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Item 8 of the provisional agenda

**Enhancing the effectiveness of the treaty bodies:
a coordinated approach to the work of the treaty bodies**

Follow-up procedures on individual complaints

Note by the Secretariat

I. Introduction

1. Recognizing the need to further improve and harmonize the working methods of the human rights treaty bodies, the tenth Inter-Committee Meeting (ICM) reiterated its previous recommendation (A/64/276) to establish a working group on follow-up, including as members both the rapporteurs on follow-up to concluding observations and the rapporteurs on follow-up to individual communications of each treaty body, if applicable, or the members responsible for follow-up activities. It also recommended that the working group be divided into two subgroups, one on follow-up to concluding observations and inquiries/visits, and one on follow-up to individual communications. This recommendation was endorsed by the Chairpersons of treaty bodies at their twenty-second meeting, held in July 2010. This note was prepared to serve as a basis for discussion in the subgroup on follow-up to individual communications.

2. This note focuses on the existing written follow-up procedures adopted by a number of Committees in respect of decisions/Views of the treaty bodies. It provides information regarding the convergence and divergence of these procedures, highlights their added-value and the challenges they bring. The paper also provides suggestions on ways to strengthen and harmonize them, and offers a few options for the future.

II. Mandate for the follow-up procedure

3. This paper should be read in conjunction with the first paper prepared by the Secretariat for the tenth Inter-Committee Meeting (HRI/ICM/2009/7), which took place between 30 November and 2 December 2009. That paper, called “Follow-up to decisions of the treaty bodies”, provided a basic outline of the follow-up procedures across the treaty bodies.

4. The follow-up mandate of five of the existing Committees¹ is based on their rules of procedure: in the Human Rights Committee (HRC), rules 101 and 103; in the Committee against Torture (CAT), rules 112 and 114; in the Committee on the Elimination of Racial Discrimination (CERD), rule 95; in the Committee on the Rights of Persons with Disabilities (CRPD), rule 75; and in the Committee on Migrant Workers (CMW), the rule has to be drafted. For two Committees, the follow-up procedure is based on the treaty itself: article 7 of the Optional Protocol to the Convention on the Elimination of Discrimination against Women and article 9 of the Optional Protocol to the Convention on Economic, Social and Cultural Rights (although this instrument is not yet operative).

5. Given that CRPD has not yet considered any individual communication, and that the communications procedure for CMW and CESCR have not yet entered into force, this paper only focuses on the practice of HRC, CAT, CERD, and CEDAW.

6. In considering the situation of follow-up to decisions of the treaty bodies, the statistics in the table below should be borne in mind. It is evident that the Human Rights Committee has the most experience to date in dealing with individual complaints.

<i>Committee</i>	<i>Number of cases registered to date</i>	<i>Number of cases decided to date – finding violation/s</i>
Human Rights Committee	2006	603
Committee against Torture	440	49
Committee against Racial Discrimination	48	9
Committee on the Elimination of Discrimination against Women	28	5

III. Added-value of the procedure

7. The aim of the follow-up procedure is to monitor and encourage implementation by States parties of the Committees’ compliance with its recommendations. The establishment of a follow-up procedure that functions well is essential to ensure the credibility and authority of the treaty bodies (Committees), and to avoid the false perception that the consideration of individual complaints is merely academic in nature. Indeed, satisfactory follow-up may not only redress the complainant’s own grievance but it may also have a more general consequential effect when it gives rise to amendments in domestic legislation. To date, there have been around 20 to 25 amendments to legislation to which decisions of HRC have contributed.

¹ A sixth Committee, soon to be established, is the Committee on Enforced Disappearances, which will monitor the International Convention for the Protection of All Persons from Enforced Disappearance, which enters into force on 23 December 2010. There is no provision for a follow-up procedure in the treaty itself.

IV. Convergence and divergence

Lay out of decisions following the finding of violations

Remedies and remedies section of decisions

8. In the decisions, following a finding of a violation, all of the Committees request the States parties concerned to take some action to remedy the breach. In principle, the HRC, CERD, and CAT, only suggest a remedy for the particular victim of the violation. At times, these recommendations are not very detailed and refer broadly to the provision of, by way of example, “an adequate/effective remedy”. Often they are more specific, recommending, for example, payment of adequate compensation, early release, refraining from forcible removal of the victim, a retrial, or amendments to legislation. It should be noted that such recommendations are not always fully consistent with prior jurisprudence.

9. There is a clear divergence between CEDAW and the other Committees on the detail provided in the Committee’s decisions on what action the State party should take to rectify the violation and the amount of time spent in plenary considering the most appropriate remedy. CEDAW sets out recommendations relating to the victim, including compensation, as well as more general recommendations resembling, to some extent, concluding observations.

10. HRC, CERD and CEDAW have all requested the payment of compensation in cases of violations of the treaties monitored by them. None of the Committees have ever quantified the compensation recommended. Generally, if compensation is provided, the Committees have considered the provision of compensation by the State party in itself to be evidence of its willingness to cooperate and thus satisfactory. There has been little discussion by the Committees on the quantum of compensation. Many complainants have requested the Committee to consider the issue of pecuniary and non-pecuniary compensation in this context.

11. In its decisions, following the reference to a remedy, CEDAW recommends that the State party publish the decision, translate it (if necessary) into the official language and distribute it widely. CERD also recommends that the State party give wide publicity to the decision. The other Committees do not make such recommendations.

“Implementation section” of decisions

12. At the end of the dispositive part of all of the Committees’ decisions, there is a standard paragraph, following, or as part of, the remedy section, urging the State party concerned to provide information on the steps taken to give effect to the decision within a particular length of time. These technical paragraphs are standard for each Committee but differ from one another.

13. HRC requests information “within 180 days”; CAT and CERD² within 90 days and CEDAW, in accordance with article 7 of the Optional Protocol, within six months.

14. HRC, CAT and CEDAW provide the ground upon which they request such information. CEDAW refers to article 7 of the Optional Protocol, HRC refers to the State parties obligations under article 2 of the Covenant (right to an effective remedy), and CAT

² However, in Communication No. 34/2004, Denmark was given six months to provide information about the measures taken to give effect to the Committee’s opinion.

refers to the pertinent article of its rules of procedure (rule 112, para. 5). CERD does not provide a basis in its decisions for such requests for information from States parties.

Rapporteurs on follow-up

15. HRC, CAT and CERD each designate one member of their respective Committee to act as rapporteur on follow-up to all of the Committee's decisions. CEDAW, however, designates two such rapporteurs, to follow-up on each decision.

Reporting and analysis of follow-up information

16. All Committees adopt interim reports every session, prepared by the Committees' Special Rapporteurs on Follow-up with the assistance of the Secretariat, which sets out all new follow-up information and developments received from the State party or complainant since the previous session. These reports are compiled in a special chapter on follow-up in the Committees' annual reports. The lay-out of these reports is slightly different for each Committee. In addition, both CERD and HRC have a separate chapter/annex in the form of a table, which lists the number of cases in which the Committee found violations of the treaty in question, indicates whether the State party provided a follow-up response, and reflects the Committee's decision with respect to that response. Neither CEDAW nor CAT has such a table in their annual reports.

17. All of the Committees adopt follow-up decisions based on an analysis of follow-up information provided by State parties and/or complainants. In principle, if the Committees do not regard the redress provided as "satisfactory", they tend to try and continue the "dialogue with the State party", in an attempt to arrive at a satisfactory remedy, rather than discontinuing the case under the follow-up procedure. Even in cases where the Committees find the responses "unsatisfactory", they prefer to continue the dialogue rather than close the procedure. The Human Rights Committee has found attempts to categorize follow-up responses as "satisfactory" and "non-satisfactory" as problematic and the majority of cases remain ongoing. Unlike the follow-up to concluding observations procedure of HRC, when the procedure stops at the time the next periodic report is due, the follow-up to decision's procedure has no such formal limitation and many very old cases decided by HRC remain open with "dialogue ongoing".

Confidentiality and follow-up information

18. In principle, all of the Committees consider that information provided in the context of follow-up to their decisions is public. HRC and CAT consider interim follow-up reports in public session, but CERD and CEDAW hold such meetings in private.

19. All information received from one of the parties (State or complainant) in the context of follow-up to decisions is transmitted to the other party, for comments within a deadline of two months. Any decisions made by the Committees during consideration of the interim follow-up reports are transmitted to the parties after the session. Regular reminders are sent to the parties for information on follow-up.

Missions

20. HRC has carried out only one follow-up mission to date to a State party, which was experiencing particular difficulties with the implementation of the Committee's Views. A mission to Jamaica (24 to 30 June 1995) was undertaken on the basis of the large number of

communications registered and considered by the Committee against this State, and the State party's increasing impatience with the length of time taken by the Committee to consider complaints.

21. CAT also carried out a confidential follow-up mission to Senegal relating to the case of *Suleymane v. Senegal*,³ the outcome of which subsequently became public and was summarized in its annual report (A/65/44).

Publication in annual report and on website

22. All Committees publish their interim follow-up information in their annual reports. All HRC interim follow-up reports are placed on the OHCHR website immediately after each session.

V. Challenges of the individual-complaints procedure

23. A preliminary assessment of the procedure allows for the identification of a number of challenges which will need to be addressed in the upcoming evaluation within the concerned Committees.

Lack of procedural guidelines

24. No Committee has yet adopted procedural guidelines on how to process the information received from States parties and complainants under the follow-up procedure. The lack of a written methodology may affect the consistency and sustainability of the procedure, due to the turnover of staff in the Secretariat, as well as the changes/departure of Committee rapporteurs.

Unsatisfactory implementation of decisions by State parties

25. While there have been many cases which could be considered as "success stories", it is clear that a large number of States fail to apply the remedies as recommended. This obviously has an adverse effect on the credibility and authority of the complaints procedure. The reasons why States parties often fail to implement these decisions have often been suggested to relate to, inter alia: a lack of understanding by States parties of their obligations under the respective treaties; unwillingness, on the part of certain States parties to abide by their obligations; the "non-legally binding" nature of decisions; the divergent views between States and the Committees on the interpretation of treaty provisions; weak decisions often resulting from consensus decision-making; insufficient follow-up by the Committees themselves; lack of political support (unlike ECHR – where implementation is monitored by the Council of Ministers, i.e. the States themselves); lack of expertise within States parties and lack of assistance to them on how to better implement; and failure to adopt enabling legislation.

³ See 181/2001, Views adopted on decision of 17 May 2006.

Lack of awareness

26. There is a lack of knowledge and awareness among States, the public and other stakeholders on the individual-complaints procedure, including on how to implement decisions.

Lack of resources

27. As in all aspects of treaty-body work, the procedure of follow-up to individual complaints lacks resources.

Lack of plenary time/analysis spent on follow-up

28. Given time limitations during the sessions, CAT and HRC can normally only afford to assign one hour to the consideration of follow-up to decisions. Given the number of decisions upon which these Committees must follow-up (in particular, HRC), an in-depth analysis of responses from States parties is limited, as is engagement by all Committee members in the process. In both CAT and HRC, one member of the Committee is burdened with the entire follow-up procedure and analysis of all follow-up responses. This is a particular burden on the rapporteur of HRC.

VI Strengthening the existing follow-up procedures

29. In light of the preliminary assessment above, and recalling the recommendation of the tenth Inter-Committee Meeting whereby the working group on follow-up should serve as a tool for harmonization of such procedures, a few suggestions to strengthen and streamline the existing follow-up procedures are made below.

Adoption of procedural guidelines

30. Procedural guidelines would provide guidance to the Committees and the Secretariat on: to whom decisions should be distributed, bearing in mind that it should be as broad as possible; how the submissions from States parties and complainants on follow-up should be assessed; the frequency with which reminders should be sent; when the follow-up procedure should be considered complete; how the responses should be categorized, including the language used; and how the Committee should interact with stakeholders.

Layout of decisions and annual reports - remedy and implementation section of Committees' decisions

31. The working group may wish to discuss how the Committees can harmonize and improve their recommendations on remedies (including the issue of compensation) to assist States parties in implementation. Such a discussion might include consideration of the more detailed approach taken by CEDAW to this issue in contrast to the other Committees. It should be noted that HRC is currently drafting a paper on remedies, which could give guidance to the other Committees.

32. The working group may also wish to encourage CEDAW and CAT to consider including a table in their annual report, like that of HRC and CERD, listing the decisions in which they found violations as well as the status/categorization of the follow-up response. It may wish to encourage HRC and CAT to use the language adopted by CEDAW and

CERD in their decisions, recommending the State party to publish the decision, translate it (if necessary) into the official language and distribute it widely. Finally, the Working Group may wish to encourage CERD in the “implementation section” of its decisions to consider adopting the same approach as CAT and refer to the pertinent rule of procedure in requesting the State party to inform it of measures taken following a decision.

33. The working group may wish to consider the issue of the length of time Committees give States parties in their decisions to provide follow-up responses.

Rapporteurs on follow-up

34. The working group may wish to consider ways of reducing the burden on the rapporteurs on follow-up (in particular with respect to HRC) and of encouraging other members of the Committees to take a more proactive role in following-up on decisions, possibly through the establishment of working groups or co-rapporteurs on follow-up.

Visibility

35. The working group may wish to consider how it can improve the visibility of the treaty bodies, including the individual complaints procedure. It may wish to encourage Committees to publish their interim reports on the OHCHR website immediately after adoption. It may consider encouraging CERD and CEDAW to discuss and adopt their follow-up reports in public sessions like the other two Committees. In addition, it may wish to encourage all of the Committees to include the provision of information on follow-up to decisions as a standing item to be announced during their press conferences. Judicial colloquiums which contributed to the awareness of the individual complaints procedure and increased reference to treaty-body jurisprudence in national and international instances could be recommenced. The working group may envisage asking all Committees to ensure that a paragraph on individual cases is systematically included in their lists of issues and, when relevant, in the concluding observations.

Unsatisfactory implementation

36. The working group may wish to consider ways in which States parties can be assisted and encouraged to implement their decisions, including through review and support in drafting enabling legislation, possibly with the assistance of the field offices of OHCHR.

37. One of the issues frequently mentioned at judicial colloquiums organized in the context of regional workshops on follow-up is the desirability for more fully reasoned and articulated decisions. The necessity to provide clear guidance to States parties in the decisions themselves on what the Committees expect of them in terms of providing a remedy should not be underestimated.

38. The working group may encourage the Committees to engage in a deeper analysis of follow-up submissions and discussion on the nature and status of State parties' responses.

39. Given the obvious benefits of follow-up missions/country visits, the working group may wish to consider how the Committees could carry out such visits more frequently, including the criteria to be applied in choosing the particular States for visits and cooperation and possible scheduling with the rapporteur on follow-up to concluding observations. The working group may also wish to consider how the Committees could engage in inter-sessional follow-up meetings, undertaken either by the rapporteur on follow-up or other Committee members.

40. The working group may wish to consider the commissioning of a research project of best practices (possibly through a university) on examples of good implementation to date, to include not only what was done to implement decisions in particular States and regions,

but also how it was done, internally in terms of enabling legislation, procedures and mechanisms, and what specific systems are in place, in the particular countries, to address Committees' decisions on human rights violations. The working group may wish to encourage the Committees to consider some preliminary work in this regard, which could involve the transmission of a questionnaire to certain States parties in an effort to establish basic information on implementation.
