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Report

Progress Report on Implementation of FIDH Programme (2000-2001)

Treaty Monitoring Bodies : Mechanisms to be supported

With support from the European Commission, the Royal Ministry of Foreign Affairs of Norway, the Swedish International Development Agency, and the Department for Development and Cooperation of the Swiss Federal Department for Foreign Affairs et du Département pour le Développement et la Coopération du Département fédéral suisse des Affaires étrangères.

INTRODUCTION

The vocation of the International Federation for Human Rights (FIDH) is to further implementation of all the rights defined in the Universal Declaration of Human Rights and other international instruments designed to protect human rights. FIDH brings together 114 national human rights organisations from 90 countries around the world and serves them as a network for expertise and solidarity, as well as a main communications line to the international bodies. Its mission, thus, is to keep its partners informed about possibilities to bring their concerns and demands to the international level and help them use international mechanisms for the protection and promotion of human rights.

To strengthen actions by FIDH and its partners, the Federation created a programme entitled "Training for Human Rights Defenders in Monitoring Implementation of International Instruments for the Protection of Human Rights through the Treaty Monitoring Bodies", or more simply, the "Committees Programme". This programme was started on 15 April 2000, with focus on the work of six special UN mechanisms that all operate along the same lines, namely, the Treaty Monitoring Bodies, known as the "Committees". Each is composed of 10 to 18 independent experts that equitably represent the various regions of the world. The Committees meet periodically in Geneva or in New York to supervise the States' proper application of the six international conventions on the protection and promotion of human rights. Each Committee is responsible for the monitoring of one convention.

The FIDH Permanent Representation to the United Nations in Geneva is in charge of implementing the Committees Programme, which seeks to encourage the participation of FIDH partners in the work of the six UN Committees and to help them convey an independent evaluation of the national situation with regard to the respect, protection and promotion of human rights to the Committee experts. In so doing, FIDH is not only trying to provide its partners with an additional channel of action, but also to strengthen the Committees' capacity for making analyses and wielding influence.

The purpose of this report is to assess the results obtained by the FIDH Committees Programme after two years of work. The brief is to measure the impact of actions by FIDH partner organisations on the Committees, to bring out difficulties encountered along the way, and to determine what needs to be done to improve their actions. Careful thought still needs to be given to the role of the Committees within the UN system for the protection and the promotion of human rights, and how to give the Committees more powers of control. In this field, FIDH strives to contribute its experience at the discussions underway at the United Nations.[1]

1.This report covers the period between January 2000 and December 2001. It was drafted during 2001 by the FIDH Committees Programme leaders, with assistance during the summer of 2001 from Mylène Bidault, a legal expert and specialist in the Committees system.

III. Treaty monitoring bodies: Mechanisms to Reinforce

For more efficient monitoring of International conventions for the protection and promotion of human rights.

The Committees have, at their disposal, a whole range of procedures aimed at ensuring widespread monitoring of the Conventions of which they are guardians. Although these procedures sometimes vary from one Committee to the other, all of them have, at the very least, been mandated to examine periodic state party reports. This is the common law procedure entrusted to each one of the Committees and is the basis of their action.[14]

In accordance with this procedure, the party states to a Convention are periodically required to submit a report to the competent Committee on legislative, judicial, administrative and other measures they have adopted and to implement the provisions of the Convention. At this time, States are requested to describe their constitutional and legislative arsenal, as well as the practical situation in the field and any difficulties encountered.

The FIDH Programme works within the context of this procedure, and the Treaty Monitoring Bodies are a fundamental tool for NGOs at a local level. There are several advantages to this procedure which can be very influential as long as weaknesses are corrected. As seen earlier, strengthening of the action of the Committees unquestionably depends on increased participation of NGOs. This, however, is not sufficient: there is a need for a basic structural reform.

1. Examination procedure for periodic reports: a high potential procedure

a. Regular, in-depth, extensive monitoring

Contrary to the review procedure for individual complaints, the reports examination procedure allows for periodic in-depth examination of a State's situation and its changes through the years in terms of respect, protection and promotion of a large number of fundamental rights. The abstract monitoring technique can be used to look at the whole situation in a state. The Conventions whose implementation needs monitoring are particularly extensive, since they cover the whole human rights issue. Regular follow-up of the agenda of each of the six Committees by NGOs therefore allows for an in-depth and widespread examination of the human rights prevailing situation in their country.

The full and complete participation of a State in this procedure allows it to assess the current state of affairs in terms of human rights, to review the content of Conventions it has ratified, as well as the general demands adopted by the Committees over the years. This is the opportunity for the State to not only elaborate new strategies in response to the results of the analysis carried out, but also to open up a dialogue with the civil society on the concrete measures to adopt and what direction to take. The role of NGOs, in this respect, is to ensure that States submit fully to the assessment procedure that they have accepted, and that they play their part in holding an open and constructive dialogue with both the Committees members and the civil society. The examination of a State's situation by a Committee is an opportunity for NGOs to voice their demands and concerns on an international level. The final concluding observations of the Committee, serve them as an additional tool to use on a national level in order to obtain the reforms necessary for the respect and protection of human rights.

This examination is all the more successful when the main people running it are experts in their field and are independent of any governmental influence. Unfortunately, this is not always the case anymore, which leads to a certain weakness in the evaluation and even, in some cases, to inappropriate remarks

Although each of the Conventions specifies that the Committees charged with their supervision should be composed of independent experts, member States do not hesitate to appoint people with governmental links, whose job makes it an outrage to see them in positions of power within such monitoring organisations. Professor Anne Bayefsky, in an interesting report published in April 2001, explains that nearly 50% of Committee members also hold government positions.[15] FIDH, in particular, finds this practice worrying and unacceptable. This is in complete violation of the provisions set out in the international conventions that created the Committees, and is a serious obstacle to their efficient working. Common practice within Committees is that experts are not to express their opinion on the situation in

their own country and the aforementioned connections raise major problems, such as:

- Committees have to be maintained as independent, expert bodies, as opposed to other intergovernmental bodies. The structure of these bodies in this respect is different from other United Nations bodies such as the Commission, ECOSOC or the General Assembly. This difference has to be maintained, so that the identity, unique features and above all, mandate of each of these bodies, is respected;
- Non-independent members are appointed to these positions more through promotion than through expertise in the field covered by the Convention. This diminishes technical assessment of the respect and implementation of the Convention and their expertise of the ways of ensuring a better application. Sometimes, their assessment is influenced by the foreign policy of their own country, more than by a close attachment to Conventions to which respect is owed;
- Their presence prevents some of their colleagues from developing an in-depth critical analysis; for fear that they might upset the good team spirit. Expertise and technical elements are diluted by political considerations, in an attempt to maintain "a consensus of opinion".

b. Flexibility and Dynamism of Treaty Monitoring Bodies

It is when they examine the periodic reports, using a procedure they have learned to improve over the years, that the Committees demonstrate their full flexibility and dynamism. Slowly but surely, they have, among other things, managed to increase the involvement of NGOs in their work, and have been able to develop original procedures which enable them to strengthen their monitoring capacity. Without going into detail about the improvements made to the system through the application or changes in internal regulations by the Committees, the most significant ones are listed below.

Examination procedures without reports

The first important element concerning examination procedures of reports is to bring States to hold talks and convince them to take part in the procedure, even though no truly efficient measure exists to punish them if they default in their duty to regularly submit a quality report to the Committees. In reaction to the fact that many States submit their reports several years late, if at all, some of the Committees have elaborated new procedures.

The most important of them is most certainly the one initiated by CERD and CESCR, and which consists in examining the situation of member States that are five years or more late in submitting their periodic reports, on the basis of other information then available, notably from non-governmental sources.[16] HRC examines the situation after ten years, which seems to be a particularly long delay. HRC recently modified its internal regulations to adopt this new procedure; hopefully the other two Committees will do the same thing in the near future; in May 2002, CAT put a debate on this procedure on its agenda.

In 1998, FIDH, in co-operation with the Anti-Racism Information Service (ARIS), congratulated CERD on adoption of the procedure, following a request from both organisations.

The results of this new procedure demonstrate their efficiency. Faced with a potential threat to the States, such as the possibility of seeing their situation under scrutiny following information communicated by NGOs, most of them appeared before the Committee (something a great many of them had not previously done, despite reminders). Quite a few of them communicated the awaited report, sometimes after having received a short postponement. In some cases although it failed to submit a report on time for examination by the Committee, at least the State sent a delegation of representatives to Geneva, thus resuming the dialogue with the experts.

As for HRC, it has adopted a specific procedure by which it send its "preliminary conclusions" at the end of its' examination, to the State that has not sent in a report, and only making them public at the following session, if the State in question is still absent.

Beyond making this a widespread procedure, what is now at stake involves the content of the conclusions adopted in the context of these procedures.[17]

Emergency procedures

The examination procedure for periodic reports is not very flexible in so far as the timetable for examining situations, established according to the decisions of the Conventions and Committees (and the States good will), is not always adapted to the needs of the moments. For example, when the Committees ought to study certain events, their timetable does not allow them to do so, and even requires them to wait for several years before being informed about certain events that should be dealt with urgently. Admittedly, within the United Nations system, the special procedures of the Commission for Human Rights, in this respect, is more flexible, so can more easily obtain details of current events. This is because they have an

inspection mechanism that the Committees lack or have difficulty using. However, altogether, these procedures have a mandate that covers far less rights than, than those of all the 6 Committees combined (certain themes, in particular in the field of economic, social and cultural rights and also certain civil and political rights, do not fall within the mandate of the Special Rapporteurs or the working groups of the Commission for Human Rights).

HRC decided therefore, in April 1991 that it could request periodic emergency reports to be provided within a three-month period, "*in the light of recent or current events indicating that the enjoyment of human rights protected under the Covenant has been seriously affected in certain State parties*"[18] Later, it was agreed that "*where the consideration of a report revealed a grave human rights situation, the Committee could request the Stat party concerned to receive a mission composed of one or more of its members in order to re-establish dialogue with it, explain the situation better and formulate appropriate suggestions or recommendations.*"[19] The use by HRC of this new procedure is still rare.

During their fourth yearly meeting in 1992, presidents of the bodies created in accordance with international instruments relating to human rights stressed the importance of such procedures and the relevance of developing them, stating that the bodies created in accordance with international instruments have an important role to play in the attempt to prevent violations of human rights and to face up to them when they occur. Each of these bodies therefore ought to carry out emergency studies of all the measures that could be adopted, in its field of competence, to prevent violations of human rights as well as to follow more closely all sorts of emergency situations occurring in the jurisdiction of member States. If new procedures are necessary to this end, they should be examined as soon as possible.[20]

In 1993, CERD created an emergency procedure, of which the implementation conditions are to be found in more detail in a working document entitled "Prevention of Racial Discrimination, including Early Warning and Urgent Procedures".[21] This procedure is part of a United Nations thought process on the "The Organization's role in preventive diplomacy, peacemaking, peace?keeping and peace building". On the basis of this working document, the Committee has instituted a practice which consists of the drawing up of a permanent list of countries subject to urgent procedures, that can be revised at each session, depending on how the situation develops.[22]

In virtue of this new procedure, the Committee can choose to adopt two types of measures: *Early-warning measures and Urgent procedures measures*, which are not always very easy to separate. *Early-warning measures* are aimed at addressing existing problems from escalating into conflicts or to prevent a relapse into conflict in situations where it has occurred.

As far as Urgent procedures are concerned, these would aim at responding to problems requiring immediate attention to prevent or limit the scale of a number of serious violations of the Convention. The admissibility criteria of such procedures relate to the presence of a serious, massive or persistent pattern of racial discrimination; or that the situation is serious and there is a risk of further racial discrimination.

The measures relating to this mechanism can be varied and flexible, therefore adapted to the prevailing situation in the country concerned. Quite a few states have been submitted to this type of mechanism (for example Rwanda, Burundi, the countries stemming from ex-Yugoslavia, and also Algeria, Australia, Cyprus, Israel, Liberia, Mexico, Papua New Guinea, the Democratic Republic of Congo, Czech Republic, Sudan, etc.). Generally, the objective is to provide technical assistance to States, in particular by sending one or more CERD members to the field, upon invitation from the States. The Committee can request urgent transmission of special reports on measures taken by certain member States to resolve difficulties. In the context of procedures for emergency intervention in particular, a Special Rapporteur can be appointed from among the Committee members, to be in charge of ensuring follow-up of decisions adopted. Another important aspect of this new procedure is the declared will of the Committee to refer the alarming situations identified to other relevant United Nations authorities. In particular, in the case of procedures for urgent intervention, the Committee can recommend to the Secretary General to bring the matter before the Security Council (which he did, for example, in relation to the situations existing in Bosnia-Herzegovina and in Burundi in the mid-1990s).

This procedure was left aside during the past few years; FIDH has attempted, lately, to reactivate it, e.g. by submitting in March 2002 a complaint to CERD on the dangerous consequences of the discriminatory effects of counter-terrorism legislation in three countries. As a result, CERD decided to analyse the effects of such legislation on the implementation of the convention it monitors. It still, however, has to decide, at its August 2002 session, if this examination will take place in the context of its procedure for emergency intervention, which is what FIDH supports, or in the context of the regular study

procedure of periodic reports. The latter option would greatly weaken the effect of the Committee's positive reaction to the complaint submitted to it.

Other Committees, such as, CESCR, CRC, CEDAW and CAT, have also, occasionally asked certain States for special reports, but have not systematically integrated this procedure into their work. Among these, CESCR is the quickest at examining situations, which are not dealt with by state party reports[23]. These examinations consist in sending letters to the relevant governments, expressing the concern of the Committee in relation to the information gathered and asking for factual information in response. But these examinations are, at present, carried out outside any well-defined procedure. Urgency is one of the factors in sending letters of concern, but CESCR seems, for the moment, to prefer, to justify its reaction within the framework of its follow-up to earlier recommendations.

Position of NGOs better guaranteed

To begin with, the examination procedure of periodic reports was developed without officially including NGOs in the work of the Committees. The independent experts nevertheless considered, for the most part, that their status allowed to obtain information from all available sources. Little by little, NGOs whose participation in the Committees work is one of sine qua non conditions of their efficiency, have emerged from obscurity. Nowadays, they take an increasingly important part in the meetings with experts. Admittedly, these meetings are still often unofficial (CERD, CAT), but more and more open and recognised. In 4 Committees, NGOS now have official status: most of the time, these meetings take place during pre-session Committee Groups, in charge of conducting a first examination of a State's situation and of drawing up a list of questions for the State (HRC, CESCR, CEDAW, CRC). NGOs can take the floor before three Committees, CESCR, CEDAW and CRC, rather than their working groups alone. In the case of CESCR, they can also submit written interventions.

Improved coherence

The existence of six parallel Conventions (soon seven)[24] whose provisions sometimes widely overlap, and the obligation of the States to present reports, sometimes even before six Committees, has led to an effort to rationalise the work of the Committees, which is, as yet, unfinished. There are, however, a certain number of achievements which deserve to be highlighted: the partial harmonisation of directives on the drawing up of reports, the partial harmonisation of periodic State Party Reports, the organisation of the Annual Meeting of Chairpersons, and the will to increase co-ordination and co-operation with other United Nations bodies.

Without doubt, thus will be one of the biggest challenges in the years to come. It is essential to ensure better co-ordination among Committees, avoid duplication of work that is a waste of energy within the Office of the High Commissioner for Human Rights and the Committees, as well as within the States. The efficiency of the Committees themselves is at stake. However, it is obvious that, given the lack of widespread reform, current proposals may not live up to expectations.

2. Procedure for the examination of periodic reports: weaknesses to correct and essential deep reforms

Despite really important and sometimes bold progress, the weakness of the examination procedure of periodic reports is still worrying. This procedure is, on the whole, unknown and the Committees feel that their work has attracted very little media attention. The practice, adopted by most States, of elaborating periodic reports in private within the administrative services, does not improve matters. Without the public debate before and after the procedure, the efficiency of the Committees, in the States under scrutiny, could be considerably weakened. Because of the non-compulsory nature of the concluding observations adopted by the Committees, the efficiency of the procedure depends on media attention combined with the moral strength of the mechanism.

It is an acknowledged fact that all six Committees are lacking in human and material resources, a fact which has led, among other things, to a worrying backlog of periodic reports to be reviewed. Occasionally, reports presented by the States to the Committees, have to wait for one or even two years before being examined and, because of the short amount of time given to their study, the concluding observations are in some instances of quite poor quality. Last year, during their annual meeting, Committee Chairpersons said they were concerned by persistent problems such as the heavy backlog of State reports waiting to be examined and letters waiting for reply, (...) and by, the fact that, although two of the committees had been given extra meeting time, the time allotted was still largely insufficient to carry out all of the work.[25] Since the international community regularly calls for universal ratification of international conventions on protection and the protection of human rights, it should, as a consequence, provide them with the means to carry out their resulting monitoring mission.

Further, lack of independence of the experts, adds to the weakness of recommendations, and can lead to discussions that are out of place.

All of this shows that there are still many failings in the system of protection instituted by the international conventions on protection and the promotion of human rights. The main objective of the examination procedure is to succeed in instituting, on the basis of conventions' provisions, a constructive dialogue, not only between Committees members and the States, but also, and this is as important, between the State and civil society. Some States lend themselves more and more to this practice, but others still hesitate to do so, sometimes through lack of resources, time or even interest. Others still simply refuse to fulfil their procedural obligations.

In view of this situation, the Committees have very few means at their disposal to convince States to fully participate in the procedure. Renewed appeals are not and cannot be sufficient. The lack of political will on the part of the States is not always the main cause of deficiencies in the monitoring system: the structure of the Committees and certain work methods have to be improved or even reviewed and corrected.

It is now time to move forward.

For over ten years, serious work has been carried out on the improvement of the monitoring of international instruments in the field of human rights. Two independent experts, Philip Alston and Anne Bayesfky, have drawn up very complete and ambitious proposals.[26]

The proposals formulated by both Philip Alston and Anne Bayefsky fall into two categories.

The first consists in both reinforcing each Committee's capacity for action, through straightforward modification of the Committees' internal practices and regulations, and improving the co-ordination of their work. This is the path that has been chosen over the past few years. More progress is still needed in this field, but these measures cannot eliminate obstacles which are of an essentially structural nature, e.g they, alone, cannot provide solutions to questions such as delays accumulated in the Committees' work or the reduction of duplication action.

The second reform consists in merging the six Committees. The initial proposals made to this effect by Philip Alston in 1989 were taken up again, over ten years later, by Anne Bayefsky. For the moment, these proposals have above all aroused mistrust, as much by the States as on the part of the expert members of the Committees and certain NGOs. Until now, in any case, it seems that the United Nations political bodies have never analysed them with much seriousness.

FIDH would also like to take part in the debate by using its experience to analyse the proposed options and suggesting the best ways to improve the functioning of the treaty monitoring bodies.

a. "Minor Reforms" to be pursued

More guarantees of the Independence of experts

Independence of experts must be better ensured. Choosing this option would, as we have already seen, strengthen the credibility of the action undertaken by the experts and would also mean that their selection criteria would give greater weight to expertise. This measure would appear to be a precondition to the pursuit of Committee reforms.

Expert status is defined in each of the Conventions, it would be quite impossible to detail all the criteria to be applied by simply modifying the text. The criteria might best be defined in an optional protocol to each of the conventions and ratified by all of the national parliaments. This procedure is far too complex and important to be covered by amending a text.

However, it ought to be easier to standardise attitude of Party States in selecting the experts. They should avoid candidates who already work for the government. Such a practice is already largely adopted in the choice of people mandated to carry out special procedures. This has proven to be efficient and to have an impact on the experts' analyses.

Strengthening and broadening of the examination procedure without a report

Having proved its efficiency, in so far as it forces States to hold regular talks with the Committees,[27] the examination procedure without a report now needs to be adopted by the two Committees that have not yet done so (CEDAW, CAT), and brought into line within a reasonable delay (five years). Numerous proposals to this effect have been formulated, in particular at the Annual Meeting of Chairpersons.

However, the quality of concluding observations adopted in the context of this procedure still has to be improved. As a rule, as we have already seen, CERD adopts summary conclusions elaborated using the same model, and just a few paragraphs long: in other words, the conclusions remind States of their

obligations and invite them to ask for the technical assistance offered by the United Nations.[28] Although the Committee occasionally goes a little further and tries to identify problems existing within the territory of States under its control, it never carries out any in-depth monitoring.[29]

This superficial monitoring would reduce the efficiency of the procedure if the States knew that they have nothing to fear from it. States are less inclined to ensure they are represented at the time of the consideration sessions or to rapidly submit a special report. Furthermore, it is difficult to rally local organisations in order to prepare an information report; because they are sometimes discouraged in advance at the thought that the Committee's concluding observations will only be a few paragraphs in length and will contain few or no basic recommendations or suggestions. Finally and despite all this, observations such as the ones adopted by the Committee following an examination without a report cannot be used on a national level to launch a debate within the society on current problems, and, in this way, incite governments to adhere to their own commitments.

Using the full potential of this procedure, will automatically serve to strengthen its efficiency: it is important that the examination without a report on State situations is done thoroughly and leads to the adoption of precise suggestions and recommendations. As for the national and international NGOs, they should pursue their efforts to submit quality information to the Committee members on a regular and systematic basis.

Strengthening and broadening of the emergency procedure

The emergency procedure has not been readily welcomed, by the States or by certain experts,[30] who have asked for its suppression. Noting that the Committees are already overloaded with work, they felt that other UN bodies were in a better position to deal with emergency situations. NGOs have, until now, made very little use of this procedure, either through ignorance of its existence, or because they felt that it would not be able to deal efficiently with such serious situations.

Despite criticism, this procedure seems to be essential. FIDH feels that it should be strengthened and extended to the other Committees. It is, in fact, strange on the one hand, to try to resolve the issue of work overload within the Committees by restricting their activities, rather than increasing the means at their disposal, or even by reform on a larger scale. On the other hand, although other UN bodies are able to deal with emergency situations, most of them are either, political bodies which, because of their composition, are often prevented from acting, or special procedures of the Commission on Human Rights, which do not always have the appropriate mandate (some do not include the so-called "reactive" mandate and, as above, the range of human rights under their control is far less covered by the International Conventions, whose Committees oversee the application). It is essential to enable independent bodies, such as the Committees, to be in a position to warn political bodies, whose main mandate is to ensure the respect and promotion of human rights as well as to safeguard peace (the General Assembly, the Security Council, the Commission on Human Rights). This gives an extra dimension to human rights when dealing with emergency situations and makes political bodies face their responsibilities.

Developing this procedure and, in particular, getting other treaty bodies to adopt it, requires the implementation of strict criteria that are known and accepted. The criteria used by CERD could, in this respect, act as reference e.g the existence of "serious, widespread or systematic racial discrimination or dangerous situation presenting a risk of new acts of racial discrimination".

Moreover, this rapid alert procedure not only promotes special dialogue with governments, it also ought to systematically associate special procedures of the Commission on Human Rights and main UN agencies. The aim is to react usefully, and alert, if need be, the highest United Nations authorities (the High Commissioner for Human Rights, the Secretary General of the United Nations and the Security Council), and so, to gather as many strong and convergent signs as possible once an alarming situation has been identified. Admittedly, special procedures already comprise the sending of reports to the Commission on Human Rights (or even to the General Assembly) and treaty monitoring bodies draw up reports for the General Assembly. However these means of communication are inappropriate in cases of emergency, because of the fact that the Commission and the General Assembly only meet once a year. United Nations bodies channels for alerting must be further improved: a good example of this was when CERD transmitted its recommendations on Burundi to the Security Council.[31]

Reinforced presence of NGOs before the Committees

Because the position of NGOs before the Committees was organised empirically, each of the six Comittees adopted its own rules. Although these rules are often similar, there are still some differences. Certain Committees could usefully envisage bringing their practice into line with that of other Committees, e.g NGOs should be officially allowed to take the floor before all

the Committees or before pre-sessional working groups, or be authorised to submit written interventions to all the Committees.

Improved follow-up of concluding observations

The recommendations adopted as a result of the examination of a State party situation by a Committee are still too rarely implemented. This is, once again, one of the most worrying weaknesses inherent in the system of examination of periodic reports.

Stronger follow-up mechanisms should therefore be systematically implemented, not only on the level of the States to whom the UN recommendations are addressed, but also within the Committees themselves. Most of the time, the Committee also assesses the implementation of recommendations at the time of the following State Party Report, in other words, at the very best, 4 to 5 years later. The creation of real follow-up mechanisms within the Committees is essential and ought to allow experts to ensure Stat follow up of their recommendations, as well as the successful implementation of the commitments made in their presence by State delegations.

CESCR, in its letter to the Hong Kong authorities at the time of its May 2002 session, replied in an ad hoc manner to a request to follow-up recommendations made during the periodic examination of the Hong Kong authorities. Such a procedure could be carried out systematically, according to a range of specific criteria.

An essential additional method of assessment such as this one, will have to rely on results obtained by monitoring platforms created at a national level, not only by the States, for whom it is compulsory, but also by NGOs, who ought to be in a position to report to Committees on the way in which recommendations are implemented. During the 13th Annual Meeting of Chairpersons, FIDH insisted on the need to create such monitoring platforms.[32] It is particularly important that they work in close co-operation with, where necessary, teams in the field sent by the High Commission for Human Rights, UNDP, and other United Nations agencies.

The creation of links between the Committees and other mechanisms, including non-UN ones, for monitoring recommendations is essential. In particular, when member States who are part to an agreement containing a so-called "Human Rights" clause, (for example, the European Union's association agreements with Third States), meet, the recommendations and concluding observations adopted by the Committees could serve as a framework for the dialogue among these States concerning human rights issues. This is why the European Union has decided that the Committees concluding observations should systematically serve as a reference in discussions with other States.[33] Other links could also be created with international organisations such as OAU, OAS, the Council of Europe, the Arab League, etc., for better monitoring of the recommendations adopted by the Committees.

Reinforced coherence and efficiency: the issue of the consolidation of state party reports and the merging of the six Committees

The six, soon seven international conventions have overlapping provisions. For example, the freedom of association and to form trade unions, the right to education and the principle of non-discrimination are included in several of them. This overlapping is considerably increased when a category-based approach is adopted: not only are specific conventions aimed at protecting certain segments of the population (women, children, minorities and soon, migrants), but Committees that monitor conventions of a general nature (such as the Covenants), also have to use the category-based approach to examine the situation of women, children, minorities, migrants, old people, disabled people etc.

The work of the Committees overlaps therefore as much as that of the Conventions, if not more. As for the States, they have the heavy task of compiling periodic reports, and also have to deal with an increase in the number of requests for information that overlap from one Committee to the other. This system of referral from one periodic report to the other, which is often advised, not only complicates the reading of the periodic report, but also provides no real solution. For many years now, States have asked that the examination procedure of periodic reports be rationalised.

Several solutions have been suggested, some of which are very interesting, others seem relevant.

Increased specialisation of the Committees

In order to resolve the problem of duplication of work, it would be illusory to want to attribute to such and such a Committee the main responsibility of studying a particular dimension[34] since each Convention contains specific rights that the others do not have, so making a whole that affects the level of requirements of the Committees. Consequently, giving one

Committee alone the responsibility of dealing with a particular issue, would mean restricting possible achievements in terms of " jurisprudence " in the context of other Conventions. Admittedly, there is a tendency to unify the basic practices of Committees. This tendency is also aided by the fact that, on the basis of its Convention, a Committee may move forward more easily by using the work done by other committees. Finally, it would be necessary to monitor the level of ratification of the Conventions and the state of progress in the reading of its other periodic reports by the other Committees

Responses to specific questions rather than an overall periodic report

It was also suggested that the State respond, in its report, to a group of specific questions, rather than compile a complete report for each Convention. The system has already been used, notably by CESCR. This solution would alleviate the work overload for States as well as Committees. The risk however is that certain rights or groups of people will be ignored more often than others, and the drawback is that it will eliminate one of the merits of the procedure, which consists in requesting the State to take stock regularly of an overall situation. Finally, period between reports, which is already rather long i.e. several year period imposed by the conventions, as well as almost systematic State party delays which are not only the result of a work overload), is to be lengthened as a result: some subjects will only be studied during every second or third cycle. However, this proposal is interesting, because in the same amount of time, situations can be studied in much greater depth than when the overall situation are studied (it is unrealistic to think that this can be done in a single session lasting only a few hours). It would appear inappropriate, however, as long as the time between periodic reports has not been shortened. Otherwise, the measure would do little to relieve States and Committees of their heavy workload. The organisation and division of work within a limited period of time, would, on the other hand, be far more efficient.

The issue for a consolidated State Party Report

The idea of a consolidated State Party Report that reviews the progress in implementing all the Conventions which have been ratified by a given State, then presented to the relevant Committee, has been proposed on numerous occasions.

States are in general in favour of this solution, as it is perceived to contribute to lightening their workload. Yet, the reports will always require States to find qualified experts for long periods of time, and there is a risk that this solution would lower the quality of reports.

The reform does not, however, resolve the issue of work overload for the Committees themselves and will require better co-ordination on their part. Committees, in particular, will have to have their State examination sessions on dates fairly close together, in other words, a few months apart (otherwise the report will quickly be out of date and the need to continually update it will nullify the sought-after effects of the reform). Finally, they will have to elaborate common instructions for the whole report. This task is extremely difficult, particularly because of the so-called "general nature" of the obligations set out at the beginning of each Convention. These obligations are essential, because they define the nature of State party's obligations. Yet, they are different from one Convention to another (for example, whereas both international Covenants establish freedom of association and to form trade-unions, only the International Pact on Civil and Political Rights, makes it a general obligation to make effective appeal channels available to victims). Sometimes, Committee practices unify these general obligations. The existence of common directives will not only facilitate a review, but will also somehow strengthen the principle of indivisibility of human rights.

b. Another idea: merge the six Committees

One idea for a far-reaching reform would be to merge all six Committees into one, thus improving their efficiency. This is a many-sided proposal and implies the following consequences: global reports, studying only certain issues, harmonising and shortening the period between reports, harmonizing the Committees' work methods, lengthening meeting times, improving communications and public-awareness of working methods and, finally, strengthening the impact of concluding observations (a permanent Committee with a broader mandate would automatically gain increased political and moral influence).

This strengthening of the moral and political impact of a single Committee is by far one of the most important consequences, for this is precisely the weakness inherent in the system. States increasingly lend themselves to a routine exercise, for which certain administrative (not political) services are responsible[35]. As for NGOs, they struggle to provoke the necessary political debates, before and after an examination session on the situation of their States, because politicians and journalists are either unaware of the existence of these overlapping yet splintered mechanisms, or do not believe in mechanisms which they feel would not interest the general public.

It is not difficult to imagine the communication possibilities surrounding a global periodic report preliminary to a global examination, carried out according to a less uncoordinated

timetable, concerning a global situation in terms of human rights in a given State. Shortcomings in the consideration process, as a result of the non-ratification of some of the conventions, or even because of particularly widespread reservations, would be far more visible. Follow-up measures could be monitored more smoothly during the inter-report period, and media coverage would be easier to achieve. The experts would be in a better position to understand the situation of the State under observation, if the whole range of issues concerning the respect of human rights were dealt with. The organisation of public debate, which is one of the fundamental objectives of the system of periodic reports, would be facilitated . Finally, the issue of the proliferation of monitored conventions would be less of a problem.

As for the States, their task would be greatly simplified: they would no longer be required to compile more than one periodic report (as opposed to a report every one to two years, as is the case for some of them), and they would, as a consequence, have more means at their disposal for this purpose. Their periodic report would automatically be improved, and their assessment of their home situation would be far more efficient. The quality of the dialogue between the State and the experts would be improved, and states could prepare themselves better, at a lower cost, since they would only have to appear before one Committee.

As for the reports consideration procedure, a reform which, as this is perceived as contributing towards an improvement of the procedure itself, which though sometimes disregarded because of its weaknesses, is nevertheless essential and potentially extremely efficient. It should be remembered that the system of Committees, was not intended to be excessively efficient, and was the result of a compromise which was already no longer valid at the time of its adoption (the European Court had been created and the Inter-American Court was about to be born). Despite the limited means at their disposal, the Committee members have succeeded, with support from the Secretariat, to make considerable progress. It is difficult for them to go much further alone.

After the 6 Committees merge, the new Committee could only deal appropriately with the backlog of overdue reports and increase their efficiency, if the following conditions were met:
- The Committee should be permanent.
- The Committee should be made up of truly independent experts. Strict compulsory rules should be used as a framework for the independence of the experts, in accordance with those already provided for in the international conventions for human rights.[36]
- To guarantee this independence and because the Committee would be a permanent one, the experts should be paid for their work.

However, the main difficulty of such a reform rests less in its design than in its adoption by the States: the "small reforms" described above can, in practice, be adopted and codified to become part of the Committees rules of procedure, but a merger of the six Committees would probably require the adoption of some sort of additional procedural Protocol, which would be common to all six Conventions.

FIDH feels that the authority of the Committees can be re-established in a more concrete and precise manner: allowing NGOs to appropriate the Committee mechanisms (through preparation work, exchange of views during the sessions and participation in the follow-up), would equip them to pass on the knowledge that can be obtained from these mechanisms. This entails:
- Reinforcing the guaranteed independence of experts, through a detailed, technical analysis which fully covers the implementation of the Conventions;
- Involving NGOs association in all of stages of country reviews;
- Equipping the Committees to deal with emergency and follow-up situations.

Since these proposals have been presented in the report, It is now up to the Committee Chairpersons, at their annual meeting, to reinforce their action and means over and beyond amendments to the Conventions, in order to better co-ordinate the work of the Committees and to devise flexible methods for joint monitoring of state situations.

14. Some Committees have at their disposal additional means of action, such as the examination procedure of individual petitions, and the possibility of carrying out investigations in the field.
15. Anne Bayefsky, The UN Human Rights Treaty System : universality at the crossroads, April 2001, p. 108.
16. For CERD : Decision 1 (XXXIX), 19 March 1991, A/46/18, Chapter VII, 1996 Decision, A/51/18, Chapter IX, Section C; for CESCR: E/1992/23, § 382; E/1993/22, § 39 to 41.
17. See above III-II.A
18. A/50/40, volume I, § 36.
19. A/50/40, volume I, § 39.
20. A/47/628, para. 44
21. A/48/18, annex III. Details of the procedure are noted in the annual reports submitted by CERD to the General Assembly.
22. A/51/18, p 7.
23. In August 2001, the adoption of recommendations on Israel concerning the situation in the Occupied Territories; in May 2002, on Hong Kong.

24. The International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families will come into effect when 20 ratification instruments have been presented. To date, 19 States have ratified this Convention.
25. A/55/150, Report of the Chairpersons of the Committees created in accordance with international instruments relating to human rights on their twelfth meeting, held in Geneva from 5 to 8 june 2000, § 22.
This had already been stated ten years ago. Philip Alston the independent expert on improvements to the implementation of international instruments of human rights that the irony is that the system founded on international instruments cannot work in the current climate, if member States constantly fail in their obligations. This is unfortunately still the case. Interim report, A/CONF.157/PC/62/Add.11/Rev.1, Annex, § 14.
26. Philip Alston, First Study: A/44/668, Interim report: A/CONF.157/PC/62/Add.11/Rev.1, Final report: E/CN.4/1997/74.
Anne Bayefsky, The UN Human rights treaty system: universality at the crossroads, april 2001.
27. See above.
28. See for example, A/54/18, the examination of Antigua and Barbado, § 291 s ; Central African Republic, § 362 s.
29. See for example, A/54/18, the examination of the Congo, § 108 s. As for CESCR, it has more often carried out truly in-depth monitoring.. For example, see the examination of the Republic of Congo on 5 May 2000 (E/2001/22, § 186s.).
30. In particular, Philip Alston and Anne Bayefsky.
31. See above III-I.B
32. For more details, see Annex IV.
33. Communication of the EC to the Council and the European Parliament on the EU's role in promoting Human Rights and Democratization in Third countries, so-called Patten States, in May 2001, and the Council's Decision on the same subject, July 2001. FIDH is delighted about the adoption of these instruments something it had worked on for a long time. It deplores the difficulties surrounding their systematic implementation.
34. See for example Philip Alston, Interim report, A/CONF.157/PC/62/Add.11/Rev.1, Annex, § 26.
35. The ideal situation would, of course, be the association of parliamentary institutions in debates related to the examination of State situations as suggested by the Belgian League for Human Rights during the preparatory regional European Conference to the World Conference against Racism.
36. At this stage, it should be noted that the fight to get experts appointed would be much keener since the Committee would then have considerable moral clout.

ANNEX 4 : FIDH WRITTEN INTERVENTION - THE 13H ANNUAL MEETING OF THE CHAIRPERSONS OF TREATY BODIES

On the occasion of the 13h annual meeting of the Chairpersons of Treaty bodies, the International Federation of Human Rights (FIDH), wishes to express its sincere appreciation of the work undertaken by all Treaty bodies in the protection of Human rights. We are most grateful for the collaboration that has been built with NGOs, which is ever so fruitful in information-sharing and awareness-raising on country-based Human rights violations.

The FIDH is also most thankful to have the opportunity to participate in the dialogue on ways to enhance the impact of the work of the Treaty bodies, specifically on the issue of the follow-up of its national recommendations.

In the framework of this dialogue, the FIDH would like to submit the following written position, which is parallel to a written submission presented to the 8th annual meeting of the Special Rapporteurs, Representatives, Independent experts and Chairpersons of Working groups.

The FIDH has been participating for many years to the work of the Treaty bodies, in helping national NGOs submitting information to those bodies, on country specific situations, parallel to the examination of the implementation of the respective treaties by these countries.

Such a contribution has always been extremely rewarding, as a number of issues we have been raising have been taken up by various experts of the treaty bodies and reflected in the national recommendations

When it comes to the following-up of these recommendations, the national NGOs are very active on two levels:

- awareness raising on the national recommendations, through press releases or through the mobilisation of the various fora they take part in;
- following-up the implementation of the recommendations -they take this even more seriously when they feel they have indirectly contributed to their adoption by Treaty bodies.

Yet, in countries where the implementation of national recommendations is often the most problematic, NGOs have the most difficulties in raising awareness on their existence and in demanding their implementation.

This is not the case everywhere, as several examples of close collaboration between NGOs and international or national institutions have proven the possibility of pursuing effective and efficient follow-up. Such examples should be generalised.

In this framework of this dialogue on efficient and effective follow-up, the FIDH would like to propose that national follow-up teams be developed, composed of representatives from the civil society and NGOs, in co-operation with field presence -if any- of the OHCHR, with the UNDP and other UN agencies. These teams should report both to the Treaty bodies and to the UN High Commissioner for Human Rights on the effective implementation of the follow-up of national recommendations. They should also report on the implementation of Special procedures recommendations following country visits or general statements[40]. The reporting mechanism should be transparent: as national recommendations are made public, the follow-up of them should also be made public. In countries where no teams would have been put in place, the Office of the High Commissioner should itself gather the information on the follow-up, directly from NGOs or from its field desks, and subsequently feed the reporting both to the Treaty bodies and to the Commission.

39. This proposition has been submitted to the 8th annual meeting of the Special Rapporteurs, Representatives, Independent experts and Chairpersons of Working groups, on the occasion of their consultation with NGOs on the follow-up of national recommendations, on June 19 2001.

Treaty Monitoring Bodies : Mechanisms to be supported

The reports produced should be made available to UN and other development agencies, such as the UNDP, the World Bank, so as to have them link development programmes with effective collaboration with various Human rights bodies.

Every year, the High Commissioner, in accordance with Treaty bodies, should report to the Commission of Human Rights on the overall follow-up and implementation of recommendations, based on information provided by the national teams.

In situations where a specific country repeatedly refuses to follow the majority of the recommendations included in several national reports, the High Commissioner, backed by Treaty bodies, should recommend for the adoption of a resolution on that country.

Please see http://www.fidh.org/intgouv/onu/organes.htm for more information