secretary-General on human rights defenders  
Special Rapporteur on Promotion and protection of the right to freedom of opinion and expression  
Special Rapporteur on Independence of judges and lawyers  
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance  
Special Rapporteur on Religious Intolerance  
Special Rapporteur on Question of Torture  
Special Rapporteur on Violence against Women, its causes and consequences

### Country Rapporteurs/Representatives

Special Rapporteur on the Democratic Republic of the Congo  
Special Rapporteur on Burundi  
Special Representative of the Secretary-General on Iran  
Special Rapporteur on Sudan

### Sub-Commission on the Promotion and Protection of Human Rights (ECOSOC Resolution 1503)

Complaints concerning women are also sent to the Commission on the Status of Women (which deals with trends, rather than providing remedies).

In the past, OHCHR had a petitions unit that dealt with incoming communications relating to the treaty bodies and ECOSOC Resolution 1503. The staff worked closely together and considered whether a case was more properly before the treaty bodies or the Resolution 1503 procedure. The unit was later disbanded, and even among the treaty bodies communications were sent separately to CAT, CERD or HRC. In the meantime, the number of Commission on Human Rights mechanisms greatly enlarged, as did their interest in handling individual communications. Within the last few months OHCHR recreated a Petitions Unit. It currently deals only with communications to treaty bodies. Hence, within OHCHR communications go in three overall directions (a) treaty bodies, (b) Special Rapporteurs/Representatives/Working Groups, and (c) the Resolution 1503 procedure. Since December 2000, complaints also go to CEDAW in the Division for the Advancement of Women in New York.

The Human Rights Committee currently receives about 3,000 pieces of correspondence per year, of which about 500-600 originate from the OHCHR website address. Estimates suggest about 1,700 of those pieces of correspondence deal with new matters, while the rest are ongoing correspondence in relation to previously registered cases.

OHCHR is in the process of creating a Common Early Entry Point System (CEEPS), which will be a central digital registry for human rights complaints. It will receive, register and forward complaints to each of (a) the treaty bodies, (b) Special Rapporteurs/Representatives and Working Groups, and (c) the 1503 procedure. It does not, however, have a clear set of transparent and agreed guidelines upon which to base a streaming exercise.

At the moment, the different entry points receiving human rights correspondence operate under different premises concerning the streaming of complaints not specifically addressed to a UN mechanism or treaty body. The premises of the various sorting venues now are:

New York OHCHR liaison office:

- an intern sorts the mail into about 15 categories (which vary from intern to intern, that is, every 3-4 months); a category is intended to try to separate out “individual communications”, although a check for ratification of the treaties’ communication provisions is not done

OHCHR registry:

- if the correspondence raises a specific subject matter related to the mandate of a thematic Rapporteur/Representative/Working Group then it is sent there; they do not check to see if the case is in respect of a state which has ratified the treaty communication procedures
- if it does not relate to other mechanisms, then it goes to the treaty bodies (the latter send correspondence on to the 1503 procedure when they cannot deal with it)

The 1503 Procedure as a further sorting venue (together with the OHCHR registry):

- if the correspondence indicates an urgent matter it is sent to a Special Rapporteur/Representative/Working Group
- if it relates to a group, such as minorities or indigenous peoples, then it is sent to the 1503 procedure
- if it is (a) not urgent, and (b) concerns an individual, and (c) is in relation to a state ratifying the treaty communication procedures, then it is sent to the treaty bodies

Palais des Nations registry:

- if it appears to be a serious complaint from an individual, (for example, containing domestic legal opinions) and it is in relation to a state which has ratified the treaty communication procedures, then it is sent to the treaty bodies
- if it relates to a mass communication, or is in a nonofficial UN language, or relates to an individual who clearly is unfamiliar with the UN system (the sorting to occur subsequently), then it is sent to the 1503 procedure
- otherwise, it is sent to the branch of OHCHR dealing with Special Rapporteurs/Representatives/Working Groups.

OHCHR “hot line” - fax in Activities and Programmes Branch

- faxes received are generally sent to thematic or country rapporteurs/representatives/working groups; they do not systematically check to see if case is in respect of a state which has ratified the treaty communication procedures.

Evidently, many cases are immediately streamed, (or retained if received directly), to the Special Rapporteurs/Representatives/Working Groups, or the 1503 procedure, rather than the treaty system. For example, although not a single case from Algeria has been registered by the Human Rights Committee in 11 years since ratification of the Optional Protocol, Algerian cases are sent to the Special Rapporteur on Question of Torture, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the Special Rapporteur on Violence Against Women, its Causes and Consequences, and the Working Group on Enforced or Involuntary Disappearances.

In general, desk officers responsible for specific states send the communications they receive to thematic rapporteurs and working groups with which they are familiar, (in particular the Special Rapporteurs/Representatives on Torture, Extrajudicial, summary or arbitrary executions, Human Rights Defenders, Freedom of Opinion and Expression, and the Working Group on Arbitrary Detention). Their reasons include the following:

- lack of familiarity with the treaties both in terms of substance and procedure; they are unsure what should be sent to treaty bodies
- the treaty system is under-resourced and cannot handle the numbers of cases
- urgent appeals cannot be handled by the treaty bodies
- clear evidence of exhaustion of domestic remedies is required, such as local judicial proceedings, and in its absence the case cannot be handled by the treaty bodies
- the case reveals a systematic pattern of violations and therefore it is not appropriate for the treaty bodies
- cases received are often undeveloped because individuals are afraid, or it is a war situation, and not conducive to making a case sufficiently developed for the treaty bodies.

Once a case is sent to a thematic rapporteur, it is almost never sent on to the treaty bodies. Thus apparently the cases which are sent to the Special Rapporteur on Torture are not routinely sent on to CAT or the Human Rights Committee, even if the case relates to a state which has accepted Article 22 of CAT or the Optional Protocol and it is possible that domestic remedies have been exhausted.

In the result, the treaty bodies are frequently the default category for communications. They tend to receive cases which are not covered by the special procedures/mechanisms. The system, however, should work in the opposite manner. It is important to support the legal nature of international human rights standards. Decisions of the treaty bodies have an enhanced legal character from the decisions of Rapporteurs/Representatives/Working Groups, and the status of their decisions can have an important trickle down effect on the development of international law and on national legal systems. Therefore, if a communication relates to a country which has accepted the individual complaints mechanisms of the human rights treaties it should go first to the treaty bodies, and only if it cannot be dealt with under their procedures (on the basis of their interim measures, or admissibility criteria), should it be sent on to thematic or country rapporteurs.

At the same time, duplication as between the treaty bodies and the special procedures should be avoided, even though in theory the treaty may permit consideration of cases following their handling by the special procedures. State cooperation will be encouraged by a process which streams cases to the appropriate venue at the outset so as to avoid a multiplicity of OHCHR mechanisms dealing with the same case.

### Urgent action<sup>186</sup>

Currently, urgent action cases are sent to the special rapporteurs/representatives/working groups and not to the treaty bodies. They in turn send out approximately 800-900 urgent appeals annually. Desk officers almost never send these cases on to the treaty bodies. If the matter is urgent, it is assumed that the exhaustion of domestic remedies requirement will expend valuable time. Furthermore, states parties will object if matters are handled by the treaty bodies which do not clearly indicate exhaustion of domestic remedies. In other words:

- (a) the treaty bodies (or their secretariat) are not given an opportunity to decide if they should be dealing with an urgent appeal, and
- (b) a legal opinion is not sought as to whether domestic remedies are likely to have been (or have been) exhausted.

However, the exhaustion of domestic remedies condition may be satisfied, not by the existence or use of domestic proceedings, but by the fact that they are ineffective or unavailable or unreasonably prolonged. According to the jurisprudence of the Human Rights Committee the rule of exhaustion of domestic remedies “applies only to the extent that those remedies are effective and available” and not “unreasonably prolonged”.<sup>187</sup> Similarly the rules of procedure of CAT state that the requirement of exhaustion of domestic remedies “shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention”.<sup>188</sup> Where desk officers happen to be familiar with the treaty body rules, they may fortuitously take these requirements into consideration when deciding where to stream complaints.

Furthermore, the treaty bodies can act quickly on urgent actions. The secretariat may deal only with the Special Rapporteur on New Communications (in the case of the Optional Protocol); if the Special Rapporteur cannot be reached, the secretariat reaches a member of the Bureau. With respect to CAT, the secretariat deals only with the Chair and then a Rapporteur immediately assigned to the case. In addition, the criterion for the use of the urgent action or interim measures procedures<sup>189</sup> is not a final determination that domestic remedies have been exhausted. The test is irreparable damage. According to the Human Rights Committee rules, “interim measures may be desirable to avoid irreparable damage to the victim”. Requesting the application of interim measures “does not imply a determination on the merits of the communication.” According to CAT rules, the criteria for the use of the interim measures procedure similarly is the avoidance of “possible irreparable damage” to the individual claiming to be a victim of a violation. “[S]uch a request addressed to the State party does not imply that any decision has been reached on the question of the admissibility of the communication.”

At the same time, with few relevant cases or requests the treaty bodies’ application of the “irreparable damage” criteria to date has been limited. The Human Rights Committee may believe that arbitrary detention does not constitute irreparable damage if financial compensation for the time spent in prison is an alternative. If someone has disappeared, to date the Human Rights Committee has not used the interim measures procedure to order the individual to be produced. Furthermore, an urgent appeal is only properly before a treaty body where there is an

allegation of a violation of a treaty right. For example, since the CCPR does not prohibit the death penalty *per se*, allegations must relate to Covenant provisions such as the right to a fair hearing. Or since the CCPR does not have a right against extradition or expulsion *per se*, allegations must relate, for example, to the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment. Many of the urgent action cases received by OHCHR do not make the link to Optional Protocol or CAT rights.

#### Systemic human rights abuses or communications affecting groups and minorities

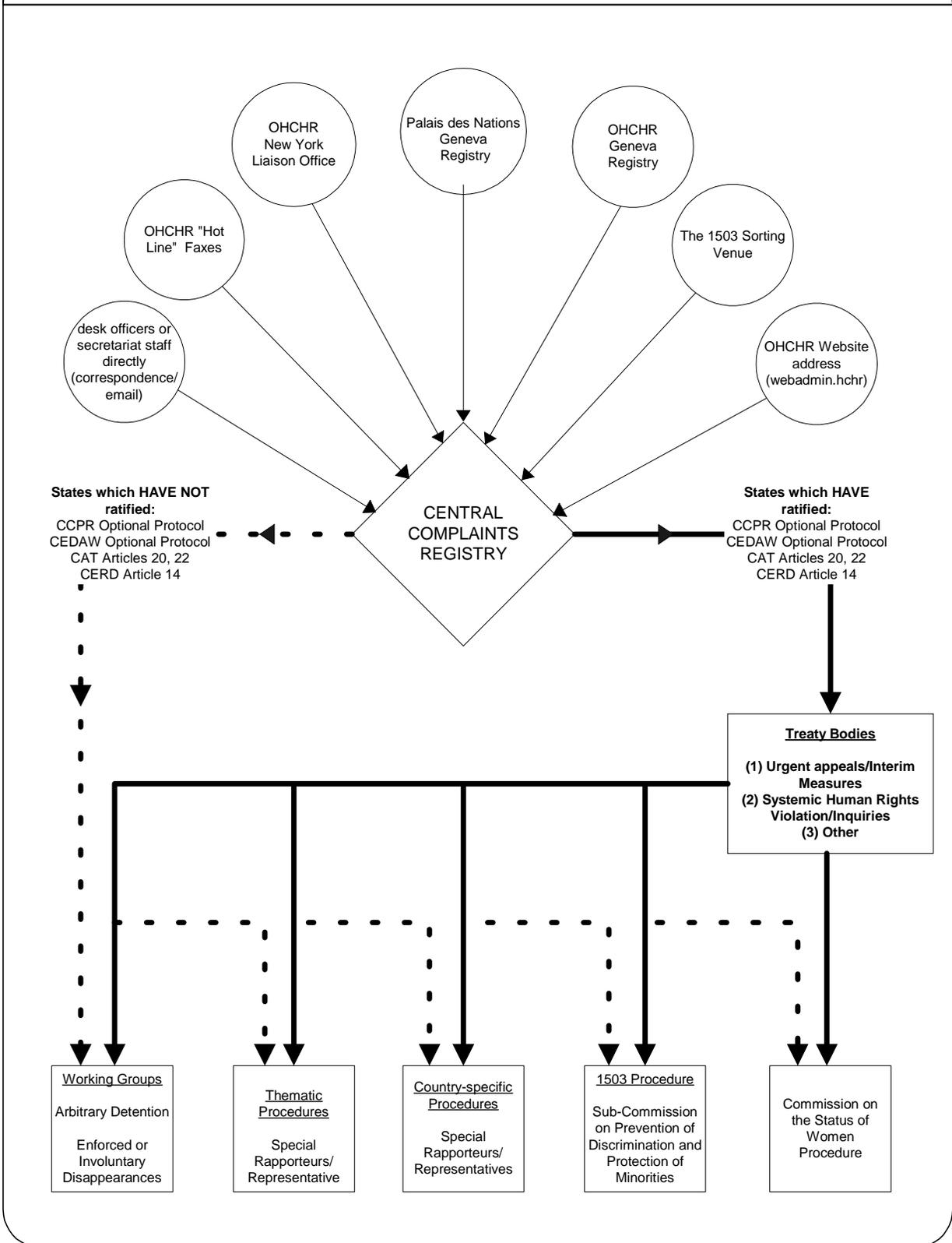
Most complaints coming to the UN, which allege systemic or group rights violations, make no mention of the 1503 procedure. But cases relating to a systematic pattern of human rights violations, or to groups of victims, are routinely steered away from the treaty bodies.

The Optional Protocol to the CCPR, however, clearly covers complaints from minorities (Article 27) or systemic discrimination (under Article 26). A number of other Covenant provisions relate to group rights, or rights which are exercised in community with others. The distinguishing feature of what can be brought under the Covenant as distinct from 1503 cases should not be whether they apply to groups or are systemic in nature. The qualifications for using the Optional Protocol are that (a) there is an identifiable victim, and (b) the communication has been submitted by the victim or a person close enough to the victim (or their legal representative). 1503 cases need only allege a consistent pattern of gross and reliably attested violations of human rights, and may be brought by a range of individuals without the same degree of consanguinity to the victim or proof of authority to act on the victim's behalf.

Furthermore, the treaty system also covers (where accepted by states parties) gross or systematic violations under CAT Article 20 and the CEDAW Optional Protocol Article 8. CAT permits consideration and action upon receipt of "reliable information which appears to...contain well-founded indications that torture is being systematically practised in the territory of a State Party". CEDAW's Optional Protocol permits consideration and action upon receipt of "reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention". These procedures, and their legal foundations, must be encouraged to grow and develop. Therefore, all information that concerns states parties which have accepted CAT Article 20 or the CEDAW Optional Protocol Article 8 (and 9), and relates substantively to these treaties, should be channelled to the treaty body system, rather than to the 1503 procedure (or the procedure of the Commission on the Status of Women). A methodology for keeping the 1503 procedure informed of trends should be developed.

**Streaming Complaints**

**Diagram 5**



## **RECOMMENDATIONS (See Diagram 5)**

### **OHCHR**

*Plans to institute a common early entry point system, or central digital registry for human rights complaints, should be instituted as soon as possible. It should include the thematic and country mechanisms, the 1503 procedure and the treaty body system (including CEDAW). Follow-up to outcomes of individual complaints should be an important component of the central complaint registry. Follow-up information in principle should be public.*

*The relationship of a central complaints registry to the general UN registry, or the OHCHR general registry, or any initial streaming point must be established. A system of registration of all UN human rights correspondence should be designed which avoids the same correspondence being read two or three times, prior to being sent to its destination, such as by the OHCHR New York Liaison Office, the Palais des Nations registry and the OHCHR general registry. The relation between the detailed symbol number filing system of the Palais des Nations central registry to the OHCHR registry needs to be examined and clarified. A clear set of transparent and common guidelines for channelling correspondence from the initial entry point to a central complaints registry must be established. A corresponding training programme for registry officers initially handling the full range of human rights correspondence should be conducted.*

*As a team, staff for each of the central complaints registry, the treaty Petitions Team, and the “quick response desk”, must be able to work in all six of the UN official languages, (and priority should be given to engaging staff competent in other languages frequently used by authors.)*

*A clear set of transparent guidelines for the distribution of complaints by the central complaints registry should be developed. This should entail a substantive analysis of the range of possible venues, their respective mandates, the nature of their operation, and the details of their follow-up records. A clear priority should be placed on the implementation of the treaties’ legal obligations and their concomitant procedures and remedies.*

*There should be an overarching principle in favour of sending complaints initially to the treaty Petitions Team if they relate to states which have ratified the treaty communication or inquiry procedures. (See Diagram 5) For example, a complaint relating to rights found in the CCPR Optional Protocol/the CEDAW Optional Protocol/CAT/CERD, should be sent to the treaty system’s Petitions Team if there is an identifiable victim, and the complaint is submitted by the victim or someone sufficiently close to the victim or authorized to act on the victim’s behalf. In addition, information concerning the systematic practice of torture, or grave or systematic violations of women’s CEDAW rights, should be sent to CAT or CEDAW if it relates to a state which has ratified the respective CAT or CEDAW Optional Protocol inquiry provisions.*

*Criteria should be developed for promptly redirecting cases from the treaty Petitions Team if the latter determines that the complaint patently does not satisfy the criteria for interim measures or admissibility, but the matter falls within the mandates of the thematic or country rapporteurs/representatives/working groups. Alternatively, the complaints registry itself could make an initial determination of the likely satisfaction of interim measures or admissibility criteria, and therefore further screen cases before sending them to the treaty Petitions Team, if their staff included legal expertise.*

*A “quick response” desk for handling urgent appeals should be closely related to a central complaints registry. The guidelines developed for the distribution of all complaints should include, and govern, urgent appeals. The distribution of incoming requests for urgent action, and the follow-up on urgent appeals, should not be undertaken in isolation from the operation of the treaty body communication procedures. The distribution of urgent appeals should give priority to the treaty procedures where:*

- (a) they relate to states which have ratified the treaty complaint procedures*
- (b) there is an allegation of a violation of a treaty right*
- (c) the treaty body is able to act quickly*
- (d) a brief and prompt analysis indicates that
  - (i) the “irreparable damage” criterion has been satisfied, and*
  - (ii) domestic remedies are likely to have been exhausted, or are ineffective, unavailable or unduly prolonged.**

*Tracking follow-up to urgent action appeals should also allow this hierarchy to be kept under review, and take due consideration of factors such as the efficacy of joint appeals by Special Rapporteurs, the response time, and the overall success rate of the various mechanisms.*

*Within the Petitions Team, criteria for streaming cases to the different treaty bodies must be developed to govern situations where more than one treaty body potentially has jurisdiction (on the assumption the author has not specified a preferred venue). Overlap exists, for example, with respect to CCPR Article 3, and 26 and its Optional Protocol, and CEDAW’s Optional Protocol. There is also some overlap between CCPR and CAT, and between CCPR and CERD.*

*The treaty Petitions Team should handle complaints under all four treaties, including the CEDAW Optional Protocol. There is no justification for the duplication or creation of two sets of staff to deal with individual communications under the treaties (requiring professional competence with respect to the same issues such as admissibility, the use of interim measures, and follow-up). (See infra section 32. Documentation)*

*In the future, substantive amalgamation of the servicing of all individual complaint and urgent action procedures throughout OHCHR should follow the centralization of the complaints registry for streaming those procedures at the moment in three different directions.*

## **32. Documentation**

### **Information available in the Annual or Sessional Reports (See Annex 6(a))**

Although many of the substantive items included in the annual or sessional reports of the committees are similar, there are significant variations in the information provided. The method of presentation also varies in such a way as to affect accessibility.

Examples of this variation are as follows. Attendance, or interaction with UN agencies/organs, is generally not noted by CERD. Attendance by NGOs is not listed by CERD, CEDAW or CAT. CRC provides more information on the details of the operation of its working group. The names of country rapporteurs for specific state reports are provided only by CERD, CCPR and CAT. The numbers of meetings spent on considering state reports is only provided by CESCRC and CRC. An overview of current working methods is only routinely provided by CESCRC. Follow-up information on communications is not provided by CERD or CAT. A summary of the committee's work on general comments/recommendations is only provided by CCPR and CESCRC. A list of reports received from states over the past year is not in the annual reports of CCPR or CEDAW. Comments received from governments on concluding observations are reproduced only in the annual reports of CERD and in theory CRC. The existence of such government comments is not noted by CESCRC or CAT. So far information on activities related to follow-up of state reporting is only provided by CESCRC, and indirectly by CRC. Information concerning the activities of committee members between sessions is not provided in the case of CERD, CCPR and CESCRC.

In prior years a summary of the dialogue with states parties, including the questions posed by members, the responses of governments, and the comments and criticisms of individual members, were included in the annual report. This portion of the annual report was removed by all committees except CEDAW, which has chosen to retain only the summary of the opening remarks of governments. These comments standing alone add very little to the written record. The larger summary was removed from the annual reports in the expectation that summary records would be readily available and a summary in the annual report was unnecessary duplication. However, the summary records are not readily available. They are not produced as a complete set for long periods of time, and not produced as a complete set in one language for years, if at all. They are also available in only 2-4 languages (depending on the committee). Furthermore, all of the lists of issues are not readily available, and written replies by governments to the list of issues are usually not issued as a public document. Hence, the summary of the questions, answers and individual comments of members has been removed from the annual report without providing an effective alternative.

In the case of all committees except CEDAW only documents officially "issued" are listed in the annual report. This means there is no public record of the documents which are only produced for the session (and publicly available only to those in attendance or directly from the secretariat).

The list of documents includes summary records as “issued”, or “before the committee”, when in fact many summary records are not yet available or issued, (and will not be for years), and many do not relate to public sessions and will never be available.

Information on the submission of reports varies significantly:

- a) in the case of CERD, CCPR and CAT, a list of reports which have been considered is not included
- b) in the case of CESCER information on the due date of overdue reports is not always provided
- c) in the case of all committees but CERD and CCPR (the latter has an incomplete list), overdue reports are organized by which report is overdue (initial, second periodic, and so on), and not by state; this makes it very difficult to discern the record of individual states
- d) information on the submission of reports is not provided in statistical form (such as the number of overdue reports, number of initial reports overdue, lengths of time reports are overdue).

Future information is very limited. The dates of future sessions are not provided by CERD or CAT. The draft provisional agenda for future sessions is only provided in the case of CEDAW and CRC. The names of future working group members are only provided in the case of CEDAW. The list of states for future sessions is only provided in the case of CESCER, CEDAW and CRC. (The number of sessions in advance for which this information is provided varies - CESCER (1), CEDAW (3), CRC (2).)

Information on the work of CAT under Article 20 is more limited than necessary. No information is provided concerning the number of states under consideration, or the current stage of any investigations which have not been concluded (for example, whether there have been state visits).

Follow-up information is very limited. Follow-up information on communications is not provided by CERD or CAT. In the case of CCPR, public information concerning follow-up to individual communications is extremely limited despite the Committee’s pronouncement in its annual report that publicity is to be given to follow-up activities. Follow-up information concerning state reports is extremely limited. Only the CESCER has begun to provide specific information concerning follow-up activities in this context.

#### Documents officially issued (*See Annex 6(b)*)

In general, the largest number of documents produced for the treaty bodies are the summary records, many of which are significantly out-of-date by the time they appear, raising questions about the resources used in this context. (Only the HRC has a larger number of documents produced in connection with another category of document, namely, individual communications.)

UN agency reports are generally not issued as official documents, indicating that their written submissions often consist of portions of the agency’s own official documentation, or are confidential. They occasionally appear on the web.

Replies to lists of issues, which are often focused and very substantive expansions on the application and implementation of the treaties in the state concerned, are not reproduced as official documents. This is a significant loss of informative material.

Concluding observations which are not officially issued as separate documents have been posted on the web in “unedited” form.

CERD issues many separate documents on the status of submission of reports for different kinds of periodic reports. This is confusing and unnecessary.

Follow-up to consideration of state reports is a kind of document which is only produced for CESCR, although it was produced by CRC in the past. This is an unfortunate reflection of the emphasis the system places on follow-up, which is usually confined to the consideration of the next report. Discontinued is the document by CRC concerning “additional information from states”. The document by CRC on areas for technical assistance and advisory services is also not being produced currently. It attempted to distill, albeit in a limited context, specific recommendations in concluding observations for follow-up activities.

CEDAW alone produces regular documentation considering innovations in its working methods. This has proved to be a useful contribution, often summarizing committee-wide practices.

Regular updates of the status of reservations and declarations are not produced by the treaty bodies, and the sources of this information are limited to fee-charging UN databases. Given the importance of this issue for implementation, this is an unfortunate omission.

There are also rules for the production of documents which give rise to considerable time delays. These have the effect of rendering the documents significantly less useful. Documents which are submitted, but not due to be considered for some time, are not produced by Conference Services until the meeting date is much closer at hand. Consequently, for example, state reports for CRC may take over a year to be produced after submission because the backlog for consideration is so long. This, however, impedes the production of NGO reports relating to the state report, and any possible dialogue at the national level which might have been initiated by the release of the report. State reports are often made accessible at the local level by way of international, rather than national, sources. (See concerning summary records *supra* section 21. The Dialogue)

The symbol numbers of treaty body documents are often confusing, counterintuitive and inhibit access. For example, symbol numbers for CESCR have dates which refer to the year in which a document of that kind was first issued, not the date that the document itself was issued. At the very least, a list of symbol numbers associated with all documents in the treaty system should be readily available so as to maximize the capacity to locate desired documents.

## Publications

OHCHR has a very limited publication programme. The major categories of publications are:

Fact sheets (Numbers 1-26, to 2000)

Professional Training Series (Nos. 1-7, to 2000)

Human Rights Study Series (Nos. 1-10, to 1997)

Series on the UN Decade for Human Rights Education (1995-2004) (Nos. 1-4, to 2000)

1998- 50<sup>th</sup> Anniversary of the Universal Declaration of Human Rights Basic Information Kits  
(No. 1-4)

Human Rights Quarterly (Nos. 1-6, to 2000)

Seven individual Ad-Hoc Publications

Reports of Meetings (to 1996)

Promotional Material (posters, brochures)

Reference Material, specifically:

CD-ROM, OHCHR, 4<sup>th</sup> edition, 1999

United Nations Reference Guide in the Field of Human Rights (1993)

United Nations Action in the Field of Human Rights (1994)

Human Rights: A Compilation of International Instruments (1994)

Human Rights: A Compilation of International Instruments - Regional Instruments (1997)

Human Rights: Status of International Instruments (1987)

Human Rights: International Instruments, Charts of Ratifications (1997)

Human Rights: Bibliography (1992)

Official Records of the Human Rights Committee 1992-93 (1996)

Selected Decisions of the Human Rights Committee under the Optional Protocol  
Vol. 1 (1984), Vol. 2 (1989)

Many of these categories of publications are dated. With respect to Reference Material, the usefulness of updating some of these publications is extremely doubtful. In some cases, the subject matter has simply been overtaken by the OHCHR website or CD-ROM technology. In other cases, efforts to update should be reconsidered within the framework of a more systematic review of the publication needs of users, together with an assessment of technological alternatives. This is true, for example, of the anomalous Official Records of the Human Rights Committee, or Selected Decisions of the Human Rights Committee.

CEDAW, within the Division for the Advancement of Women, has a separate publication programme. It also includes very outdated series such as “The Work of CEDAW”, last published in 1997 but relating to reports and summary records from 1989 (Vol. IV). The programme has also issued a number of useful and innovative publications in recent years, such as “Assessing the Status of Women: A Guide to Reporting Under the Convention on the Elimination of All Forms of Discrimination Against Women” (2000) and “The Optional Protocol: Text and Materials” (2000)

### Documents on the Web (*See Annex 6(c)*)

The UN website and the website of OHCHR represent a revolutionary change in accessibility to UN documents. With so few UN depository libraries around the world, the limited number of states with UN Information Centers, and the specialized (and usually unfamiliar) UN system of organizing documentation, lack of access was a key factor in the highly restricted reach of the treaty bodies. While power shortages and other technical limitations, government restrictions, and the costs of equipment, continue to make internet access problematic in many countries, there is little doubt that the potential for contact with the treaty system has been immeasurably improved. A lack of resources for developing state-of-the-art services, preoccupation with secrecy, political considerations relating to external links, and technical impediments concerning three of the six official UN languages, continue to hold back the creation of a first-class system. But the quality of the service is improving rapidly.

The internet offers many advantages for the treaty regime. It has not been inhibited by many UN rules concerning documentation, such as the required simultaneous release of documentation in all official or working languages, or the format limitations for official texts. It is, however, limited by a human factor. What is posted in addition to, or in advance of, the official documentation depends on what the treaty body secretariat give to the OHCHR officer responsible for the site.

The website itself has some specific problems.

Human Rights and Women's Rights are not well-integrated on the UN website.

- the main web page entitled "Welcome to the United Nations" lists linkages to "Economic and Social Development" and "Human Rights" as distinct entries;
- if one moves to "Economic and Social Development" the page lists "Human Rights" as one category and "Women" as another;
- if one moves to "Human Rights" the page does not list "women's rights/women" or have a link to "WomenWatch" (the "UN Internet Gateway on the Advancement and Empowerment of Women")
- the home page of the "Office of the High Commissioner for Human Rights" has no entry "women's rights/women" which could lead to "WomenWatch"; there is only a general reference to "related links" (which when followed has many different entries, one of which is WomenWatch)
- the home page of "WomenWatch", on which there is a quick link to CEDAW, has no entry for the Office of the High Commissioner for Human Rights

The absence of a clear link from the OHCHR web site to WomenWatch inhibits access to key CEDAW documents, such as the state reports to CEDAW which do not appear on the OHCHR site.

There are a number of documents relating to the treaty system that are missing on the OHCHR web site:

- (a) the list of issues for states appearing before CRC and CEDAW
- (b) replies to lists of issues for CRC and CEDAW
- (c) state party reports for CEDAW
- (d) a complete set of summary records for any committee in one language
- (e) summary records for CEDAW
- (f) reports of UN agencies/organs (very few)
- (g) rules of procedure for CEDAW
- (h) summary records of states parties meetings for all committees except CAT
- (i) states parties meeting documents for CEDAW
- (j) curriculum vitae/biographical data of candidates for CESCR.

There are documents relating to CEDAW that are missing on WomenWatch:

- (a) lists of issues
- (b) replies to lists of issues
- (c) provisional agendas
- (d) summary records
- (e) states parties meeting documents re: elections
- (f) summary records of states parties meetings
- (g) rules of procedure
- (h) all documents distributed for each session except sessional reports
- (i) reservations (which can only be obtained through a subscription fee).

The website exhibits a number of confusing features:

- (a) CORE documents are not put together by state
- (b) the three languages (English, French, Spanish) are mixed together in a confused manner; an initial request for language preferred, followed by a collection of documents in one language, would be considerably more user-friendly
- (c) concluding observations may be from either annual reports or separate documents; a uniform method of posting concluding observations (at least once annual reports are issued) should be determined
- (d) the rationale for the entry called "Additional Info from State Party" is not clear
- (e) the entry called "Inquiry under Article 20" is not explained or a context is not provided
- (f) the entry called "Info from Non-governmental sources" provides no explanation of its limitation to one committee (and the information posted there from CRC is negligible)
- (g) the entry called "Info from governmental sources", provides no rationale, and the information is dated
- (h) the entry called "Info from other sources" really concerns documents relating only to one meeting of CESCR, and is therefore misnamed
- (i) the entry called "Other treaty-related document", in the case of four committees refers to meetings of states parties for election purposes, it is therefore misnamed or a

- separate entry is required
- (j) the entry called “Decision” relates only to the CERD urgent action procedure, and is therefore, misnamed
  - (k) the entry called “Review of implementation” has no rationale
  - (l) the entry called “Basic reference document” should be broken down into categories in order to make important key documents more accessible (namely, Guidelines for reporting, Reservations, Rules of procedure, Status of submission of reports)

There is no listing of relevant or related documents which are not on the web but which are available in hard copy as official UN documents, in particular, documents in languages other than English, French and Spanish (such as Russian summary records).

As indicated, documents which have not been issued as official documents will only be posted on the OHCHR website if they are provided to the responsible OHCHR staff member by the treaty body secretaries. However, there are no rules or guidelines governing the responsibilities of the treaty body secretaries in this regard. The result is that the posted information is haphazard and does not reflect the documentation publicly available (though not officially issued) either through direct contact with the secretaries or actual attendance at the meetings. Examples include the lists of issues or written replies to the lists of issues. There are also time differences as to when material is posted which result from the priorities of the secretaries or their availability, rather than common standards or expectations. The website need not be limited to “official” documentation. It already includes items written and developed solely for the internet, such as “notes” from specific sessions of the treaty bodies.

It is not standard practice to receive or request documentation from states parties in electronic format. This inhibits the use of the website to provide prompt access to documentation, and in some cases prevents the circulation of information altogether, such as written replies to lists of issues. Such electronic information may also be helpful in streamlining the process of producing documentation; it may encourage a move to “unedited” formats which reduce the resources and time taken to produce formal UN documents.

## **RECOMMENDATIONS**

### **Treaty Bodies**

***The treaty bodies have developed the substance of the annual reports in an ad-hoc manner and largely in isolation from each other, except through their secretaries which interact behind the scenes. The result is a wide variation in the material included. Common policies should be considered for the substance of annual reports, after an analysis of the reasons for information provided or withheld by the various treaty bodies. Best practices suggest including:***

- ***noting the attendance by UN agencies/organs***

- *noting the attendance by specific NGOs*
- *as much detail as possible about the operation and substance of working group meetings*
- *the names of country rapporteurs*
- *the number of meetings spent on various committee activities, specifically:*
  - ▶ *considering state reports*
  - ▶ *individual communications (where applicable)*
  - ▶ *inquiries (where applicable)*
  - ▶ *general comments/recommendations*
  - ▶ *other*
- *an overview of current working methods, in view of the frequency of changes made to working methods*
- *follow-up information on communications including:*
  - ▶ *details of the follow-up replies received from states parties*
  - ▶ *specification of whether a reply of a state party in relation to a given View is considered satisfactory*
  - ▶ *details of the follow-up replies received from authors*
  - ▶ *details on the follow-up meetings conducted with states parties*
  - ▶ *details of follow-up missions which may have been conducted*
  - ▶ *summary of requests for interim measures and the outcomes of those requests*
- *follow-up information on state reporting including:*
  - ▶ *a table, or summary information, concerning requests for additional information, due dates, whether the information requested was submitted, whether a follow-up dialogue has been scheduled*
  - ▶ *note of the receipt of any unsolicited additional information submitted following the dialogue*
  - ▶ *details of follow-up visits which may have been conducted*
- *a summary of all of the committee's work on general comments/recommendations*
- *a list of reports received from states parties over the annual report year*
- *references to the publication, where relevant, of government comments on concluding observations or views*
- *tables concerning information about the consideration of reports which include:*
  - ▶ *all reports which have been considered*
  - ▶ *the due dates of all overdue reports*
  - ▶ *a list of overdue reports organized by state, not by kind of report*
  - ▶ *cumulative numbers concerning overdue reports, such as the number of overdue reports, the number of initial overdue reports, the lengths of time reports are overdue*
- *the dates of future sessions*
- *draft provisional agendas for future sessions, including the names of state reports to be considered at future sessions in so far as they have been scheduled*
- *the names of future working group members*
- *concerning CAT and Article 20:*

- ▶ *the number of states under consideration or inquiries being conducted*
- ▶ *a summary of the stages of the Article 20 process for the inquiries being conducted, including an indication of the number of countries visited*
- ▶ *an indication of follow-up conducted to Article 20 reports*

*The treaty bodies should consider using the Annual Report to a greater extent as a vehicle for dialogue with the Commission on Human Rights, ECOSOC and the General Assembly. In the Annual Report the treaty bodies could highlight specific requests or needs for action or follow-up, and respond to inaction or comments these political bodies have made in their resolutions.*

*CERD should issue only one document on the status of the submission of reports, and it should be organized by state, not by the kind of report overdue.*

### *Treaty Bodies and OHCHR*

*The lists of documents issued in the annual reports should include all information available at the time of the meeting, including information not formally issued. A clear indication of the public nature of the information should be provided.*

*Summary records listed as documentation “issued” or “before the committee” should clearly indicate when they were available (if at all), and whether or not they will ever be issued as public documents. As stated previously (See *infra* section 21. The Dialogue), unless summary records can be produced in a complete set, in one working language (and here the priority should be the working language of most value to nationals of the state party concerned), within four months of the dialogue they should be discontinued.*

*If the annual report contains sufficient information on follow-up, a separate follow-up document would not be required. At the moment however, a follow-up document on state reporting should be produced by every committee, which tracks (a) requests for additional information prior to the next report, (b) due dates, (c) when information is submitted, (d) symbol number, (e) when the information is considered.*

*(See also *supra* section 15. Lists of Issues)*

### *OHCHR*

*Documentation which explains the working methods of the committees, in easily comprehensible form, should be produced and kept up-to-date.*

*Documentation on the status of reservations and declarations should be produced regularly and kept up-to-date (particularly in the context of the existence of a UN user fee for this information).*

*Key or “basic reference” documents for the treaty bodies which amalgamate the work of all six bodies are an important contribution to the system’s coherence. They should be regularly produced (or continue to be produced in the case of those already issued), including a compilation of general comments/recommendations, reporting history, reporting guidelines, guidelines for NGOs, reservations and declarations, rules of procedure.*

*Discussions with Conference Services should be held for the purpose of reaching a common understanding, within the limits set by General Assembly directives, of a time frame for the production of documents which is related to their usefulness.*

*Consideration should be given to rationalizing the symbol numbers for all documents issued in the treaty system. In the meantime, a key providing a list of symbol numbers associated with all kinds of documents in the treaty system should be readily available so as to maximize the capacity to locate desired documents.*

*The publication programme relating to the treaty bodies requires a careful reassessment. There are various series that are considerably out-of-date, and the rationale for expending the resources required to bring them up-to-date is not evident. These include collections of summary records or “selected” individual decisions. The necessity of publications should be reconsidered in light of increases in the availability of material on the web. Serious consideration should be given to terminating considerably out-of-date publications. It is recommended that OHCHR engage in an external consultation with a combination of NGOs, academics, UN agencies/organs, and states parties’ representatives, on the kinds of materials which are needed by users, and the requirements of a user-friendly format.*

*A single communications database, which is searchable by subject matter, articles of the treaties, and state, should be produced by OHCHR, (even though a few similar databases have been produced in its absence by external actors).*

*A clear set of policies need to be developed concerning the interaction between the treaty body secretariat and the operation of the treaty body database or OHCHR website in general.*

*These policies should indicate:*

- (a) what information received from external sources or partners should be provided to the treaty bodies in electronic form, and a plan for obtaining it*
- (b) clear guidelines on what information should be transmitted by the treaty body secretariat to the OHCHR staff responsible for the website, and when such information should be sent*
- (c) what information should be developed specifically for the web in relation to the work of the treaty bodies.*

*The website of OHCHR and WomenWatch should be much more closely integrated. United Nations home pages should, by example, clearly indicate the relationship of women’s rights and human rights.*

*The site of CEDAW should be considerably improved and a large number of missing documents posted. Ideally, the documentation associated with CEDAW should be completely integrated into the OHCHR website. In the meantime, the CEDAW site should include:*

- *lists of issues*
- *replies to list of issues*
- *provisional agendas*
- *summary records*
- *states parties meeting documents concerning elections*
- *summary records of state parties meetings*
- *rules of procedure*
- *all documents distributed for each session except sessional reports*
- *reservations (without the subscription fee)*

*The OHCHR treaty body database should add (in the absence of being able to move CEDAW to the OHCHR database):*

- *the lists of issues for states appearing before CEDAW*
- *replies to list of issues for CEDAW*
- *state party reports for CEDAW*
- *summary records for CEDAW*
- *rules of procedure for CEDAW*
- *states parties meeting documents for CEDAW,*

*and in addition:*

- *the lists of issues for states appearing before CRC*
- *replies to list of issues for CRC*
- *curriculum vitae/biographical data of candidates for CESCR*
- *complete set of summary records for all committees in one language*
- *all non-confidential reports of UN agencies/organs*
- *summary records of all states parties meetings.*

*Other changes which should be made to the treaty body database are:*

- *the site should open with an initial request for a preferred language (English, French, Spanish), and documents should then be collected into three, identical, but distinct, units for the three languages*
- *CORE documents should be put together by state*
- *concluding observations should consistently be taken from the same place; if they are posted initially in a format derived from a document issued separately from the annual report, they should eventually be replaced, or the citation of the annual report location given, when the annual report is issued*
- *the rationale for the entry called “Additional Info from State Party” should be stated*
- *the entry called “Inquiry under Article 20” should be accompanied by an explanation of the context*
- *the entry called “Info from Non-governmental sources” should either be significantly expanded or limited to a written explanation of the uses made of non-governmental*

- *information and the methodology for its submission*
- *the rationale for the entry called “Info from governmental sources” should be clearly explained and kept current*
- *the entry called “Info from other sources” should be renamed to reflect its actual content*
- *the entry called “Other treaty-related document”, refers to meetings of states parties for election purposes and should be renamed to reflect its actual content*
- *the entry called “Decision” relates only to the CERD urgent action procedure and should be renamed to reflect its actual content*
- *the entry called “Review of implementation” should be removed or consideration given to the development of a substantive follow-up section*
- *the entry called “Basic reference document” should be broken down into categories in order to make key documents more accessible (categories should include: guidelines for reporting, reservations, rules of procedure, status of submission of reports)*
- *a list of all documents concerning the treaty system which are issued officially, but not available on the website because of linguistic restrictions, should be created.*

*(See also concerning follow-up documents supra section 24. Follow-up on State Reporting or Operationalizing the Human Rights Treaties)*

### **33. The Venue for CEDAW**

Currently CEDAW meets in New York, and is serviced by the Division for the Advancement of Women. All other treaty bodies are based in Geneva and serviced by OHCHR.

OHCHR has a small New York Liaison office and one three-week session per year of HRC is held in New York. Other treaty bodies, particularly CERD, have requested that meetings be held alternately in New York, but such requests have been denied. The financial costs of meetings in either venue are not substantially different, with the additional travel costs of staff offset by other reduced costs in New York. There have been, however, practical problems associated with meetings held outside of the secretariat’s home base. It has been suggested that CEDAW hold one of its two sessions per year in Geneva. Meeting for a few weeks a year in either place, however, is not a substitute for the closer functional relationship that would arise by being permanently based in the same venue.

As is evident from the current operations of the five Geneva-based treaty bodies, a common base does not guarantee common procedures or working methods, or substantive interaction on matters such as producing general comments/recommendations or preparing country analyses. Nevertheless, with respect to the individual communication and inquiry functions now in effect under the CEDAW Optional Protocol, the common interest in streamlining procedures, reducing overlap, and harmonizing jurisprudential outcomes, can only be accommodated by bringing the two secretariats and their committees together. Two sets of secretariats dealing with individual

cases or inquiries based on treaty rights which overlap, from what will essentially be the same group of states parties, duplicate resources and compound problems related to streaming and interpretation of rights. Creation of a wholly independent CEDAW-communications unit *de novo* also fails to capitalize on the experience of the treaty bodies' communication staff. The mechanism for implementing the CEDAW Optional Protocol is in its initial stages, as is the re-creation of the Petitions Unit at OHCHR. It is the opportune moment to develop a Petitions Team which services all of the human rights treaties.

A number of statements of principle suggest, more generally, that the whole of CEDAW's operation should move to Geneva:

- women's rights are human rights<sup>190</sup>
- mainstreaming a gender perspective into UN activities furthers the goal of achieving gender equality<sup>191</sup>
- greater efforts to ensure normative consistency in concluding observations, general comments, and individual communications among the treaty bodies are important to adequate gender integration.<sup>192</sup>

Mainstreaming does not replace the need for targeted mechanisms for women in some contexts. But the extent of the UN system's current separation of women's rights from human rights impedes gender equality. Integration of CEDAW with OHCHR will be a net gain, provided that key CEDAW-inspired substantive and operational standards are maintained, namely:

(1) a broad concept of discrimination:

- human rights protection is not only about refraining from doing harm, or negative implications on the part of the state, but also about positive obligations to realize equality and the enjoyment of rights<sup>193</sup>
- obligations on the part of the state extend to inhibiting private actors from interfering with rights, actors such as husbands, partners, or employers<sup>194</sup>
- international human rights protection requires relief from facially-neutral laws and policies which have adverse effects, and discriminatory systemic results<sup>195</sup>

(2) the integrated nature of women's rights; the CEDAW Convention exemplifies the interlocking relationship between civil and political rights, and economic, social and cultural rights both of which are contained in the same document<sup>196</sup>

(3) the close relationship with the constituencies which have mobilized around the CEDAW Convention and made it work.

If steps are taken to ensure an adequate level of resources and servicing, CEDAW's move to Geneva can be accomplished without undermining these requirements. On the contrary, the Human Rights Committee's 2000 General Comment on gender equality reinforces the underlying vision, signalling the potential benefits of greater coordination and collaboration.

## ***RECOMMENDATIONS***

### ***OHCHR/Secretary-General***

***CEDAW should be moved to OHCHR in Geneva, and the petitions and inquiry functions should be integrated into the Petitions Team. (See supra section 31. Streaming Complaints)***

### **34. Servicing and Resources**

Servicing and resource problems with the treaty bodies have been constant themes for many years. They are repeatedly the objects of complaint and negative commentary by the treaty bodies, their chairpersons and others.<sup>197</sup>

A sample of resource-based concerns includes:

- the limited capacity of the secretariat to assist the treaty bodies with in-depth research of country situations; insufficient preparation of country analyses; inadequate gathering of country-specific material sufficiently in advance of a committee's consideration of state reports
- a variety of documentation for the committee's consideration of a state report is received by committee members too late to properly consider
- a lack of appropriate training of staff members
- the growing backlog in the examination of reports
- a lack of follow-up activities in relation to state reports
- the delay in registering new cases; the failure to acknowledge individual communications promptly upon receipt
- the backlog of correspondence awaiting replies (other than cases for registration); the inability to correspond with authors in order to provide assistance in the development of cases, or in the preparation of files for consideration
- inability to prepare an adequate number of individual cases (where applicable) for the committee's consideration each session
- delays in the examination of communications in languages other than the working languages of the secretariat; lack of translation services or staff fluent in the languages of states that are significant sources of communications
- failure to process individual communications expeditiously
- lack of follow-up activities for individual communications, including inadequate reports on follow-up for the annual report
- limits placed on the number of annual missions of CAT under Article 20
- the limited number of general comments and recommendations which are adopted each year by the treaty bodies; insufficient time and resources to engage in the preparatory research, consultations, drafting assistance.

Participants in the treaty system also voice concerns more generally:

- as the system has expanded, there has been a continual deterioration of the resource-based servicing situation in terms of numbers and turnover of staff, as well as a loss of essential expertise and institutional memory
- many of the core tasks of the secretariat are performed by non-regular budget personnel, whose jobs are in continual jeopardy, or who are unpaid altogether such as interns (with professional qualifications)
- there are inadequate numbers of specialized professionals where required, such as lawyers with knowledge of the various legal systems and languages of states parties to service the communications procedures.

In this context, it should be noted that the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, adopted 18 December 1990, now has 15 states parties and will enter into force when it has 20 ratifications. The Convention calls for the establishment of a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, which will be composed initially of ten members, and a system of state reporting and a communication procedure. In the absence of prompt efforts to arrive at a mechanism for designating an existing treaty body as the monitoring body for this Convention,<sup>198</sup> the servicing problem will be significantly exacerbated.

Treaty body servicing in OHCHR is currently assigned a total of 30 professionals: 15 regular posts, 11 extra-budgetary posts (from the funding of the exceptional “Plans of Action” campaign of OHCHR) and 4 Junior Professional Officers who have two-year assignments. Hence, at OHCHR (excluding CEDAW) 30 professionals, half of whom have no permanent position and frequently rotate or leave, currently do the following on an annual basis at a minimum:

- deal with queries, reports and communications from 193 states
- service five committees having 74 members
- attend (and service) meetings held for 48 weeks in a 52-week period<sup>199</sup>
- handle 97 state reports<sup>200</sup>
- assist with the production of approximately 4-6 general comments/recommendations
- deal with approximately 1-4 inquiries under CAT Article 20
- handle approximately 200 living cases
- receive 3,000 pieces of correspondence relating to communications.

Treaty language says explicitly: “The Secretary-General shall provide the necessary staff and facilities for the effective performance of the functions of the Committee...”<sup>201</sup> At the same time, resolutions of the General Assembly and the Commission on Human Rights routinely highlight servicing needs, and request the Secretary-General to provide adequate resources, financial arrangements, staff and facilities to the treaty bodies.<sup>202</sup> Evidently, it is commonly understood that an adequate level of servicing is imperative if the human rights treaty system is to function effectively.

In fact, the growth in the number of state participants in the treaty system has not been matched by a concomitant increase in resources to service their participation.<sup>203</sup> The system is chronically underfunded. The circle of “defective functioning” and a lack of resources is a vicious one. Inefficiency and unsatisfactory procedures discourage increased financing. Lack of sufficient funding impedes servicing improvements and superior results. Since at one and the same time states parties complain about the processes and outcomes, and refuse to increase funding (all UN members being a party to one or more treaty), it is impossible not to conclude that a considerable number of states, by intention, shortchange the system in terms of both quantity of financing and quality of results.

There are servicing problems that can be ameliorated by OHCHR directly. There is significant duplication within OHCHR as a whole with respect to expertise required of staff members on

country situations. For example, the staff now servicing each of the treaty bodies generally tend to work separately from each other, staff members specializing in the working methods and legal requirements of a particular treaty. (Mutual assistance does occur occasionally in the servicing of a particular treaty body session.) Instead, core staff could be assigned to each of the specific treaty bodies, servicing them on a regular basis, while the remaining staff could be shared among the treaty bodies. Duplication (in the preparation of country analyses or country files, the identification of partners, and the solicitation of information from NGOs), could be avoided by the same staff member preparing for consideration of the reports of the same state before all treaty bodies. Organization along geographic lines would facilitate the identification and cross-fertilization of crosscutting themes, the focussing of the dialogue, and the future consideration of consolidated reports.

The overall organization of OHCHR should encourage the development of country-specific expertise by staff members shared across treaty bodies and other parts of OHCHR. This would entail expanding the functions of desk officers to assist the treaty bodies to a much greater extent. At a minimum, desk officers would solicit and organize country-specific information from UN agencies/organs and all other parts of the UN system on a systematic basis. With the input of desk officers, a central virtual country file would be created that could be used across OHCHR in all its activities. Ideally, desk officers would also be in a position to target information to the six treaty bodies, assist in the analysis of state reports and country situations, the preparation of lists of issues, and the liaison with government officials and NGOs at the national level on a range of issues relating to the reporting process. A significant source of duplication, namely, repeated efforts by different staff members to familiarize themselves with the same state, could therefore be eliminated.

OHCHR can also take steps to encourage streamlining and rationalization by others, particularly, the treaty bodies and states parties.

## ***RECOMMENDATIONS***

### ***Treaty Bodies***

***As detailed throughout this Report, the treaty bodies must continue to improve working methods, efficiency and performance, and these improvements must manifestly accompany servicing/resource gains.***

### ***OHCHR (See infra Annex (7))***

***In-house, there must be a clear improvement in the efficiency of OHCHR, and the UN system in relation to human rights as a whole, in terms of coordination, coherence and non-duplication. Visible commitments by OHCHR, (and the related UN structures and partners), must be made to:***

- *a coherent organizational structure,*
- *effective managerial effort to stream assignments and rationalize procedures, and*
- *non-duplication of in-house activities and tasks.*

*OHCHR should elaborate upon the 2000 Mission Statement in order to:*

- *develop the practical implications of the conceptual commitment to the centrality of the UN human rights treaty regime for the international protection of human rights; articulate the role of the High Commissioner and the responsibilities of the Office in relation to treaty standards, (See supra section 24. Follow-up on State Reporting)*
- *specify the steps necessary to ensure that the operations of OHCHR are driven by the treaty standards and that these standards are integrated into all operational activities*
- *specify performance indicators for the work of the High Commissioner and the Office in this context. (See infra Annex (8)).*

*More specifically, OHCHR should organize its work to a greater extent along geographic lines, encouraging country-specific expertise to be developed by staff members and shared across the treaty bodies and other parts of OHCHR. (See also supra section 20. The Special Procedures/Mechanisms)*

- *The same staff member should prepare for the state reports of the same state before all treaty bodies.*
- *Desk officers should solicit and organize country-specific information from UN agencies/organs and all other parts of the UN system on a systematic basis.*
- *With the input of desk officers, a central virtual country file should be created that can be used across OHCHR in all its activities.*
- *Desk officers should direct information to the six treaty bodies, assist in the analysis of state reports and country situations, the preparation of lists of issues, and the liaison with government officials and NGOs at the national level on a range of issues relating to the reporting process.*

*OHCHR should also assume a leadership role in encouraging broader reforms on the part of others. OHCHR should prepare a paper on working methods for the treaty bodies itemizing the differences and similarities among the treaty bodies and pointing out the advantages and disadvantages of the various working methods in operation (See infra Annex (2)).*

*OHCHR should prepare a paper on a thematic approach to treaty rights, grouping or clustering articles of the treaties together on a thematic basis, and identify overlapping substantive themes among the treaties (See infra Annex (3)).*

*OHCHR should prepare a model state report based on a thematic clustering of treaty articles, for interested states parties, who could be encouraged to prepare such a report as a single submission to all treaty bodies (See supra section 5. Focused and Consolidated Reporting).*

*OHCHR should organize consultations or an informal task force of interested states parties concerning the issue of consolidation of the treaty bodies, or pose the issue in the form of a discussion paper to each of the meetings of states parties. OHCHR should provide states with information directed at facilitating consideration of the modalities and implications of consolidation. Treaty body members should be invited to participate. The clear and concurrent objectives must be to avoid duplication and promote coherence, while preserving the independence and expert quality of the treaty monitoring system.*

### States Parties

*States parties must acknowledge:*

- *ultimate responsibility for the successful implementation of the human rights treaties*
- *the voluntary nature of their participation and the self-assumed character of their obligations*
- *the universality of the standards and the goal, namely, the common human interest in ameliorating the suffering of human rights victims everywhere.*

*States parties should ensure that adequate funding is provided for the operations of the treaty bodies and OHCHR's supporting functions. This includes the necessary staff and facilities for the effective performance of their work, and reasonable remuneration for all treaty body members. Funding from the regular UN budget should be emphasized, in order to provide the necessary continuity and expertise to permit and sustain a culture of professionalism.*

## 35. Amendment

### The Process of Amendment

There have been substantive amendments over the years to the human rights treaties:

#### IN FORCE

1. the Second Optional Protocol to the CCPR, regarding the abolition of the death penalty<sup>204</sup>
2. the Optional Protocol to CEDAW, providing for individual complaint and inquiry mechanisms<sup>205</sup>

#### NOT IN FORCE

3. amendment to CERD concerning financing of CERD from the UN regular budget<sup>206</sup>
4. amendment to CAT concerning financing of CAT from the UN regular budget<sup>207</sup>
5. amendment to CRC concerning an increase in the number of committee members from 10 to 18<sup>208</sup>
6. amendment to CEDAW concerning the extension of meeting time<sup>209</sup>
7. the Optional Protocol to CRC on children in armed conflict<sup>210</sup>
8. the Optional Protocol to CRC on the sale of children, child prostitution and child pornography.<sup>211</sup>

Pending the entry into force of (3), (4), and (6), the General Assembly has authorized funding of CERD and CAT, and funding for increases in meeting time for CEDAW. (Increases in meeting time have also been approved, without engaging the formal amendment process, in the case of other committees.)

Two other substantial amendments have been discussed for some time:

- a draft optional protocol to the CESCRC which would provide for an individual complaint procedure<sup>212</sup>
- a draft optional protocol to CAT which would provide for a system of preventive visits.<sup>213</sup>

There have also been changes with respect to the operations of the Covenant on Economic, Social and Cultural Rights through ECOSOC resolutions, in particular:

- the creation of the Committee on Economic, Social and Cultural Rights<sup>214</sup>
- the approval of the Committee's rules of procedure<sup>215</sup>
- extensions of meeting time.<sup>216</sup>

In general, there have been few amendments. The rate of approval has been very slow, and where the substance of the amendment has been afforded in other ways, the prospect of ever entering into force is minimal.

The precise amending formulae for the human rights treaties and their protocols vary, but usually involve a combination of approval by a percentage of states parties, and the General Assembly. Evaluating the advisability of making recommendations which require amendment of the treaties, or a new protocol, will therefore depend upon the viability of these organs or state actors as instruments of constructive change in the realm of international human rights law. This assessment is not static, and clearly is subject to ongoing review.

At the moment, the rhetoric of state actors does not bode well for the early use of amendment as a path for improving the operation of the human rights treaties. The language of states in UN fora dealing with human rights takes the form of a number of terms which on their face are consistent with human rights protection, but which are used to effect quite the opposite result. Consideration of reform takes place in a context of the constant invocation of these guiding "principles". "Objectivity" is used to mean prefer participants or decision-makers from my geographic region or those of my allies. "Non-selectivity" is used to mean apply human rights standards to my enemies but not my state. "Rationalization" and "non-duplication" are used to mean reduce the number of international monitors that could review my state's human rights practices. "Cooperation" is used to mean criticisms of any specific states' human rights record, particularly my own, are inappropriate. "Double-standard" is used to mean apply human rights standards to our enemies that should not apply to us. "Indivisibility" is used to mean my state will not improve some human rights conditions until we get what we want in other contexts. "Particularities" is used to mean insulate my national laws from international review and the universal application of human rights norms. "Politicization" is used to mean the politics are not my state's politics.

In this environment, international human rights “monitoring” is an offending word. Improving the effectiveness of the international human rights treaty regime, however, means improving monitoring and follow-up to the facts. Can improvements in the implementation of human rights standards through amendments to the legal regime be made in this atmosphere? The likelihood now is remote. Consequently, the recommendations herein focus on progress which can occur without amendment, but where it is necessary it is indicated in the hope that the voices of victims in every state will be heard over the babble of diplomacy.

### Consolidation

The unavoidable need for amendment relates essentially to one procedural matter, that is, the reorganization of the monitoring procedures associated with each of the treaties. It is clear that the system will be permanently defective in the absence of consolidation of the treaty bodies.

### Why consolidation?

There are many reasons for consolidation, both procedural and substantive.

#### (a) The Reporting Burden

- It is impossible for the treaty bodies to handle the number of reports which the system now requires:
  - ▶ if the numbers of reports which are overdue were to be submitted, the treaty bodies could not deal with them in a timely manner, since it would require an average of at least six or seven years just to handle those currently due and backlogged (even if one report satisfied all overdue reports from that state)<sup>217</sup>
  - ▶ the gap between the number of reports due and those received or examined has increased more than ten times over the last two decades,<sup>218</sup>
  - ▶ this is true regardless of the fact that the meeting time of the treaty bodies has tripled in the last two decades and doubled in the last decade.<sup>219</sup>
- Permitting the submission of one consolidated report to all treaty bodies would substantially reduce the reporting burden, but the reduction in the reporting burden gained through a consolidated report would be eroded if the treaty bodies did not also consider the report within a short time frame, since otherwise updating reports would become necessary; there is no realistic capacity for the treaty bodies to meet simultaneously or coordinate their schedules to all deal with the report from the same state within a short period
- the burden on states in the last ten years, has doubled in terms of the production of reports<sup>220</sup>; among the majority of states which have engaged in regular interaction with the treaty bodies over the past ten years the average burden has been the production and consideration of a report every year<sup>221</sup>
- many states have responded to the burden, despite the legal obligation they have voluntarily assumed to the contrary, by failing to produce reports; the rampant noncompliance has now reached proportions threatening the integrity of the system as a whole.

#### (b) Timeliness, Delays

- most of the treaty bodies cannot handle, in a timely manner, even the numbers of reports which have currently been submitted<sup>222</sup>
- in an effort to deal expeditiously with the consideration of reports, on average, consideration by one treaty body amounts to a six-seven hour period<sup>223</sup> once every five years<sup>224</sup>; this has not maximized the potential for constructive interaction with states parties
- there are long delays in the processing time of individual communications to the Human Rights Committee<sup>225</sup>; these delays are despite the fact that 30% of states parties have as yet not been the subject of a communication,<sup>226</sup> a circumstance which is bound to change over time

#### (c) Duplication, Coordination, Consistency

- the treaty monitoring system has been developed in an ad-hoc and uncoordinated manner, with a mere layering of more and more bodies over time
- six different treaty bodies have now generated six different working methods, documents, and practices concerning access and communication; there are six different rules of procedure and six different reporting guidelines; basic reference documents which gather together the different practices illustrate the degree of overlap and unjustified variation in the operation of the treaty bodies; a harmonization of practices, only possible through consolidation, will benefit users
- consolidation can improve the connection with NGOs, particularly at the national level, through a central list of partners and a cohesive methodology for ensuring systematic access and input whenever a state is considered
- the treaties themselves have a substantial degree of substantive overlap of rights and freedoms
- there is significant duplication in the work of the secretariat servicing the consideration of reports from the same state to different treaty bodies
- there is inevitably duplication of human rights concerns among treaty bodies, and hence of the substance of the dialogue, in respect of the same state
- if a specific state is examined in light of all the information, and an overall analysis of its human rights conditions there will be an improved understanding of problems and needs
- a concrete understanding of the “universal, indivisible, interdependent and interrelated” nature of rights will only be truly possible through their concurrent application
- the current division in the UN between human rights and women’s rights, and the inadequate mainstreaming of women’s rights into the interpretation and application of all human rights treaty obligations, is far more likely to be overcome through the integration of the treaty monitoring bodies
- consolidation would promote a consistent interpretation and application of rights; international human rights monitors should provide consistent recommendations
- treaty body substantive output (concluding observations, general comments/recommendations, communications, follow-up) has been organized by the treaty body which produced them, and not by subject matter (and generally not by state) -

- in contrast to the needs of users
- many of the institutions and individuals expected to follow-up on conclusions from different treaty bodies at the national level are often the same
- it is incongruous to advocate human rights as a crosscutting theme for different operational agencies/organs at the national level, while dis-aggregating human rights in terms of analysis and programmatic development (via six sets of treaty body concluding observations) at the international level
- UN reform has been premised on the importance of unifying and adopting a global approach to the needs of each country; consolidation of the treaty bodies at the international level is consistent with this approach at the country level.

Why two consolidated treaty bodies (one for state reports and one for communications/inter-state complaints/inquiries)?

(a) Timeliness, Delay

- despite the significant delays experienced in dealing with communications, and the almost two year backlog in the consideration of submitted reports, the Human Rights Committee spends only 45% of its time on state reporting,<sup>227</sup> finding itself unable to deal expeditiously either with communications or state reports.

(b) Duplication, Efficiency

- procedural requirements, concerns and functions for the handling of communications by all four treaty bodies now dealing with individual cases are very similar and call for the same expertise among both staff and experts
- there is significant substantive overlap of the kinds of complaints which can come before one or more of the four treaty bodies dealing with individual communications
- individuals are often unaware of the range of venues the treaty petition system now offers and consolidation would alleviate the problem of streaming cases using potentially divisive and value-laden criteria.

(c) Substantive Results

- improving compliance with Views will be promoted by the professionalization of the decision-makers and their procedures
- substantive outcomes will be improved by a staff able to focus professional skills and attention either on reporting, or communications; the quality of servicing will be enhanced by the resulting depth of substantive and comparative research
- the ability and effort to engage in partnerships with other international actors and those at the national level, is central to a productive dialogue, while central to the proper functioning of the individual complaint system is the independent, impartial and fair application of legal procedures and standards to the individual victim
- acquiring the in-depth knowledge and understanding of country conditions necessary to produce practical, programmatic concluding observations is a quite different skill from the expertise required to decide individual cases

- legal experience should be a clear prerequisite for decision-making in the context of individual cases, in contrast to the current membership of some treaty bodies now handling communications
- the attempt to select individuals who are able to perform both functions interferes with the quality of both products (concluding observations and Views)
- the current competition for limited and insufficient time and resources between the two functions of state reporting and communications, and the divergent opinions of committee members over priorities, will be overcome.

#### Why (two consolidated) full-time treaty bodies?

- In the absence of a full-time position, and the associated remuneration and professional facilities, treaty body members are much more susceptible to competing and incompatible demands which undermine their independence and impartiality.

#### Objections to Consolidation:

Objections to consolidation have come primarily from treaty body members, and the external constituencies that have worked closely with different treaty bodies. Treaty body members themselves in general do not, and will not, support the elimination of their positions, or the perceived downgrading of the uniqueness of their substantive and procedural operations through consolidation. Some treaty body members have been on treaty bodies for almost three decades. (It might be noted that members of the European Court of Human Rights most objected to reform of the Court through Protocol No. 11.) The constituencies which have worked closely with different treaty bodies are concerned that consolidation will mean the loss of attention and expertise on specific rights. Although the linkages between focussed constituencies and the different treaty bodies vary considerably, this is a legitimate fear and one which must be addressed in the initial design of any consolidated treaty body.

#### (a) Membership

It is not self-evident that after two decades of confining female members of treaty bodies almost entirely to the two treaty bodies dealing with women and children, that consolidation would not result in the severe reduction of the proportion of female experts (from even current levels of 35% on average but with the concentrations on two committees). Similarly, the current failure to ensure independence and impartiality of treaty body members, gives rise to a concern that membership might be reduced in general to a minimum common denominator.

The success of consolidation would therefore depend on the ability to insist on clear qualifications for membership. In particular, members would have to be selected in a manner which ensured independence, equitable geographical distribution, representation of the principal legal systems, recognized competence in the field of human rights, and gender balance. Membership on the treaty body specializing in individual communications should, in addition, depend on having legal qualifications.

#### (b) Organization

Of equal importance to the success of consolidation would be the continued participation of international and national constituencies which have made such a key contribution to the reporting process, in particular, NGOs and UN agencies/organs. Those constituencies seek assurances that there will be treaty body members who are knowledgeable about the interests they promote on behalf of human rights victims. In other words, they need to know that there will be treaty body members able and willing to give adequate attention to those issues throughout the process of state reporting, and in particular, in concluding observations. In part, this can be addressed through the application of the membership criteria discussed. In addition, meeting those concerns might entail a clustering of rights for consideration and analysis by thematically-oriented working groups, or building specific sectoral expertise through combinations of members considering specific themes. States parties representatives might also engage directly with these working groups. Furthermore, focal points on certain substantive matters might also be designated from among the members as having specific external liaison responsibilities.

#### (c) Prior to universal ratification

Most states participate in the bulk of the treaty system.<sup>228</sup> The extent of participation has continued to rise steadily, although slowing in pace. Consequently, the interaction with states parties still less than fully involved in the treaty system will not waste the resources of a consolidated body. It need not subject states which have not ratified some treaties to questioning concerning their implementation of provisions which do not apply to them. It might encourage those states parties to ratify the remainder of the treaties, by clarifying the nature of indivisibility and interdependence of rights, which they frequently espouse.

#### (d) The Costs

The treaty bodies currently meet for 56 weeks in a 52-week period, 11 of which are pre-sessional meetings.<sup>229</sup> This number is continually rising, and further requests for additional meeting time from the individual treaty bodies can be expected. There are 97 treaty body members, the number to rise by eight with the coming into force of the amendment to the CRC (and potentially by another ten should the Migrant Workers Convention be permitted to come into force without amendment). Travel is now required for 97 persons to attend 15 distinct sessions. As the 2000-2001 programme budget indicates, a very large percentage of the budget for the treaty bodies concerns travel expenses.<sup>230</sup> The per diem allowance is substantial. Taking into account the ever-rising costs of the existing system, it is possible to design two treaty bodies, with remunerated professionals, based permanently in Geneva without cost becoming the determining factor.

## **RECOMMENDATION**

### **States Parties**

*The Commission on Human Rights should establish an open-ended working group to elaborate a draft omnibus procedural optional protocol to all six human rights treaties (and the Convention on Migrant Workers). The purpose of the protocol would be to establish two consolidated treaty bodies, one for considering state reports and one for examining communications and inter-State complaints, and conducting inquiries. Results would eventually have to be taken up by the respective meetings of states parties, ECOSOC, and/or the General Assembly, in accordance with the terms of each treaty.*

### **III. List of Recommendations**

#### **Overdue Reports**

##### Treaty bodies

1. *Treaty bodies should each appoint a Special Rapporteur on Input, or the initial phase of State Reporting. That individual should*
  - *regularly meet with government representatives concerning the failure to report*
  - *write accounts in annual reports of such meetings*
  - *recommend to the committee that targeted invitations be issued to specific governments to appear before the Committee in public session for the purpose of discussing the failure to report, reasons for the delays and possible action to be taken (including offers of support in the drafting of reports). (See also Recommendation 101)*
2. *Letters of reminder should be sent annually by individual committees to those states with particularly egregious reporting records.*

##### Treaty Bodies and OHCHR

3. *Letters of reminder should be sent annually by the High Commissioner for Human Rights to all states parties highlighting their particular reporting record.*
4. *In addition to the global record currently produced on the detailed reporting history of each state party, a new global report should be created with the following two tables.*

**Table 1: Compliance with Reporting Obligations**

<i>state party</i>	<i>treaty body</i>	<i>date of ratification</i>	<i>number of reports submitted</i>	<i>number of reports considered</i>	<i>date at which report was last considered</i>	<i>date set by treaty body for next report; if there has been no date set (because of non-reporting or no consideration) this will be the date set by the treaty or the rules of procedure</i>
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*This table should be in alphabetical order of states parties.*

*Note:*

*Number of reports considered should refer to the number of distinct occasions at which a state “report” was considered. If a state submitted a so-called combined report (sometimes artificially referred to as more than one report), this would count as one report considered. There are also a few situations in which a state report was held over for one or two sessions, which would still be counted as a single consideration.*

*There will be states which have had their situation with respect to the treaty considered in the absence of a report, but this will not be relevant to a table of compliance with reporting obligations, although it may be the subject matter of a footnote or separate table.*

**Table 2**

<i>state party</i>	<i>treaty body</i>	<i>length of time since ratification</i>	<i>number of state reports considered</i>	<i>length of time since report was last considered [or in square brackets the length of time since ratification if no report has ever been considered]</i>	<i>date set by treaty body for next report; if there has been no date set (because of non-reporting or no consideration) this will be the date set by the treaty or the rules of procedure</i>
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*This table should be in order of the largest numbers in the fifth column, namely, states parties with the longest time since a report was last considered (per treaty) or if this is null, then the length of time since ratification.*

*Note:*

*There are states which submit reports, but continually delay their consideration, hence the need to emphasize the date considered. It will, however, incorporate the backlog between submission and consideration.*

5. *These tables should be provided to the General Assembly and the Commission on Human Rights on a regular basis.*
6. *The practice of including in annual reports a variety of different tables concerning reporting history, or lists of overdue reports, can be discontinued. Instead, a table highlighting those states with particularly egregious records (based on the tables above) in the context of an individual treaty should be developed and included in annual reports.*

## OHCHR

7. *OHCHR should offer assistance to states parties in preparing reports, stressing in particular:*
  - *the development of national strategies for drafting reports (for example, the kinds of governmental structure and cooperation required; relationships with NGOs)*
  - *technical advice or assistance on collecting statistics*
  - *guidance in identifying legislation, policies, judicial decisions which should be monitored.*

## **The Consideration of States Parties' Compliance with the Treaty in the Absence of a Report**

### Treaty Bodies

8. *States parties which do not report for a specified number of years following ratification, or a specified number of years after the consideration of a previous report, should nevertheless have their record of compliance with the treaty's obligations considered by the treaty bodies. The number of years of non-reporting may vary by treaty body and depend on the body's backlog or the anticipated date of the actual consideration of a report. In any case, the number of years initiating this procedure should not be considerably different from the time between consideration of states parties which do submit reports. (See Recommendations 101, 120)*

## **Periodicity of Reports**

### Treaty Bodies

9. *Treaty bodies should insist on regular reporting deadlines consistent with the spirit of engagement undertaken by states parties in each of the treaties.*
10. *Failure to produce a report on schedule should result in a consideration of the state's compliance with treaty obligations in the absence of a report.*
11. *The reports due for each state to all treaty bodies should be consolidated into a single report. (See Recommendation 15)*
12. *A timetable should be delineated for the periodic production of consolidated reports, and its introduction coordinated among the treaty bodies.*

### Treaty Bodies and OHCHR

13. *On an experimental basis, OHCHR should deliberately organize and schedule overlapping meeting times for treaty bodies, at the same time in the same venue.*
14. *The treaty bodies should be provided with the opportunity to take advantage of overlapping, for instance, by scheduling one state before more than one treaty body during overlapping meeting times.*

#### *Note:*

*(1) Consolidated reporting varies the strict reporting schedule in the treaties themselves, and it might be argued would require an amendment to CERD, CEDAW, CAT and CRC, and an ECOSOC resolution for CESC. However, the variation from the treaty commitments currently in practice has been instituted in the absence of formal amendment or resolution and has not been the subject of objection by states parties.*

*(2) This recommendation must be coordinated with the consideration of reports, since there is little point submitting a single report which is taken up by different treaty bodies over an extended period of time - thereby requiring significant and multiple updates at the times of consideration.*

*(3) The effectiveness of this recommendation is closely related to a timely consideration of reports, and this in turn raises the issue of a greater degree of consolidation. (See Recommendation 228)*

### **Focussed and Consolidated Reporting**

#### Treaty Bodies

15. *The states parties should be requested to submit one consolidated report applicable to all treaties which they have ratified, and which has been organized on a thematic basis.*
16. *The treaty bodies should prepare consolidated guidelines for the preparation of a single report, organized on a thematic basis and clearly identifying overlapping provisions of the treaties (in addition to those which remain unique). (See Thematic List and Index of Treaty Rights and Freedoms, Annex (3))*

#### OHCHR

17. *OHCHR should assist the treaty bodies by identifying overlapping substantive themes among the treaties.*
18. *A model report based on a thematic clustering of treaty articles should be prepared for interested states parties, who could be encouraged to prepare such a report as a single submission to all treaty bodies. (See Recommendation 224)*

*Note:*

*Consolidated reporting should be coordinated with the consideration of reports. (See Recommendations 13, 14, 228)*

## **Inadequate Reports**

### *Treaty Bodies and OHCHR*

19. *Treaty bodies should encourage the OHCHR secretariat to identify incoming reports which may be wholly unsatisfactory in their failure to follow reporting guidelines (in length, form or absence of statistics), and to permit them to suggest informally to the states parties ways and means to resubmit an improved report prior to consideration.*

## **Special Reports**

### *Treaty Bodies*

20. *Treaty bodies should not engage in the practice of requesting special or exceptional reports.*

## **Order of Considering Reports**

### *Treaty Bodies*

21. *Treaty bodies should take up state party reports in the order in which they are received.*
22. *Treaty bodies should take up reports as scheduled when states parties refuse to attend the consideration of their reports.*

## **The Timing of the Consideration of Individual Communications**

### *Treaty Bodies*

23. *The Committee should introduce a rule of procedure which requires it to deal with applications in the order in which they become ready for examination. Decisions to give priority to a particular application should be made on an exceptional basis.*
24. *Delays resulting from state party efforts to avoid prompt consideration of a case (including unjustified requests for time extensions, for separating the consideration of*

*admissibility from the merits, repetitive submissions) should not be tolerated by committee practices. The author should be kept fully informed of all state party communications with the committee, including all efforts to delay the prompt consideration of a case.*

25. *Time limits should be more rigorously enforced. A clear timetable for reminders for each stage of the proceedings, together with a set of consequences for failures by either the state party or complainant to adhere to the timetable or time limits, should be articulated. Reminders should be sent as required. The treaty bodies should regularly be kept up-to-date on the timetable and status of each case - incorporating a “consequence/bring forward” methodology.*

## **Considering Individual Communications**

### Treaty Bodies

26. *The Human Rights Committee should designate two to three working groups or chambers, taking into account legal skills and geographic considerations. These groups should meet simultaneously and be able to deal with all aspects of communications. Working groups should be enabled and encouraged to make recommendations to the Committee on all matters, including final views. The Committee should normally adopt those recommendations, without discussion, except in narrowly-defined circumstances.*
27. *The basis of the Committee Views should be transparent and well-reasoned. Decisions should contribute to the understanding and development of international law and enable domestic courts to invoke and apply international treaty obligations.*

### OHCHR

28. *The secretariat of CEDAW dealing with individual communications should be merged with the Petitions Team at OHCHR.*
29. *The secretariat should assist in the development of Committee jurisprudence by providing, upon request, analytical assistance in the form of substantive and comparative research concerning treaty rights.*

## **Working Groups**

### Treaty Bodies

30. *Efficient management of the treaty bodies' time suggests that all treaty bodies should create working groups, charged with a broad range of responsibilities: identifying lists of issues, considering additional information supplied between reporting schedules, a potentially enhanced follow-up role, consideration of working methods, and consideration of draft general comments. Given the current nature of the job of treaty body member (part-time, largely unremunerated, 5-9 in-session weeks annually), participation should be voluntary. Nevertheless, efficiency requires that a significant degree of deference be paid to decisions emanating from the working group on whatever it addresses.*

### OHCHR

31. *A background paper should be drafted concerning information on the operation of chambers and their potential uses in other international or regional human rights bodies or courts, and provided to the treaty bodies for consideration.*

## **The Special Rapporteur on New Communications**

### Treaty Bodies

32. *The functions of the Special Rapporteur on New Communications should be enunciated in the Committee's Rules of Procedure.*
33. *More precise information on the application of the interim measures procedure should be publicly provided by all committees using such a procedure, including the specific cases in which it has been used (at the time it is invoked) and the responses of states parties to requests.*

### OHCHR

34. *The secretariat must have sufficient human resources to be able to engage efficiently in the preparatory work required for the proper functioning of the Special Rapporteur and the Working Group on Communications, and ultimately the Committee. In particular, the Petitions Team should include many more lawyers familiar with a wide range of legal systems and languages.*
35. *The numbers of provisional files opened should be recorded and made public.*

36. *A manual for prospective users of the petition system should be prepared which explains the process and how to make an effective case based on the experience of the secretariat over the past two decades. The issue of forum-shopping among the treaty bodies, and detailed information concerning the application of the interim measures provision, including practical advice, should be included.*
37. *Cooperative relationships with appropriate legal assistance services or programmes at the national or international level should be developed to assist lawyers and provide information and assistance concerning the filing of complaints. This could include offers by OHCHR staff to attend or give nationally-based seminars to legal aid clinics, bar admission courses, professional development courses for lawyers, and judicial training.*

## **The Special Rapporteur on Follow-up to Individual Communications**

### Treaty Bodies

38. *Follow-up to communications should not be a minor, isolated concern of a single member of the Committee with little connection to, or attention of, the Committee as a whole.*
39. *Follow-up should be routinely on the agenda (and the published provisional agenda) at every meeting.*
40. *Follow-up business should be conducted in public meetings.*
41. *Follow-up procedures for individual communications should be established governing the process after every communication in which a violation is found. The process should incrementally increase the committee's level of engagement with a particular state with respect to follow-up as time goes on, for example:*
  - *a letter of reminder at the end of the 90-day period*
  - *further reminders at regular intervals*
  - *a meeting of the Special Rapporteur with a state party representative*
  - *public reporting by the Rapporteur of the substance of the meeting and any state party undertaking*
  - *public reporting of any information on follow-up from the author*
  - *a clearly stated Committee position on the satisfactory nature of the state party's response to the communication*
  - *a public meeting of the committee with the state party on follow-up (for example one or two meetings a session should be set aside to publicly discuss follow-up for 30 minutes with a series of states parties, without the necessity of a written report)*
  - *a further view or clearly stated Committee position on the satisfactory nature of the state party's oral response to the communication*
  - *a visit to the state party on follow-up*
  - *the public release of the mission report on the visit.*

42. *Follow-up to individual communications should be introduced and applied to the work of CAT and CERD (and eventually CEDAW) on communications, including the appointment of a Special Rapporteur on Follow-Up to Individual Communications, and the regular production of a document on follow-up to communications.*
43. *A transparent and detailed follow-up practice should be developed with respect to the application of CEDAW's general follow-up Rule of Procedure 18.*

#### States Parties

44. *States parties have ratified the Optional Protocol in bad faith when refusing to provide a remedy by calling into question the Committee's authority. This behaviour on the part of states undermines the legitimacy of the international protection of human rights and the treaty monitoring process which seeks to make it meaningful. There is no excuse for the lack of state support for the Committee's authority as a response to individuals exercising their treaty rights, and the poor example of those states with democratic institutions in this regard is particularly regrettable. States should honour their obligations to provide an effective and enforceable remedy for victims of violations of the treaty's rights.*

### **Country Rapporteurs**

#### Treaty Bodies

45. *The system of country rapporteurs is an efficient way to maximize the committees' ability to comprehend country situations. However, its effective functioning depends on the expertise and initiative of committee members. In theory, all committee members should take an equal role in serving as country rapporteurs. It is therefore incumbent on states parties to elect members who are willing and able to perform the function of country rapporteur.*
46. *As long as states parties continue to elect non-independent members to treaty bodies, the committees themselves must exercise greater responsibility for ensuring that members are not named as country rapporteurs with respect to states for which their independence and impartiality appears to be in any doubt.*

## List of Issues

### Treaty Bodies

47. *All treaty bodies, including CAT and CERD, should adopt lists of issues for the consideration of state party reports. CEDAW should adopt lists of issues for initial reports.*
48. *The lists of issues should be published and put on line prior to the dialogue with the state party.*
49. *Written answers should be solicited from every state party at least two months in advance of the dialogue.*
50. *Written replies to lists of issues should be published. The informality of their format can be maintained; they can be published in “unedited” form. If the submission of the replies in an electronic form would assist in their earlier publication or availability on the OHCHR website, states should be requested to submit an electronic version together with hard copies.*
51. *Treaty body members should confine their questioning to the broad areas of interest and concern identified in the list of issues, except in circumstances of unanticipated, new, and significant information.*

### NGOs

52. *NGOs should increase their input during the drafting stages of the lists of issues.*

## Country Information within OHCHR

### OHCHR

53. *A country analysis is in principle a helpful tool for all treaty bodies. The analysis should:*
  - *primarily reproduce selected portions of original material rather than offering written summaries,*
  - *indicate all sources, and wherever a selected text is included the specific source should be identified on each occasion,*
  - *organize information in accordance with the provisions of the treaty,*
  - *systematically include:*
    - ▶ *findings, decisions and reports of UN mechanisms, bodies and agencies*
    - ▶ *concluding observations of other treaty bodies*
    - ▶ *NGO information*
    - ▶ *reports of regional institutions*
    - ▶ *major governmental reports.*

54. *At the same time, copies of original sources should continue to be provided in a country file available to committee members for consultation. Over time, experience by the committee with particular sources of information may indicate that they are unhelpful, or unreliable and should be omitted, and direction may be provided to the secretariat in that regard. Lists of information not included in the country analysis, but available in the committee room's country file, can be provided to committee members.*
55. *Country analyses should be sent to all committee members well in advance of the session at which it will be used (the working group, or committee session). A list of source material used in its preparation and available from the secretariat should be provided to members at the same time, so that they will be able to request it in advance of the meeting if necessary. Material received after the production of the country analyses (particularly NGO material) should be circulated in advance of the session as far as possible to all committee members.*
56. *In the context of a consolidated state report organized on a thematic basis, there would be one common country analysis which organized information on a thematic basis, (thereby considerably reducing the duplication of a secretariat effort to produce country analyses).*
57. *Current efforts by OHCHR to create a "country information framework" on its internal HURICANE network (Human Rights Computerized Analysis Environment) should be encouraged. The plan should be expanded to incorporate text or links to all relevant country-specific UN reports (such as state analyses from UNDP, UNICEF, UNFPA, WHO). A multiple database search engine which permits a user to access information by country must be introduced. This should connect to the "External sources database" currently under development. Guidelines should be developed for OHCHR staff possessing country-specific documents on the use of HURICANE. These should include identification of the kinds of material which should be posted, the responsibilities of desk officers for posting the material, and the methodologies for restricting access where necessary.*
58. *Common country files need to be kept on a systematic basis by OHCHR. This includes the preparation of a professional catalogue of existing country-specific material, the integration of material currently separated into SSB and APB files, and the preparation of a regularly distributed acquisition list which provides sufficient details to enable a preliminary assessment of the relevance of the material to the treaty bodies.*
59. *For those states with which the desk officers have specific expertise (producing reports for a country rapporteur, participation in a needs-assessment mission, or servicing a technical cooperation project), desk officers should routinely brief the treaty bodies. They should prepare a memorandum or briefing notes for the committee, and meet directly at least with the country rapporteur and working group. For those states with*

*which the desk officer has no specific expertise, they should assist the treaty bodies in identifying sources of information and relevant documents, share information which may have been channelled to them, and be available to meet with the country rapporteur and working group if asked. Overall, there should be a clearly defined set of expectations on the part of all desk officers in relation to the work of the treaty bodies, and a concomitant interest on the part of the treaty bodies in the knowledge and resources of the desk officers. (See Recommendations 91, 92, 222)*

## **Core Documents**

### OHCHR

60. *Letters of reminders should be sent to states which have not submitted CORE reports.*
61. *A list of CORE documents should be clearly catalogued on the OHCHR website by country.*

### States Parties

62. *CORE documents should be kept up-to-date through the submission of periodic updates by states parties as required.*

## **Non-governmental Organizations (NGOs)**

### Treaty Bodies and OHCHR

63. *The treaty bodies and OHCHR should take a proactive approach to engaging NGOs in the reporting process. NGOs should routinely be:*
  - *provided with clear information on the working methods of each treaty body and its relationship and rules with respect to NGOs concerning (a) written submissions, (b) oral interventions and meetings*
  - *informed of the timetable of state reporting in respect of their state*
  - *invited to submit information and to consider working with other national partners to submit information*
  - *informed of guidelines for producing useful shadow reports where they have been issued by the committee, or of practical suggestions for producing useful shadow reports*
  - *sent specific concluding observations where they have indicated an interest or submitted information to the treaty bodies*

### Treaty Bodies

64. *Clear rules about access to the addresses of treaty body members should be adopted and those rules should be applied uniformly to all NGOs making submissions. Savings in time and costs may dictate that professional addresses should be publicly available.*
65. *Committee members should not be prevented from viewing any submitted NGO material.*
66. *NGOs should be provided by all treaty bodies with clearer directions on what the treaty body expects and wants from NGOs, both in terms of written and oral comments, at both the Working Group and informal meetings during the session.*
67. *The treaty bodies should inform themselves about the sources and expertise of those making submissions as part of their effort to ensure that conclusions are based on reliable information. Committee members should concentrate on producing an accurate analysis of the central issues facing a state party and developing a concomitant set of relevant recommendations, and not on narrow agendas which may be selectively pressed before them.*
68. *Committees should not permit the use of session time for general submissions from NGOs concerning states parties that are not on the agenda.*

### OHCHR

69. *OHCHR should identify NGOs interested in the process at the national level in each state; a database of national NGOs should be created including, where relevant, ECOSOC-accredited NGOs, and NGOs that have participated in the treaty system in the past. (See Recommendation 93 and 146)*
70. *OHCHR should appoint an NGO-treaty body liaison officer to facilitate various aspects of the NGO-treaty body relationship.*

### NGOs

71. *NGOs should be encouraged to submit (at least written) information to the working group considering the list of issues, rather than simply making submissions at the time of the consideration of the report. Written information should clearly indicate (a) the relevant article of the treaty related to the specific information submitted, (b) the suggested question to be put to the state party, and (c) the rationale supporting the inclusion of the question.*
72. *International NGOs should be encouraged to play a facilitative role in familiarizing and engaging national NGOs in the treaty body processes.*

73. *NGOs should be encouraged to develop an integrated approach to implementing human rights treaties. They should aim to maximize national input at the international level by writing shadow reports, sending representatives to attend treaty body sessions, and sharing information with treaty body members. They also should aim to use international standards at the national level in policy and legal advocacy, through legal and non-legal channels, the judiciary, human rights groups, human rights commissions, government officials, and parliamentarians.*

#### States parties

74. *States parties should be encouraged to perceive NGOs as partners in a nationally-focussed and ongoing process of generating awareness, conducting reviews, drafting action plans, and monitoring results.*

### **UN Agencies, Bodies and Programmes**

#### Treaty Bodies and OHCHR

75. *The UN agencies, bodies and programmes are key partners in the effective functioning of the human rights treaty system. Neither OHCHR, nor the treaty bodies, has the capacity to engage as broad a constituency in the treaty system as these agencies/organs. The culture of the UN should promote the genuine integration of human rights into the functions and operations of existing mechanisms. Efforts should be made by OHCHR and the treaty bodies to maximize the involvement of the agencies/organs in the treaty system. This should envisage the participation of these agencies/organs in a number of ways:*
- *encouraging the drafting of state reports and the development of national coalitions and partners*
  - *providing solid information from the field*
  - *contributing suggestions for the drafting of practical and accurate conclusions*
  - *following-up and applying standards to specific states in their own work.*

#### Treaty Bodies

76. *The treaty bodies should adopt a more proactive approach to soliciting input from UN agencies, bodies and programmes, beginning with specific invitations and personal contacts with a broader range of agencies/organs, with a view to their operational capacities; invitations should solicit input into the preparation of country analysis, and initiate meetings with treaty body members.*
77. *Greater efforts should be made specifically to engage hitherto uninvolved and important agencies such as the World Bank and the International Monetary Fund.*

78. *Treaty bodies should conduct a detailed discussion with individual agencies/organs concerning the information that would be most useful to receive from the field, and in turn listen to their accounts of the form and content of useful concluding observations. (The brief statements and limited interaction at the Chairperson's meeting have not served this purpose.)*
79. *Treaty bodies should develop practical guidelines tailored to the work and mandate of individual agencies/organs, on the most useful form of submissions or contact, and suggested follow-up strategies.*
80. *CAT and CERD should institute pre-sessional working groups.*
81. *Treaty bodies should draft concluding observations which are cognizant of programmatic requirements.*

#### OHCHR

82. *Greater numbers of MOUs should be signed between OHCHR and UN agencies/organs (in addition to those currently with UNFPA, UNDP, FAO, and UNESCO). MOUs between OHCHR and UN agencies/organs should stress that assessment and planning in light of human rights treaty standards (and their application by the treaty bodies), is a necessary part of the agencies/organs' work, consistent with legal obligations of all UN member states. Divisions of responsibilities should be clearly articulated in MOUs, and modified and developed through experiences in the subsequent follow-up process. These divisions, or the details of a framework of complementarity, should bear in mind concerns for operational effectiveness including safety, access, resources and visibility. Ongoing monitoring of the contribution of the MOUs with UN agencies/organs should be an important priority for OHCHR, and cooperation with the treaty bodies should be integrated and supported throughout the process.*
83. *OHCHR should expand its provision of training sessions for UN agency/organ personnel on the requirements and substance of the human rights treaties.*
84. *OHCHR should consider attaching small numbers of staff, or hiring local people to be attached, to existing UN agency/organ field offices, or field offices of other actors as appropriate, for the purposes of monitoring and reporting, providing advice, or disseminating information to government and NGOs at the local level.*

#### UN Agencies, Bodies and Programmes

85. *The human rights treaties should be a reference point for the UN agencies/organs, and the standards should be integrated into their operations.*

86. *UN agencies/organs should send targeted information to the treaty bodies, not simply copies of reports for other purposes without some effort to relate these reports to the treaty standards.*
87. *UNDP should significantly deepen the extent and form of its cooperation with the treaty bodies, as envisaged in a number of reports from regional workshops and statements made in the MOU Review and HURIST context. These include using the preparation of state party reports as an opportunity to encourage dialogue with many actors at the national level. HURIST should facilitate not only ratification, but also follow-up of treaty body conclusions. Its success should primarily be measured by follow-up programming initiated, and improved implementation, utilizing the treaty bodies' lists of issues and concluding observations as benchmarks.*

*(See also Recommendations 151-161)*

## **The Special Procedures/Mechanisms**

### Treaty Bodies

88. *The treaty bodies should consult country-specific rapporteurs when their respective state is being considered, and thematic rapporteurs more generally. Future reports organized on a thematic basis will also benefit from the input of thematic rapporteurs concerning observable trends, the nature of rights and their application to states parties.*
89. *The treaty bodies should consult relevant thematic rapporteurs in the formulation of general comments or recommendations.*

### OHCHR

90. *The temptation to give priority in planning, development, fund-raising, and resource management to the higher profile special procedures at the expense of the treaty bodies should be avoided. On the contrary, the overall framework should be that of a partnership between (a) the methodical examination of country conditions on the basis of legal obligations, with the goal of developing national plans of action and sets of imperatives, and (b) more intensive focussed examination of a state, or of a thematic human rights issue, where conditions warrant.*
91. *In the long term, there should be sufficient numbers of desk officers to cover every member state of the United Nations, each of which has ratified one or more of the human rights treaties. These desk officers would be the focal point of all country-specific information within OHCHR. They would both prepare country analysis for treaty bodies and briefing papers for special procedures. While their preparatory work for treaty*

*bodies could be subject to a legal review ensuring the connection between the country information and treaty provisions, substantive familiarity with specific states would be the primary responsibility of desk officers. (See Recommendation 222)*

92. *In the shorter term, a central database (with internal controls over access), accompanied by clear directives and organizational strategies for posting country-specific information, should house all information coming into OHCHR from a wide variety of directions (treaty bodies or special procedures). Internal reports produced for either treaty bodies or special procedures must be readily organized by state. Search engines should permit the identification of country-specific information within thematic reports. Desk officers familiar with a country situation should routinely provide briefings to treaty bodies prior to their consideration of relevant state reports. (See Recommendation 222)*
93. *A central database of NGO partners of both the treaty bodies and special procedures should include notes on information flow and active participation (posted and shared by treaty body staff and desk officers). (See Recommendations 69, 146)*
94. *There should be only one common country file holding hard copies of submitted information (in the absence of the technology to convert all submissions to electronic format), both for the special procedures and the treaty bodies. A bibliography of everything kept in a common country file should be created and regularly updated. A professional report concerning the handling of these sources of information should be commissioned, and include a comparative analysis of methodologies of other international or regional bodies, or foreign affairs' libraries.*
95. *A coherent, principled and transparent set of guidelines must be developed to channel or stream communications to treaty bodies and/or special procedures. This includes the streaming of all urgent appeals. A central complaints desk must be administered to implement these guidelines. This should be closely followed by the development of a user-oriented handbook for the submission of complaints by victims of human rights violations.*
96. *All special procedures should be routinely provided with the output of the treaty bodies as part of the preparation of any mission.*

#### Special Procedures/Mechanisms

97. *Country-specific rapporteurs should be provided sufficient resources to brief treaty bodies when their state is being considered.*
98. *The treaty standards should inform the work of all special procedures. Special procedures should aim to reinforce the universality of human rights and fundamental freedoms and foster universal ratification of human rights treaty obligations.*

99. *Special procedures should seek input from treaty bodies and their secretariat in the planning stages of a mission in order to identify possible opportunities for (i) fact-finding, (ii) information exchange about state reporting requirements, or (iii) follow-up of concluding observations.*
100. *Special procedures should consider inviting a member of a treaty body to accompany them on mission in appropriate circumstances.*

## **The Dialogue**

### Treaty Bodies

101. *Committee sessions should be divided into states at different stages of the process:*
  - a) *states engaged in an initial dialogue concerning their report,*
  - b) *states engaged in a second (briefer) dialogue concerning unanswered questions, or unsatisfactory responses to requests for additional information*
  - c) *consideration of states failing to submit reports, and*
  - d) *states providing unsatisfactory follow-up replies on individual communications in private meetings with the Special Rapporteur on Follow-Up to Communications.*

*(See Recommendations 1, 8, 133)*

102. *The value of the dialogue outweighs its dysfunctional dimensions. Many of the regrettable features of the dialogue are avoidable. The goal should be to hone in on the key set of issues and concerns for that state, and become sufficiently familiar with them to permit programmatic concluding observations, through a series of preparatory steps taken in advance of the meeting.*
103. *Short and reasonable deadlines for introductory statements, answers of states parties, and interventions of members, should be set, communicated in advance, and strictly enforced by the Chair.*
104. *Members should generally be required to confine their questions to areas addressed by the lists of issues or raised by written responses, except in cases of unanticipated directions raised by the answers or significant new information.*
105. *The delay between meetings considering a report from one state party during a session, should not be greater than two days.*
106. *States which refuse to answer the questions posed during the dialogue should be met with:*
  - a) *a request to receive a written response,*

- b) *within a specified period, and*
- c) *notice that an unsatisfactory response will be met by resumption of the dialogue at an early session of the Committee.*

107. *In exceptional circumstances, the dialogue should be suspended with representatives unable or unwilling to answer questions and the state party asked to resume the dialogue at the earliest opportunity with appropriate alternative representatives.*
108. *Treaty body meetings (currently only HRC) should not rotate between Geneva and New York.*

*(concerning Lists of Issues see Recommendations 47-51)*

#### *Treaty Bodies and OHCHR*

109. *Summary records should not be produced for closed meetings of the treaty bodies.*
110. *Unless summary records for open meetings of the treaty bodies with states parties can be produced in a complete set, in one working language (and here the priority should be the working language of most value to nationals of the state party concerned), within four months of the dialogue they should be discontinued.*

#### *States Parties*

111. *States should be clearly informed of the importance of sending qualified representatives to the dialogue and should be directly contacted by the secretariat to reinforce the matter. Failures to do so should be the subject of commentary in concluding observations. Names of the delegates should appear in annual reports.*

*(concerning NGOs see Recommendation 71)*

### **Concluding Observations**

#### *Treaty Bodies*

112. *Concluding observations should be adopted in closed-session, with members uninhibited by observers.*
113. *The committee member charged with the development of an initial draft and with the incorporation of members comments into subsequent drafts, must be willing and able to undertake the task.*

114. *Concluding observations should be released as soon as they are adopted, which may be prior to the end of the session. All the treaty bodies, including CEDAW, should release concluding observations no later than the last day of the session.*
115. *The introductory remarks of governments should not be included in concluding observations (CEDAW).*
116. *The portions of concluding observations entitled “Positive Aspects” and “Factors and difficulties impeding implementation” have already been highly attenuated, are generally not useful, and should be discontinued.*
117. *Concluding observations should include the following information:*
- (a) introductory information*
- *due date of the report*
  - *submission date of the report (and symbol number)*
  - *dates and meetings at which the report was considered*
  - *the kind of report (additional information, special, initial, more than one report)*
  - *names and positions of the members of the delegation which presented it*
  - *committee’s views about the composition of the delegates in terms of their positions and expertise*
  - *whether written replies to the list of issues were submitted (symbol number)*
  - *(if so) when written replies were submitted (as compared to the consideration of the report)*
  - *the level of cooperation of the delegation in responding to oral questions; whether questions were left unanswered*
  - *promises made about future submission of information*
  - *how the report was prepared (by whom, over what period of time, consultations held)*
- (b) concerns and recommendations*
- *the concluding observations should then proceed directly to a consideration of concerns and recommendations*
  - *concerns should be clearly connected to recommendations*
  - *recommendations should concentrate on concrete proposals; they should be practical and as precise as possible*
  - *recommendations should clarify whether they relate to policies, practices, or legislation and identify them*
  - *recommendations should be grouped thematically and provide some indication of priorities*
  - *recommendations based on concerns about human rights violations caused by third parties should clearly indicate the treaty bodies’ expectations of government action and responsibility, and the foundation of these expectations*
  - *references to any kind of external documentation required to understand the content of recommendations should be avoided; necessary references or*

*substantive documentation referred to should be footnoted; the recommendations should be self-explanatory*

*(c) concluding information*

- *additional information promised and/or requested*
- *deadlines for the submission of additional information*
- *plans for the dissemination of the concluding observations*
- *processes the state should have for dissemination of the concluding observations*
- *languages into which concluding observations should be translated*
- *processes or structures the state party should institute for follow-up to the concluding observations; concrete proposals can be made about best practices for ongoing monitoring of the treaty's implementation (including the preparation of the next report)*

118. *All interested parties should be given the concluding observations at the same time.*

119. *Government comments or responses on concluding observations should be posted on the web and published as separate documents at the discretion of the Committee. All such submissions received should be noted in the Annual Report.*

120. *Concluding observations finalized in the absence of the participation of a state party must be preceded by a careful compilation and analysis of information from a wide variety of sources. It will sometimes be preferable in the absence of the participation of a state party to identify only "preliminary" concluding observations, to be revisited upon full participation. (See Recommendation 8)*

**OHCHR**

121. *Concluding observations should specifically be sent to all parties submitting information for the consideration of a state report. (It is not sufficient to post them on the web.) They should also be specifically sent to UN Country Teams, and the individuals responsible for implementing MOUs between OHCHR and UN agencies/organs. (See Recommendation 63)*

**Reservations**

**Treaty Bodies**

122. *The treaty bodies should use the opportunity of the dialogue to probe the extent to which the requirement to limit reservations to those compatible with the object and purpose of the treaty has been met, and to encourage states to meet these conditions.*

123. *All treaty bodies should clearly express their reasoned views as to the compatibility of reservations with the object and purpose of the treaty.*
124. *The treaty bodies should jointly approach the General Assembly to request an advisory opinion from the International Court of Justice on the validity and legal effect of reservations to the human rights treaties. The cooperation of the Sub-Commission and the ILC might be solicited in making this request.*

#### States Parties

125. *States should institute procedures to ensure that each and every proposed reservation is compatible with the object and purpose of the treaty.\**
126. *A state entering a reservation should indicate in precise terms the domestic legislation or practices which it believes to be incompatible with the treaty obligation reserved.\**
127. *A state entering a reservation should explain the time period it requires to render its own laws and practices compatible with the treaty, or why it is unable to render its own laws and practices compatible with the treaty.\**
128. *States should also ensure that the necessity for maintaining reservations is periodically reviewed, taking into account any observations and recommendations made by the treaty body during examination of their reports.\**
129. *Reservations should be withdrawn at the earliest possible moment.\**
130. *Reports to the treaty body should contain information on what action has been taken to review, reconsider or withdraw reservations.\**

(\* are from General Comment No. 24, Human Rights Committee, HRI/GEN/1/Rev. 4, para. 20)

131. *All states should object to reservations which are incompatible with the object and purpose of the treaty. The task should be understood not only as a privilege, but a responsibility to ensure the integrity of membership in the treaty regime.*

### **Follow-up on State Reporting or Operationalizing the Human Rights Treaties**

#### Treaty Bodies

132. *Treaty bodies should appoint a Special Rapporteur(s) for Follow-up on State Reporting. The Special Rapporteur should monitor the process of requests for information following the dialogue, and facilitate the flow of follow-up information which is received to*

*operational partners and within OHCHR itself. Opportunities for follow-up visits should be considered in a broad context, and in light of various operational considerations. (See Recommendations 163, 164)*

133. *Treaty bodies should adopt transparent, procedural rules for follow-up in the case of state reporting, and adhere to them. These should involve a consistent, transparent and evenhanded approach to requests for additional information. There would be an incremental increase in the committee's level of engagement with a particular state as time goes on, including:*
- *the formulation of a specific request in concluding observations*
  - *deadlines*
  - *reminders*
  - *where necessary meetings between the Chair (or a committee member) with state party representatives to solicit information*
  - *consideration of the information submitted*
  - *where necessary scheduling a public dialogue with the state party about either the information submitted, or the lack thereof*
  - *requests for missions to states parties with the consent of the state concerned.*

*(See Recommendation 101)*

134. *In the application of this follow-up procedure, information submitted from NGOs on follow-up should be accepted.*
135. *Use of follow-up procedures should be accompanied by commitments to place in the public domain requests made by the treaty body and information received from states parties.*
136. *The treaty bodies can encourage the development of a national implementation strategy by routinely discussing with states, for example: Who has authored the report? How was it produced? Where has it been sent? Who will discuss it? What happens to concluding observations? Are there government-civil society contacts concerning their implementation? Is Parliament or the legislative assembly involved in the process of monitoring compliance and/or implementing concluding observations? Are the state reports to treaty bodies tabled in the legislature? How is the media informed of the stages of the process?*

#### *Treaty Bodies and OHCHR*

137. *A follow-up document should be published regularly which tracks requests, and responses to requests, for additional information. It should contain the following: request made (substance, state, date), deadline for receipt of submission, status of request*

*(submission received/not received), symbol number of published submission, date of consideration of submission, outcome of the consideration of submission.*

138. *Follow-up information received should generally be published, either as addenda to state reports, or to CORE reports, or as a new category of information called follow-up.*
139. *The receipt by the treaty bodies of unsolicited information from states parties relating to follow-up should be publicly noted. Unsolicited information concerning concluding observations should be accessible throughout OHCHR, and where appropriate, be made available upon request by follow-up partners within the UN system or at the national level.*

### OHCHR

140. *OHCHR should introduce a “management of follow-up” process in-house supported by a clear vision of the role of the High Commissioner and the Office in relation to treaty standards. (See infra Annex (8)). A follow-up analysis of concluding observations should be conducted. Key needs and programmes drawn from the concluding observations and Views should be identified. OHCHR should directly support the substantive outcomes of the treaty bodies by:*
- *analysing the paragraphs of the concluding observations,*
  - *identifying a limited number of possible follow-up activities, and*
  - *utilising its field missions and technical cooperation capacity to bring about concrete results.*
- Follow-up activities should be selected bearing in mind what the operational UN agencies/organs can do, or should be encouraged to do, themselves. Clear, transparent and nonpartisan criteria for identifying potential projects from the output of the treaty bodies should be developed. The contributions of OHCHR might focus, among other things, on trends or needs identified in relation to a number of states, or across treaty bodies, (such as the recommendation for an ombudsperson for children, or the preparation of a note on how to withdraw reservations). In general, the identification in-house of key programming needs revealed by concluding observations can also better enable OHCHR desk officers to in turn advocate those priorities with their contacts at the national level.*
141. *The “management of follow-up” process should involve the identification and implementation of a specific set of expectations for the High Commissioner. This should be considered part of the elaboration of a clearer vision of the role of the High Commissioner in relation to the human rights treaties and their implementation, and include:*
- *frequent reference across the High Commissioner’s activities to the treaty standards and the centrality of implementing or honouring treaty obligations*
  - *the development of a list of treaty-related items which should be raised by the*

*High Commissioner with governments on all visits to states parties, such as:*

- (a) ratification*
- (b) withdrawal of reservations*
- (c) timely reporting*
- (d) the creation of a national human rights action plan, or the introduction of the substantive elements of such a plan (such as the creation of national or local fora for dialogue with civil society about implementation and its requirements)*
- (e) the dissemination of concluding observations*
- (f) the implementation of concluding observations and final Views.*
- *the development (in consultation with the treaty bodies) of a detailed list of follow-up actions which should be the responsibility of the High Commissioner, bearing in mind the importance of respecting the independence of the treaty bodies.*

142. *OHCHR should produce a regular document organizing treaty body conclusions by subject matter of recommendation, and by country. Areas of recommendations would include, for example, (a) preparation of reports, (b) legislative review or the incorporation of international instruments into domestic legislation, (c) reform of the system of the administration of justice or the judicial system, (d) establishment or strengthening of national bodies for coordinating or implementing or investigating in the field of human rights, (e) professional training programmes in human rights, (f) translation or dissemination of the texts of international instruments, (g) data collection and analysis, (h) incorporation of human rights instruction in educational curricula, (i) organization of public awareness campaigns. The paper should not be limited to projects or areas involving technical cooperation. In addition, a thematic organization of concluding observations from all the treaty bodies should be available to states parties to assist in their implementation at the national level. Future concluding observations should themselves connect themes with specific recommendations in order to assist national structures in assigning responsibility for follow-up. Integrated into the management of follow-up review and documentation should be the Follow-up paper on communications produced by the Human Rights Committee.*

143. *The role of the desk officer as a conduit between the treaty bodies and the field presences needs to be clearly established, in terms of soliciting information, the nature of the incoming information to be provided to the treaty bodies, facilitating direct, personal contacts with field officers at treaty body meetings, forwarding concluding observations to the field, suggesting specific follow-up activities.*

144. *OHCHR staff in field offices or who undertake missions (for a variety of purposes and mandates, including advisory and technical services, or monitoring missions) should be trained in the requirements or substance of the human rights treaties. This includes:*

- *providing guidance to field officers about how to handle information they receive*

- *which is related to communications, and techniques for instructing potential victims on how to submit communications, and the basic criteria of admissibility*
  - *keeping staff informed about treaty body agendas and prompting them for information relevant to treaty body proceedings*
  - *requesting information in their reports to OHCHR on compliance with the human rights treaties*
  - *providing staff with methodologies for disseminating information about all aspects of the treaty body processes in the field.*
145. *More precise expectations of the follow-up role of the field presences in relation to concluding observations, Views (where applicable), and possible uses of General Comments and Recommendations, needs to be elaborated by OHCHR.*
146. *OHCHR should be encouraged to continue promoting the creation of national institutions which clearly satisfy the independence criteria of the Paris Principles and which have a mandate to monitor the implementation of the state's human rights treaty obligations. Efforts should also be directed towards expanding the jurisdiction of many existing national human rights institutions to include explicit connection to human rights treaties and the work and results of the treaty bodies. OHCHR should prepare, on a state-by-state basis, a list of the names and contact numbers of a variety of human rights national institutions and ombudspersons. (See Recommendations 69 and 93) The list should be used to disseminate information concerning all aspects of the treaty bodies' work. OHCHR should ensure that national institutions, particularly those served by the National Institutions Team as the secretariat for the International Coordinating Committee of National Institutions, are invited to provide input into all considerations of reports from their state by the treaty bodies, and promptly receive the respective concluding observations. Dissemination of concluding observations should include specific suggestions from OHCHR for follow-up activities by the national institution.*
147. *A standard model national human rights action plan which incorporates a national implementation strategy for human rights treaties should be developed and promoted. Such a step-by-step strategy should include:*
- *ratification of human rights treaties*
  - *removal of reservations*
  - *reviewing existing legislation, practices and policies for compatibility with treaty obligations, and amending inconsistent domestic standards or practices*
  - *enacting implementing legislation, preferably incorporating the treaties into domestic law*
  - *developing a transparent group within government with responsibility for drafting state reports, disseminating reports, translating concluding observations*
  - *developing a methodology for disseminating concluding observations*
  - *designating civil servants or team with responsibility for comparing proposed legislation or policy initiatives with treaty obligations*

- *creating a national forum composed of representatives of different components of civil society, or identifying other regular opportunities to conduct, an ongoing dialogue with government throughout the human rights treaty system's cycle of engagement, namely: understanding and education about the standards, review of existing laws and practices, planning of amendments or future initiatives, monitoring the implementation of those plans, reporting to the treaty bodies, and follow-up to the treaty body conclusions through enhancing local understanding of the meaning and application of the standards to domestic conditions.*
148. *OHCHR should prepare a more detailed set of model component parts of a national human rights action plan aimed specifically at implementing treaty standards, concluding observations and final views. This would include:*
- *model legislation for incorporating the treaties into national law*
  - *a model plan for educating civil society about the treaty system, (directed at primary and secondary schools, law schools, legal professional qualifying programmes, NGOs, government officials, media, judges)*
  - *a model plan for the development of a national/local central data base or website, or other appropriate method for systematically disseminating relevant treaty documents*
  - *a model plan for tabling state reports and concluding observations before the legislature or distributing them to the relevant legislative committees*
  - *a model mechanism for the civil service or relevant government department to routinely review proposed legislation or policies for consistency with treaty obligations*
  - *a model strategy for designating a transparent group within government with responsibility for drafting reports*
  - *a model national forum for follow-up or implementation.*
149. *OHCHR should offer to assist at the national level to tailor the model national plan of action to local circumstances, and to assist in its application and implementation.*
150. *OHCHR should publish an annual report on compliance with treaty standards on a state-by-state basis for all state participants in the treaty system. It would include the reporting record, current reservations and objections, summary of recommendations in concluding observations and findings of violations in individual cases or investigations, follow-up information on implementation of either concluding observations or individual cases obtained by the treaty bodies. It would be for distribution at the national level in local languages and to the Commission on Human Rights and the General Assembly. The extent to which the report went beyond a compilation and included a commentary on the human rights record will require further consideration of the methodology for ensuring accuracy and reliability. Credibility is key. Such a product would need to be highly professional and accurate.*

UN agencies/organs and the CCA/UNDAF process

151. *OHCHR should continue to insist that the treaty standards inform the work of the UN in all of its operational dimensions, (such as education, technical services, assistance, peace-keeping). It should continue to press for the mainstreaming of human rights throughout the UN system and on introducing human rights considerations, or a “rights-based approach”, to the work of all relevant UN specialized agencies and other bodies (including the Bretton Woods institutions). This includes continuing insistence on the full integration of human rights at the design level of the UN’s operational activities.*
152. *Wherever OHCHR has a field presence or office, they should be invited to be a member of the UN Country Team.*
153. *Where there is no OHCHR field presence or office, a focal point for receipt of information on human rights in the UN country team should be created.*
154. *All Country Teams should have a human rights thematic group. In addition, human rights should be a crosscutting theme which is integrated into the work of all thematic groups.*
155. *UNDP should use more of its resources to apply the human rights guidelines of the Resident Coordinator system and specifically organize analyses of treaty implementation pre- and post- reporting.*
156. *All CCA and UNDAF documents should be required to pass through the Learning Network.*
157. *OHCHR input into the Learning Network should be a matter of dialogue with country teams, so that both OHCHR and the country teams benefit from a continual refinement of the process of translating human rights treaty standards and concluding observations into programmatic terms.*
158. *OHCHR should have sufficient resources to review all proposed CCA and UNDAF documents. It should have the resources to provide the methodology and substantive information necessary to ensure that human rights, the treaty standards and the results of treaty body reviews, are integrated into UN programming.*
159. *The CCA Indicator Framework should include a common and more detailed list of governance, and civil and political rights indicators to be applied as relevant to specific country situations. An adequate list of core indicators for civil and political rights, based upon the treaty standards, should incorporate indicators for (a) the administration of justice, (b) political participation, and (c) personal security.*

160. *All CCA should include an assessment of the status of the implementation of human rights treaties ratified by the country concerned.*
161. *Both the design and application of all UNDAF should use human rights treaty standards and concluding observations in the identification of development priorities, and in the design of development programmes by country teams and individual agencies/organs.*

### States Parties

162. *States parties should develop a national implementation strategy for human rights treaties. It should include a step-by-step programme of action:*
- *review of existing legislation, practices and policies for compatibility with prospective treaty obligations*
  - *amendment of inconsistent domestic standards or practices*
  - *ratification of the human rights treaties (with or without specific reservations to particular domestic policies or practices which are compatible with the object and purpose of the treaty)*
  - *continued review of existing legislation, practices and policies for compatibility with treaty obligations, amendment of inconsistent standards or practices, removal of reservations when no longer necessary*
  - *enactment of implementing legislation, preferably through direct incorporation of the treaties into domestic law*
  - *the creation of a government department or office with responsibility for drafting state reports, disseminating reports, translating concluding observations*
  - *designation of a team of civil servants with specific responsibility for comparing proposed legislation or policy initiatives with treaty obligations*
  - *the development and implementation of a national central data base or website, or other appropriate method for systematically disseminating relevant treaty documents, including concluding observations*
  - *the development and implementation of a plan for educating civil society about the treaty system, (directed at primary and secondary schools, law schools, legal professional qualifying programmes, NGOs, government officials, media, judges)*
  - *the introduction of a method for systematically tabling state reports and concluding observations before the legislature/legislative assembly and distributing them to the relevant legislative committees*
  - *the creation of a national forum composed of representatives of different components of civil society and government officials to conduct an ongoing dialogue concerning: the promotion of education about the standards, the review of existing laws and practices, planning of amendments or future initiatives, monitoring the implementation of those plans, reporting to the treaty bodies, and follow-up to the treaty body conclusions.*

## **Treaty-body Visits or Missions to State Parties**

### Treaty Bodies and OHCHR

163. *Visits by treaty body members to states parties should be supported provided the targeted venue has been selected on the basis of a coherent and integrated approach to missions generally. The treaty bodies, together with OHCHR, should develop for all visits (1) a defined set of priorities (such as education, fact-finding, follow-up), and (2) a clear understanding of necessary and sufficient conditions (such as cooperation of the state party, the presence/absence of other UN human rights actors, and so on).*
164. *Prior to undertaking a visit, the following planning should occur:*
- *the context of the visit should be clear (for example, failure to report/fact-finding prior to a scheduled dialogue/follow-up to Views or concluding observations)*
  - *the objective(s) of the visit should be clear*
  - *the anticipated product(s) or performance indicator(s) should be identified*
  - *a lessons-learned analysis should be conducted following each visit*
  - *the value-added of any visit should be established in light of the network of actors in the field, (such as those already participating in follow-up - including other treaty bodies).*

## **General Comments and Recommendations**

### Treaty Bodies

165. *All treaty bodies should devote time on a regular basis to the drafting of General Comments/Recommendations. They are a valuable contribution to the development and application of international law. They should integrate and build upon the treaty bodies' experience with state reports, communications and inquiries. Specifically, they should provide a substantive elaboration of the meaning of treaty provisions, as well as an in-depth analysis of procedural concerns regarding the human rights treaties (such as reservations or denunciation).*
166. *Other treaty bodies should be routinely asked for comments during the drafting process with respect to all General Comments/Recommendations.*
167. *When the subject matter of proposed General Comments/Recommendations overlap, or is of mutual interest, the treaty bodies should make an effort to issue joint Comments/Recommendations.*
168. *External advice during the drafting process is recommended. The form and extent of external consultations during the drafting process should be regularized, or at least a general opportunity for comment should be provided, in order to avoid a perception of inappropriate exclusivity.*

## **Media**

### Treaty Bodies

169. *Concluding observations should be released no later than the last day of the session.*
170. *Final Views should be released no later than the last day of the session (at which they are adopted).*
171. *Agendas should include the timetable of consideration of all items of possible interest. Revised agendas should be issued whenever significant changes are made.*
172. *The treaty bodies should clearly identify one or more of their members as responsible for communicating with the media and also clarify the acceptable role of the secretariat in this context. There should be a designated spokesperson and alternate at all times, who is willing and able to answer questions.*
173. *The treaty bodies should formulate a press strategy at the outset of each meeting, indicating what issues or anticipated outcomes to highlight, and communicate this strategy to the OHCHR press officer. Once a week during the session, or an ad-hoc basis as required, a designated press-liaison treaty body member should update the OHCHR press officer on information or events to highlight at the OHCHR twice-weekly press conferences, or to highlight by means of a focussed press release.*
174. *Treaty bodies should hold an end-of-session briefing for NGOs, at which copies of concluding observations and final Views are provided.*

### OHCHR

175. *A press release specifically concerning the outcomes of communications should be issued at the end of every session.*
176. *The OHCHR press officer should meet with each treaty body to explain what media relations tools are available to them.*
177. *A database of major national media contacts should be developed and available to the treaty bodies. These bodies should directly be sent an advance briefing note on forthcoming treaty body sessions, and an end of session summary of key outcomes, in relation to the state concerned.*

## Meetings of Chairpersons of the Treaty Bodies

### Treaty Bodies

178. *The concept or framework of the Chairpersons' Meeting could be extended to include the creation of subcommittees composed of representatives of all treaty bodies to work on crosscutting issues when the treaty bodies have agreed to collaborative outcomes (such as joint general comments/recommendations).*  
(For a forum to discuss consolidation see Recommendation 225.)

## Treaty Body Members' Performance

### OHCHR

179. *A standard biographical data form should be circulated by OHCHR to all states parties well in advance of every election. It should be required to be completed and submitted by all candidates at least two months in advance of elections. Failure to complete the form should disqualify individuals from candidature.*
180. *The standard form should contain the following: (See Annex (4))*
- Personal details*
    - name*
    - date and place of birth*
    - nationality*
  - Education, academic and other professional qualifications*
    - degrees, year, location*
  - Employment History*
    - (a) current employment*
    - (b) past employment (including dates)*
  - Activities and experience in the field of human rights, and in the field covered by the treaty (including dates)*
  - Public Activities (including dates) (government service or employment, elected positions, public appointments)*
  - Other Activities (including dates)*
  - Publications and other works (books, articles)*
  - Languages spoken, read, written and degree of fluency*
181. *Attached to each standard biographical data form should be a number of explanatory statements. These should also be drawn to the attention of each state party by OHCHR in its Note Verbale inviting nominations in advance of states parties' meetings:*
- (a) Members of the committees shall serve in their personal capacity, and are therefore expected to abstain from engaging in any functions or activities which*

*may appear not to be readily reconcilable with the obligations of an independent expert under the treaty.*

- (b) Members shall be of high moral character, recognized competence in the field of human rights and the field covered by the Convention.*
- (c) The time commitment required for the respective treaty body, (the number of weeks of meetings per year including pre-sessional meeting times) is XXX.*
- (d) The remuneration is XXX.*

### States Parties

- 182. States parties should insist that independence and expertise be prerequisites for election to a treaty body.*
- 183. Individuals who are employed by their governments in any way, or unprepared to terminate such employment upon their election, should not be nominated or elected for treaty body membership.*
- 184. Women's representation on the treaty bodies should not be largely confined to instruments dealing with women and children.*

### **Languages**

#### Treaty Bodies

- 185. Consideration should be given to organizing membership in working groups in such a manner as to permit the use of two or three different languages without translation.*

#### Treaty Bodies and OHCHR

- 186. Rules concerning translation and interpretation in the context of treaty body practices, and OHCHR's website, should be guided by the best interests of human rights victims.*
- 187. The flexible application of rules concerning translation should not reduce the kinds of documents which ultimately appear either in official form or on the website; in other words, it should not result in the proliferation of informal papers which are not publicly accessible.*

### OHCHR

- 188. Use of the website to post "advanced, unedited" text should be encouraged, on the understanding that such texts will be replaced with official and multilingual versions once they are issued.*

189. *Sufficient human resources should be available for OHCHR to read incoming mail in a preliminary manner in order to determine where a case belongs, and whether the matter is urgent. This facility should extend to all six official UN languages, and beyond. Planning of the staff complement in the Petitions Team should take into account the importance of familiarity with the domestic legal systems of all states which have ratified individual complaint procedures, and along with that the facility to read initial submissions in a variety of languages used by correspondents.*

## **Streaming Complaints**

### OHCHR

190. *Plans to institute a common early entry point system, or central digital registry for human rights complaints, should be instituted as soon as possible. It should include the thematic and country mechanisms, the 1503 procedure and the treaty body system (including CEDAW). Follow-up to outcomes of individual complaints should be an important component of the central complaint registry. Follow-up information in principle should be public.*
191. *The relationship of a central complaints registry to the general UN registry, or the OHCHR general registry, or any initial streaming point must be established. A system of registration of all UN human rights correspondence should be designed which avoids the same correspondence being read two or three times, prior to being sent to its destination, such as by the OHCHR New York Liaison Office, the Palais des Nations registry and the OHCHR general registry. The relation between the detailed symbol number filing system of the Palais des Nations central registry to the OHCHR registry needs to be examined and clarified. A clear set of transparent and common guidelines for channelling correspondence from the initial entry point to a central complaints registry must be established. A corresponding training programme for registry officers initially handling the full range of human rights correspondence should be conducted.*
192. *As a team, staff for each of the central complaints registry, the treaty Petitions Team, and the “quick response desk”, must be able to work in all six of the UN official languages, (and priority should be given to engaging staff competent in other languages frequently used by authors.)*
193. *A clear set of transparent guidelines for the distribution of complaints by the central complaints registry should be developed. This should entail a substantive analysis of the range of possible venues, their respective mandates, the nature of their operation, and the details of their follow-up records. A clear priority should be placed on the implementation of the treaties’ legal obligations and their concomitant procedures and remedies.*

194. *There should be an overarching principle in favour of sending complaints initially to the treaty Petitions Team if they relate to states which have ratified the treaty communication or inquiry procedures. (See Diagram 5) For example, a complaint relating to rights found in the CCPR Optional Protocol/the CEDAW Optional Protocol/CAT/CERD, should be sent to the treaty system’s Petitions Team if there is an identifiable victim, and the complaint is submitted by the victim or someone sufficiently close to the victim or authorized to act on the victim’s behalf. In addition, information concerning the systematic practice of torture, or grave or systematic violations of women’s CEDAW rights, should be sent to CAT or CEDAW if it relates to a state which has ratified the respective CAT or CEDAW Optional Protocol inquiry provisions.*
195. *Criteria should be developed for promptly redirecting cases from the treaty Petitions Team if the latter determines that the complaint patently does not satisfy the criteria for interim measures or admissibility, but the matter falls within the mandates of the thematic or country rapporteurs/representatives/working groups. Alternatively, the complaints registry itself could make an initial determination of the likely satisfaction of interim measures or admissibility criteria, and therefore further screen cases before sending them to the treaty Petitions Team, if their staff included legal expertise.*
196. *A “quick response” desk for handling urgent appeals should be closely related to a central complaints registry. The guidelines developed for the distribution of all complaints should include, and govern, urgent appeals. The distribution of incoming requests for urgent action, and the follow-up on urgent appeals, should not be undertaken in isolation from the operation of the treaty body communication procedures. The distribution of urgent appeals should give priority to the treaty procedures where:*
- (a) they relate to states which have ratified the treaty complaint procedures*
  - (b) there is an allegation of a violation of a treaty right*
  - (c) the treaty body is able to act quickly*
  - (d) a brief and prompt analysis indicates that*
    - (i) the “irreparable damage” criteria has been satisfied , and*
    - (ii) domestic remedies are likely to have been exhausted, or are ineffective, unavailable or unduly prolonged.*
- Tracking follow-up to urgent action appeals should also allow this hierarchy to be kept under review, and take due consideration of factors such as the efficacy of joint appeals by Special Rapporteurs, the response time, and the overall success rate of the various mechanisms.*
197. *Within the Petitions Team, criteria for streaming cases to the different treaty bodies must be developed to govern situations where more than one treaty body potentially has jurisdiction (on the assumption the author has not specified a preferred venue). Overlap exists, for example, with respect to CCPR Article 3, and 26 and its Optional Protocol, and CEDAW’s Optional Protocol. There is also some overlap between CCPR and CAT, and between CCPR and CERD.*

198. *The treaty Petitions Team should handle complaints under all four treaties, including the CEDAW Optional Protocol. There is no justification for the duplication or creation of two sets of staff to deal with individual communications under the treaties (requiring professional competence with respect to the same issues such as admissibility, the use of interim measures, and follow-up). (See Recommendation 218)*
199. *In the future, substantive amalgamation of the servicing of all individual complaint and urgent action procedures throughout OHCHR should follow the centralization of the complaints registry for streaming those procedures at the moment in three different directions.*

## **Documentation**

### Treaty Bodies

200. *The treaty bodies have developed the substance of the annual reports in an ad-hoc manner and largely in isolation from each other, except through their secretaries which interact behind the scenes. The result is a wide variation in the material included. Common policies should be considered for the substance of annual reports, after an analysis of the reasons for information provided or withheld by the various treaty bodies. Best practices suggest including:*
- *noting the attendance by UN agencies/organs*
  - *noting the attendance by specific NGOs*
  - *as much detail as possible about the operation and substance of working group meetings*
  - *the names of country rapporteurs*
  - *the number of meetings spent on various committee activities, specifically:*
    - ▶ *considering state reports*
    - ▶ *individual communications (where applicable)*
    - ▶ *inquiries (where applicable)*
    - ▶ *general comments/recommendations*
    - ▶ *other*
  - *an overview of current working methods, in view of the frequency of changes made to working methods*
  - *follow-up information on communications including:*
    - ▶ *details of the follow-up replies received from states parties*
    - ▶ *specification of whether a reply of a state party in relation to a given View is considered satisfactory*
    - ▶ *details of the follow-up replies received from authors*
    - ▶ *details on the follow-up meetings conducted with states parties*
    - ▶ *details of follow-up missions which may have been conducted*
    - ▶ *summary of requests for interim measures and the outcomes of those requests*

- *follow-up information on state reporting including:*
  - ▶ *a table, or summary information, concerning requests for additional information, due dates, whether the information requested was submitted, whether a follow-up dialogue has been scheduled*
  - ▶ *note of the receipt of any unsolicited additional information submitted following the dialogue*
  - ▶ *details of follow-up visits which may have been conducted*
- *a summary of all of the committee's work on general comments/recommendations*
- *a list of reports received from states parties over the annual report year*
- *references to the publication, where relevant, of government comments on concluding observations or views*
- *tables concerning information about the consideration of reports which include:*
  - ▶ *all reports which have been considered*
  - ▶ *the due dates of all overdue reports*
  - ▶ *a list of overdue reports organized by state, not by kind of report*
  - ▶ *cumulative numbers concerning overdue reports, such as the number of overdue reports, the number of initial overdue reports, the lengths of time reports are overdue*
- *the dates of future sessions*
- *draft provisional agendas for future sessions, including the names of state reports to be considered at future sessions in so far as they have been scheduled*
- *the names of future working group members*
- *concerning CAT and Article 20:*
  - ▶ *the number of states under consideration or inquiries being conducted*
  - ▶ *a summary of the stages of the Article 20 process for the inquiries being conducted, including an indication of the number of countries visited*
  - ▶ *an indication of follow-up conducted to Article 20 reports*

201. *The treaty bodies should consider using the Annual Report to a greater extent as a vehicle for dialogue with the Commission on Human Rights, ECOSOC and the General Assembly. In the Annual Report the treaty bodies could highlight specific requests or needs for action or follow-up, and respond to inaction or comments these political bodies have made in their resolutions.*

202. *CERD should issue only one document on the status of the submission of reports, and it should be organized by state, not by the kind of report overdue.*

#### Treaty Bodies and OHCHR

203. *The lists of documents issued in the annual reports should include all information available at the time of the meeting, including information not formally issued. A clear indication of the public nature of the information should be provided.*

204. *Summary records listed as documentation “issued” or “before the committee” should clearly indicate when they were available (if at all), and whether or not they will ever be issued as public documents. As recommended previously (See Recommendation 110), unless summary records can be produced in a complete set, in one working language (and here the priority should be the working language of most value to nationals of the state party concerned), within four months of the dialogue they should be discontinued.*
205. *If the annual report contains sufficient information on follow-up, a separate follow-up document would not be required. At the moment however, a follow-up document on state reporting should be produced by every committee, which tracks (a) requests for additional information prior to the next report, (b) due dates, (c) when information is submitted, (d) symbol number, (e) when the information is considered.*

*(concerning lists of issues and responses see Recommendations 48, 50)*

### OHCHR

206. *Documentation which explains the working methods of the committees, in easily comprehensible form, should be produced and kept up-to-date.*
207. *Documentation on the status of reservations and declarations should be produced regularly and kept up-to-date (particularly in the context of the existence of a UN user fee for this information).*
208. *Key or “basic reference” documents for the treaty bodies which amalgamate the work of all six bodies are an important contribution to the system’s coherence. They should be regularly produced (or continue to be produced in the case of those already issued), including a compilation of general comments/recommendations, reporting history, reporting guidelines, guidelines for NGOs, reservations and declarations, rules of procedure.*
209. *Discussions with Conference Services should be held for the purpose of reaching a common understanding, within the limits set by General Assembly directives, of a time frame for the production of documents which is related to their usefulness.*
210. *Consideration should be given to rationalizing the symbol numbers for all documents issued in the treaty system. In the meantime, a key providing a list of symbol numbers associated with all kinds of documents in the treaty system should be readily available so as to maximize the capacity to locate desired documents.*
211. *The publication programme relating to the treaty bodies requires a careful reassessment. There are various series that are considerably out-of-date, and the rationale for expending the resources required to bring them up-to-date is not evident. These include collections of summary records or “selected” individual decisions. The necessity of*

*publications should be reconsidered in light of increases in the availability of material on the web. Serious consideration should be given to terminating considerably out-of-date publications. It is recommended that OHCHR engage in an external consultation with a combination of NGOs, academics, UN agencies/organs, and states parties' representatives, on the kinds of materials which are needed by users, and the requirements of a user-friendly format.*

212. *A single communications database, which is searchable by subject matter, articles of the treaties, and state, should be produced by OHCHR, (even though a few similar databases have been produced in its absence by external actors).*
213. *A clear set of policies need to be developed concerning the interaction between the treaty body secretariat and the operation of the treaty body database or OHCHR website in general. These policies should indicate:*
- (a) what information received from external sources or partners should be provided to the treaty bodies in electronic form, and a plan for obtaining it*
  - (b) clear guidelines on what information should be transmitted by the treaty body secretariat to the OHCHR staff responsible for the website, and when such information should be sent*
  - (c) what information should be developed specifically for the web in relation to the work of the treaty bodies.*
214. *The website of OHCHR and WomenWatch should be much more closely integrated. United Nations home pages should, by example, clearly indicate the relationship of women's rights and human rights.*
215. *The site of CEDAW should be considerably improved and a large number of missing documents posted. Ideally, the documentation associated with CEDAW should be completely integrated into the OHCHR website. In the meantime, the CEDAW site should include:*
- lists of issues*
  - replies to list of issues*
  - provisional agendas*
  - summary records*
  - states parties meeting documents concerning elections*
  - summary records of state parties meetings*
  - rules of procedure*
  - all documents distributed for each session except sessional reports*
  - reservations (without the subscription fee)*

216. *The OHCHR treaty body database should add (in the absence of being able to move CEDAW to the OHCHR database):*
- *the lists of issues for states appearing before CEDAW*
  - *replies to list of issues for CEDAW*
  - *state party reports for CEDAW*
  - *summary records for CEDAW*
  - *rules of procedure for CEDAW*
  - *states parties meeting documents for CEDAW,*
- and in addition:*
- *the lists of issues for states appearing before CRC*
  - *replies to list of issues for CRC*
  - *curriculum vitae/biographical data of candidates for CESCR*
  - *complete set of summary records for all committees in one language*
  - *all non-confidential reports of UN agencies/organs*
  - *summary records of all states parties meetings.*
217. *Other changes which should be made to the treaty body database are:*
- *the site should open with an initial request for a preferred language (English, French, Spanish), and documents should then be collected into three, identical, but distinct, units for the three languages*
  - *CORE documents should be put together by state*
  - *concluding observations should consistently be taken from the same place; if they are posted initially in a format derived from a document issued separately from the annual report, they should eventually be replaced, or the citation of the annual report location given, when the annual report is issued*
  - *the rationale for the entry called “Additional Info from State Party” should be stated*
  - *the entry called “Inquiry under Article 20” should be accompanied by an explanation of the context*
  - *the entry called “Info from Non-governmental sources” should either be significantly expanded or limited to a written explanation of the uses made of non-governmental information and the methodology for its submission*
  - *the rationale for the entry called “Info from governmental sources” should be clearly explained and kept current*
  - *the entry called “Info from other sources” should be renamed to reflect its actual content*
  - *the entry called “Other treaty-related document”, refers to meetings of states parties for election purposes and should be renamed to reflect its actual content*
  - *the entry called “Decision” relates only to the CERD urgent action procedure and should be renamed to reflect its actual content*
  - *the entry called “Review of implementation” should be removed, or consideration given to the development of a substantive follow-up section*
  - *the entry called “Basic reference document” should be broken down into*

*categories in order to make key documents more accessible (categories should include: guidelines for reporting, reservations, rules of procedure, status of submission of reports)*

- *a list of all documents concerning the treaty system which are issued officially, but not available on the website because of linguistic restrictions, should be created.*

*(concerning follow-up documents see Recommendations 137, 142)*

## **The Venue for CEDAW**

### *OHCHR/Secretary-General*

218. *CEDAW should be moved to OHCHR in Geneva, and the petitions and inquiry functions should be integrated into the Petitions Team.*

## **Servicing and Resources**

### *Treaty Bodies*

219. *As detailed throughout this Report, the treaty bodies must continue to improve working methods, efficiency and performance, and these improvements must manifestly accompany servicing/resource gains.*

### *OHCHR (See infra Annex (7))*

220. *In-house, there must be a clear improvement in the efficiency of OHCHR, and the UN system in relation to human rights as a whole, in terms of coordination, coherence and non-duplication. Visible commitments by OHCHR, (and the related UN structures and partners), must be made to:*
- *a coherent organizational structure,*
  - *effective managerial effort to stream assignments and rationalize procedures, and*
  - *non-duplication of in-house activities and tasks.*
221. *OHCHR should elaborate upon the 2000 Mission Statement in order to:*
- *develop the practical implications of the conceptual commitment to the centrality of the UN human rights treaty regime for the international protection of human rights; articulate the role of the High Commissioner and the responsibilities of the Office in relation to treaty standards, (See also Recommendation 141)*
  - *specify the steps necessary to ensure that the operations of OHCHR are driven by the treaty standards and that these standards are integrated into all operational*

*activities*

- *specify performance indicators for the work of the High Commissioner and the Office in this context. (See infra Annex (8)).*
222. *More specifically, OHCHR should organize its work to a greater extent along geographic lines, encouraging country-specific expertise to be developed by staff members and shared across the treaty bodies and other parts of OHCHR.*
- *The same staff member should prepare for the state reports of the same state before all treaty bodies.*
  - *Desk officers should solicit and organize country-specific information from UN agencies/organs and all other parts of the UN system on a systematic basis. (See Recommendation 91)*
  - *With the input of desk officers, a central virtual country file should be created that can be used across OHCHR in all its activities. (See Recommendation 92)*
  - *Desk officers should target information to the six treaty bodies, assist in the analysis of state reports and country situations, the preparation of lists of issues, and the liaison with government officials and NGOs at the national level on a range of issues relating to the reporting process. (See Recommendations 91, 92)*
223. *OHCHR should also assume a leadership role in encouraging broader reforms on the part of others. OHCHR should prepare a paper on working methods for the treaty bodies itemizing the differences and similarities among the treaty bodies and pointing out the advantages and disadvantages of the various working methods in operation (See infra Annex (2)).*
224. *OHCHR should prepare a paper on a thematic approach to treaty rights, grouping or clustering articles of the treaties together on a thematic basis, and identify overlapping substantive themes among the treaties (See infra Annex (3)).*
225. *OHCHR should organize consultations or an informal task force of interested states parties concerning the issue of consolidation of the treaty bodies, or pose the issue in the form of a discussion paper to each of the meetings of states parties. OHCHR should provide states with information directed at facilitating consideration of the modalities and implications of consolidation. Treaty body members should be invited to participate. The clear and concurrent objectives must be to avoid duplication and promote coherence, while preserving the independence and expert quality of the treaty monitoring system.*

*(concerning the preparation of a model report based on a thematic clustering of treaty articles see Recommendation 18)*

### States Parties

226. *States parties must acknowledge:*
- *ultimate responsibility for the successful implementation of the human rights treaties*
  - *the voluntary nature of their participation and the self-assumed character of their obligations*
  - *the universality of the standards and the goal, namely, the common human interest in ameliorating the suffering of human rights victims everywhere.*
227. *States parties should ensure that adequate funding is provided for the operations of the treaty bodies and OHCHR's supporting functions. This includes the necessary staff and facilities for the effective performance of their work, and reasonable remuneration for all treaty body members. Funding from the regular UN budget should be emphasized, in order to provide the necessary continuity and expertise to permit and sustain a culture of professionalism.*

### **Amendment**

#### States Parties

228. *The Commission on Human Rights should establish an open-ended working group to elaborate a draft omnibus procedural optional protocol to all six human rights treaties (and the Convention on Migrant Workers). The purpose of the protocol would be to establish two consolidated treaty bodies, one for considering state reports and one for examining communications and inter-State complaints, and conducting inquiries. Results would eventually have to be taken up by the respective meetings of states parties, ECOSOC, and/or the General Assembly, in accordance with the terms of each treaty.*

## Endnotes

1. For an overview of the Methodology see Annex (9).
2. See Annex (10).
3. See Annex (11).
4. See Annex (12).
5. Reports prepared by Professor Philip Alston, A/44/668,(1989); A/CONF.157/PC/62/Add.11/Rev.1 (22 April 1993); E/CN.4/1997/74 (27 March 1997). The latter two are reproduced in A.F. Bayefsky (ed.), *The UN Human Rights Treaty System in the 21<sup>st</sup> Century*, Kluwer Law International, c. 2000 at pp. 515-628.
6. E/CN.4/1998/85 (4 February 1998), E/CN.4/1998/85/Add.1, E/CN.4/1998/85/Corr.1; E/CN.4/2000/98 (20 January 2000), reproduced in A.F. Bayefsky (ed.), *The UN Human Rights Treaty System in the 21<sup>st</sup> Century*, Kluwer Law International, c. 2000 at pp. 629-677.
7. Contribution of Amnesty International to the World Conference on Human Rights, “Facing up to the Failures: Proposals for Improving the Protection of Human Rights by the United Nations”, A/CONF.157/PC/62/Add.1, 5 April 1993; Contribution of the Council of Europe to the World Conference on Human Rights, “Human Rights at the Dawn of the 21<sup>st</sup> Century”, A/CONF.157/PC/66 (13 April 1993) and Add. 1; Contribution submitted by CEDAW to the World Conference on Human Rights, A/CONF.157/PC/62/Add.13 (27 April 1993); Contribution of CESCR to the World Conference on Human Rights, A/CONF.157/PC/62/Add.5, (26 March 1993).
8. Prepared by A.F. Bayefsky, and submitted to the I.L.A. Helsinki Conference, 11-17 August 1996, reproduced in A.F. Bayefsky (ed.), *The UN Human Rights Treaty System in the 21<sup>st</sup> Century*, Kluwer Law International, c. 2000 at pp. 681-699.
9. The reports (CEDAW did not participate in the first meeting) are: A/39/484 (20 September 1984); A/44/98 (3 February 1989); A/45/636 (30 October 1990); A/47/628 (10 November 1992); A/49/537 (19 October 1994); A/50/505 (4 October 1995); A/51/482 (11 October 1996); A/52/507 (21 October 1997); A/53/125 (14 May 1998); A/53/432 (25 September 1998); A/54/805 (21 March 2000); Reports 1-11 are reproduced in A.F. Bayefsky (ed.), *The UN Human Rights Treaty System in the 21<sup>st</sup> Century*, Kluwer Law International, c. 2000 at pp. 703-870. A/55/206 (19 July 2000).
10. Congregation of the Good Shepherd.
11. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 120.

12. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 134.
13. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 9.
14. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 43.
15. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 62.
16. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 62.
17. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 63.
18. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 24.
19. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 97.
20. A/55/40, (Vol. 1), at p. 90, paras. 598-599.
21. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 1,2.
22. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 63.
23. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 63.
24. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 79.
25. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 68.
26. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 62.
27. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 62.
28. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 80.
29. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 81.
30. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 82.
31. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 83.
32. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 84.
33. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 76.
34. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graphs 85, 86.

35. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 3, 4.
36. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 3.
37. See Diagram 1, “Cycle of Engagement”, *infra section* 24. Follow-up on State Reporting or Operationalizing the Human Rights Treaties.
38. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 5, 6.
39. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 2.
40. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 1.
41. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graphs 24-37.
42. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 7, 8.
43. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 23.
44. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 39.
45. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graphs 42.7, 42.61, 42.84, 42.102, 42.116, 42.122, 42.182.
46. See Thematic Index of Treaty Rights, Annex (3). In addition, related separate thematic entries in the index, or rights which are closely related, are flagged by cross-references (“see also”), and can be grouped together for reporting and consideration.
47. Comparative Summary of Working Methods of All Committees, Annex (2), Question 9.
48. 1999 report to HRC, considered November 2000.
49. 2000 report to HRC, not yet considered.
50. 1998 report to CERD, considered March 1999.
51. 1998 report to CAT, considered May 1999.
52. June 1999 report to CEDAW, considered January 2000.
53. 1997 report to CEDAW, considered January 2000.

54. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 10-15.
55. “Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights”, A/RES/55/90, 4 December 2000, (repeated in Commission on Human Rights Resolution 200/75, 26 April 2000, para. 21): “*Also welcomes* the contributions of the human rights treaty bodies, within their mandates, to the prevention of violations of human rights, in the context of their consideration of reports submitted under their respective treaties.”
56. See for example, A/54/18, Decision 4(54) at p. 8, para. 5.
57. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 16-21.
58. Comparative Summary of Working Methods of All Committees, Annex (2), Question 22.
59. This is in contrast to the European Court of Human Rights Rules of Procedure, Rule 41: “The Chamber shall deal with applications in the order in which they become ready for examination. It may, however, decide to give priority to a particular application.”
60. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 105.
61. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 104.
62. Comparative Summary of Working Methods of All Committees, Annex (2), Question 23.
63. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 29.
64. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 93.
65. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graphs 112, 113.
66. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 113.
67. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 95.
68. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 114, Graph 115.
69. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 26.
70. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 93.
71. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 92.

72. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 94.
73. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 97.
74. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 94.
75. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 23-34.
76. Comparative Summary of Working Methods of All Committees, Annex (2), Question 35.
77. Comparative Summary of Working Methods of All Committees, Annex (2), Question 36.
78. A/55/40, (Vol. 1), at p. 90, paras. 598-599.
79. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 87.
80. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 90.
81. Statistical Survey of Individual Complaints Dealt with by the Human Rights Committee under the Optional Protocol to the ICCPR, 15 November 2000. ([www.unhchr.ch](http://www.unhchr.ch)).
82. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 38.
83. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 37-40.
84. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 41-48.
85. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 38.
86. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 49-54.
87. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 7.
88. Statistical Analysis of the Human Rights Treaty System, Annex (1), Tables 5, 6.
89. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 38.
90. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 55-56.
91. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 57-66.

92. See Diagram 1, “Cycle of Engagement”, *infra section* 24. Follow-up on State Reporting or Operationalizing the Human Rights Treaties.
93. It is an autonomous, non-profit, NGO incorporated in Malaysia in 1993. IWRAW stands for International Women’s Rights Action Watch.
94. *Building Capacity for Change: A Convention Implementation and Monitoring Programme 2000-2002*, Shanthi Dairiam
95. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 67-73.
96. Noeleen Heyzer, Executive Director, UNIFEM, *Bringing Equality Home*, ed. I. Landsberg-Lewis, UNIFEM, c. 1998, p. 6.
97. Carol Bellamy, Executive Director, UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, R. Hodgkin and P. Newell, UNICEF, c. 1998, p. IX.
98. *Annex to the Memorandum of Understanding of 4 March 1997 between UNDP and UNHCHR*.
99. *Note on International Protection*, EC/48/SC/CRP.27, 25 May 1998, para. 1.
100. *Note on International Protection*, A/AC.96/930, 7 July 2000, para. 38.

101. See also:

**CESCR**

*Article 16(b)*

The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

*Article 18*

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

*Article 22*

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this

part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

**CCPR**

*Article 40(3)*

The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

102. September 2000.
103. 12<sup>th</sup> Meeting of Chairpersons of the Treaty Bodies, 5-June 2000.
104. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 74, 75.
105. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 76-82.
106. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 7.
107. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 7.
108. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 5.
109. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 83-88.
110. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 89-93.
111. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 116.
112. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 1, Graph 1.
113. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 1, Chart 2.
114. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 1, Table 3.
115. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 1, Graph 4.

116. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 1, Chart 5.
117. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 1, Table 6.
118. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 1, Graph 7.
119. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 1, Chart 8.
120. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 1, Table 9.
121. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 1, Graph 10.
122. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 1, Chart 11.
123. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 1, Table 12.
124. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 1, Graph 13.
125. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 1, Chart 14.
126. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 1, Table 15.
127. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 1, Graph 16.
128. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 1, Chart 17.
129. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 1, Table 18.
130. Saudi Arabia, 7 September 2000, Reservation to the Convention on the Elimination of All Forms of Discrimination Against Women.

131. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 1, Graph 10.
132. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 1, Graph 16.
133. See also article 19 (c) of the Vienna Convention on the Law of Treaties, Misc. 19 (1971), Cmnd. 4818.
134. General Comment No. 24, para. 18; HRI/GEN/1/Rev.4, p. 118.
135. E/CN.4/Sub.2/1999/28, para. 20.
136. A/52/10, p. 126.
137. E/CN.4/Sub.2/1998/25.
138. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 3, Graphs 39, 42, 45, 48, 51, 54.
139. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 3, Tables 38, 41, 44, 47, 50, 53.
140. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 3, Tables 37, 40, 43, 46, 49, 52.
141. U.S. comment to the Human Rights Committee: A/50/40, p. 159.
142. U.K. comment to the Human Rights Committee, A/50/40, p. 130.
143. CEDAW, A/53/38/Rev.1, paras. 6, 8, 15, 16, 17.
144. Human Rights Committee, A/50/40, para. 19.
145. CCPR, HRI/GEN/2, para. 8, p. 26; CEDAW, HRI/GEN/2, para. 40, p. 9; CRC, HRI/GEN/2, para. 11, p. 53.
146. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 2, Chart 20.
147. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 2, Chart 23.
148. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 2, Chart 26.

149. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 2, Chart 29.
150. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 2, Chart 32.
151. Reservations and Declarations to the UN Human Rights Treaty System, Annex (5), Section 2, Chart 35.
152. United Nations Charter, Article 96(1), 96(2).
153. Resolution 2000/26, E/CN.4/Sub.2/2000/L.11/Add.2.
154. I.L.C. Report A/55/10, Chapter VII.
155. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 94-101.
156. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 7.
157. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 38.
158. Examples of these resolutions from 1998-2000 are reproduced in A.F. Bayefsky (ed.), *The UN Human Rights Treaty System in the 21<sup>st</sup> Century*, Kluwer Law International, c. 2000 at pp. 873-962.
159. *Status of International Covenants on Human Rights*, CHR Resolution 200/67, 26 April 2000.
160. *Convention on the Elimination of All Forms of Discrimination Against Women*, A/RES/55/70, 4 December 2000.
161. *The rights of the child*, A/RES/55/79, 4 December 2000.
162. *Effective Implementation of international instruments on human rights, including reporting obligations under international instruments on human rights*, CHR Resolution 2000/75, 26 April 2000.
163. *Effective Implementation of international instruments on human rights, including reporting obligations under international instruments on human rights*, A/RES/55/90, 4 December 2000.
164. *Renewing the UN: A Programme for Reform*, Report of the Secretary-General, 14 July 1997, A/51/950.

165. There is no requirement of formal government approval; the CCA is intended to identify the key issues as a basis for future advocacy, policy dialogue and the preparation of a common UN response in relation to a given state. The aim is to achieve a common understanding of a country's development challenges, and to identify new ideas and opportunities together with national authorities, civil society and development partners.
166. An indicator is a "measurement or variable conveying information which may be quantitative or qualitative, but consistently measurable." The indicator framework includes indicators relating to governance and civil and political rights, which are intended to measure dimensions of human rights such as security of the person, justice and governance. Civil and political rights indicators are particularly underutilised, but in their absence suggest a truncated vision of the state.
167. This is an important entry point for OHCHR in the preparation of the CCA and UNDAF, particularly where there is no OHCHR representative on the Country Team.
168. They are responsible for, and coordinate, all the operational activities for development by the UN system at the country level. They are funded and managed by UNDP; the Resident Coordinator is the most senior head of agency in a country, which is most often the UNDP Resident Representative; the guidelines were adopted by CCPOQ (the Coordinating Committee on Programme and Operational Questions) which coordinates the system of Resident Coordinators.
169. They include representatives of UN funds and programmes, specialized agencies and other UN entities accredited to a given country.
170. It covers all the programmable and operational engagements of participating organizations for development cooperation at the country level. The government must concur with the contents of the document.
171. OHCHR has field presences in 23 states (21 where there are UN Country Teams), and advisory services or technical cooperation projects in an additional 16 different states (15 of which have UN country teams).
172. A/RES/48/141, 20 December 1993.
173. The conclusions of a workshop convened by the Commission on Human Rights in Paris in October 1991, and endorsed in CHR Resolution 1992/54, General Assembly Resolution A/RES/48/134, 20 December 1993.
174. E/CN.4/2001/99, 26 December 2000, *National institutions for the promotion and protection of human rights*, Report of the Secretary-General submitted in accordance with resolution 2000/76, at para. 6.

175. *Conclusions of the Inter-sessional Workshop on the Development of National Plans of Action for the Promotion and Protection of Human Rights in the Asia-Pacific Region*, Annex, Bangkok, Thailand, 5-7 July 1999.
176. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 102-105.
177. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 106-112.
178. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 113-116.
179. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 117, 118.
180. Comparative Summary of Working Methods of All Committees, Annex (2), Questions 119-123.
181. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graphs 44-49.
182. A/53/40, Annex III, p. 92.
183. Comparative Summary of Working Methods of All Committees, Annex (2), Question 124.
184. Judge Luzius Wildhaber, President, European Court of Human Rights, at the *European Ministerial Conference for Human Rights*, Rome, 3 November 2000. Once a case is communicated to the state, the state must respond in English or French so that the applicant or their representative must have a passive knowledge of these languages, although the applicant may continue to communicate in another of the Council of Europe languages.
185. For figures of what might be registered on the basis of current correspondence given greater resources, see *supra section 10*. Time Spent on Considering Individual Communications.
186. See *supra section 20*. The Special Procedures/Mechanisms
187. A/55/40, (Vol. 1), para. 563.
188. Rule 107(1)(f).
189. Rule 86, CCPR; Rule 108(9), CAT.
190. Beijing Declaration and Platform for Action, A/Conf.177/20 (17 October 1995) Annex I and II, adopted on 15 September 1995 at Annex I, para. 14.

191. *“Integrating the human rights of women throughout the United Nations system”*, Commission on Human Rights Resolution 2000/46, 20 April 2000.
192. *Gender Integration into the Human Rights System: Report of the Workshop, United Nations Office at Geneva, 26-28 May 1999*, E/CN.6/2000/8, Annex at 41, paras. 113-116.
193. CEDAW Convention, Article 4.
194. CEDAW General Recommendation No. 19, eleventh session, 1992, HRI/GEN/1/Rev.3, at 129-130, para. 9.
195. CEDAW Convention, Article 1.
196. See Articles 7, 10, 11, 15.
197. See for example, CERD, A/53/18, 1998 at 8; HRC, A/53/40, 1998 at paras. 22, 429, 430, 431, 432, 510; CAT, A/50/44 (1995 at paras. 17, 18, 20); CESCR, E/1997/22, paras. 374, 375, 377); reports of the Chairpersons, such as, A/53/432, paras. 39, 40, 41, 43, 44, 45, 47, 64; The Report of the independent expert on enhancing the long-term effectiveness of the UN human rights treaty system, E/CN.4/1997/74, at paras. 7(f), 81, 83.
198. As first recommended in 1997, *Final Report on enhancing the long-term effectiveness of the United Nations human rights treaty system*, E/CN.4/1997/74, para. 120.
199. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 4.
200. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 6.
201. CCPR, Article 36; CEDAW, Article 17(9); CRC, Article 43(1).
202. Commission on Human Rights Resolutions 2000/75, 26 April 2000, para. 6; 2000/67, 26 April 2000, para. 22; 2000/43, 20 April 2000, para. 43; 2000/85, 27 April 2000, para. 14; General Assembly Resolutions A/RES/55/89, 4 December 2000, para. 26; A/RES/55/90, 4 December 2000, para. 5; A/RES/55/70, 4 December 2000, para. 12; A/RES/55/79, 4 December 2000, para. 7; A/RES/55/181, 4 December 2000, II, para. 4.
203. See, for example, HRI/MC/2000/4, 5 May 2000, Annex II.
204. A/RES/44/128, 15 December 1989; entered into force 11 July 1991.
205. A/RES/54/4, 6 October 1999; entered into force 22 December 2000.
206. Adopted by the states parties, 14<sup>th</sup> meeting, and endorsed by the General Assembly in A/RES/47/111, 16 December 1992; not yet in force, 30 states parties.

207. Adopted by the states parties 8 September 1992, and endorsed by the General Assembly in A/RES/47/111, 16 December 1992, not yet in force, 23 states parties.
208. Adopted by the states parties 12 December 1995 and approved by the General Assembly in A/RES/50/155, 21 December 1995, not yet in force, 96 states parties.
209. A/RES/50/202, 22 December 1995, adopted by the states parties 22 May 1995, and noted with approval by the General Assembly in A/RES/50/202, 22 December 1995, not yet in force, 24 states parties.
210. A/RES/54/263, 25 May 2000, not yet in force, 3 states parties.
211. A/RES/54/263, 25 May 2000, not yet in force, 2 states parties.
212. See E/CN.4/1997/105, 18 December 1996; Commission on Human Rights Resolution 2000/9, 17 April 2000.
213. See E/CN.4/2000/58, 2 December 1999.
214. ECOSOC Resolution 1985/12, 28 May 1985.
215. ECOSOC Resolution 1990/251, 25 May 1990.
216. ECOSOC Resolutions 1995/39, 25 July 1995; 1999/287, 30 July 1999.
217. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 1.
218. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 9.
219. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 43.
220. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 23.
221. Statistical Analysis of the Human Rights Treaty System, Annex (1), Tables 23, 39.
222. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 24.
223. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 7.
224. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 38.
225. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 104, 105.
226. Statistical Analysis of the Human Rights Treaty System, Annex (1), Table 94.
227. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 57.

228. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 116.
229. Statistical Analysis of the Human Rights Treaty System, Annex (1), Graph 43.
230. A/54/6 (Sect. 22), Table 22.4, p. 6, and 22.25, pp. 11-12.