

Consultations on TB strengthening
Expert Meeting on Petitions
Geneva, 29 October 2011

Participants:

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Introduction

In 2009, the United Nations High Commissioner for Human Rights, in her statements to the Human Rights Council and the General Assembly, called on States parties and stakeholders to initiate an open process of reflection on how to streamline and strengthen the human rights treaty body system. The expert meeting on petitions, held in Geneva on 29 October 2011 in the context of the treaty body strengthening process, aimed at providing an open space for discussions for members of treaty bodies on how to strengthen and harmonize their existing working methods with regard to consideration of individual communications and identify and reflect upon new proposals that would increase the effectiveness and visibility of TBs' work.

The present report reflects the outcome of the expert meeting.

Before starting the consultations per se, the TB experts highlighted the key role the Petitions Section plays in assisting the TBs in carrying out their functions with regard to individual communications. The Petitions Section was viewed by experts as the “Registry of a court” of which different TBs (Committees) are “Chambers”. Some experts pointed to the importance of having training activities for staff of the Petitions Section, ensuring continuity of staff and allocating proper resources for their work.

The expert meeting on Petitions focused on the following issues:

- Strengthening the mechanisms to follow-up the implementation by States parties of recommendations contained in Treaty bodies' findings in individual cases;
- Increasing effectiveness and systematisation of recommendations under the individual communications procedure;
- Increasing accessibility and visibility of the communications procedures;
- Review of best practices regarding application of rules of procedure and methods of work;

I. Strengthening the mechanisms to follow-up the implementation by States parties of recommendations contained in Treaty bodies' findings in individual cases

The experts referred briefly to the existing follow-up mechanisms for each Committee. The appropriateness of the current mechanisms was discussed in light of the increasing volume of

work. In this regard, one expert highlighted the difficulties faced by the HRCttee in terms of follow-up in light of the significant caseload and the existing limitations to set up meetings with the States parties. He also pointed out that there are insufficient resources for follow-up activities within the Secretariat. The expert saw merit in sharing the burden of the Rapporteur on Follow-Up by, for example, appointing several Rapporteurs on Follow-Up within the same Committee. However, in view of the different caseload of the Committees, the experts agreed that **the number of Rapporteurs on Follow-Up to TB's findings in individual cases should depend on the respective caseload of each Committee.**

The experts identified specific activities aimed at strengthening the current mechanisms on follow-up. In this context, the experts expressed their support for the idea of holding **meetings on implementation of recommendations between the Rapporteur(s) on Follow-Up and members of delegations coming to Geneva or New York for the consideration of the State reports. They also supported the idea of concerted actions among the TBs, such as joint appeals for implementation of recommendations, common press releases etc.** Some experts mentioned the necessity of having common procedural guidelines on follow-up which would complement the existing RoPs and practices and harmonize the follow-up procedures of all TBs, while others were of the view that a **compilation of "best practices" on follow-up** would be more preferable. This initiative gained wide support and it was agreed that "best practices" should be compiled and prepared by the Inter-Committee Meeting (ICM). There was also consensus on the proposal to further **integrate the follow-up to TB findings in individual cases into the work of the Human Rights Council mechanisms, including the UPR and Special Procedures**, in particular by always including information on non-implementation of recommendations in the UPR compilation documents and in the materials prepared by the Council's Special Rapporteurs/working groups for their country visits. In this regard, the experts called for better cooperation with Special Procedures. One expert mentioned that the practice of integrating follow-up into the work of the Human Rights Council mechanisms would contribute to cross-fertilization among the mechanisms dealing with similar issues and would be also important in enhancing visibility of the TBs' work.

The experts also welcomed the proposal that TBs envisage undertaking follow-up country visits in cases where a State party persists in failing to implement recommendations and when the examination of cases over time reveals a systemic type of violation in a particular country. The experts were aware that this initiative would have serious budget implications.

The experts also found interesting the proposal to invite Permanent Missions to bring officials from the capital for discussions with the Rapporteur(s) on Follow-Up. However, they agreed that this might be controversial and difficult to implement in practice. Also, drawing upon the experience of the Inter-American system, one expert suggested that the idea of having hearings with States parties and petitioners on follow-up should be explored.

One expert, with reference to the practice of the Council of Europe, questioned the current TBs practice of monitoring the implementation of the recommendations themselves. In this regard, he advanced the idea of analysing the convenience of strengthening the follow-up process both at the level of non-political and political organs, and proposed to have a Special Rapporteur on Follow-Up of the Human Rights Council, who should have regular contacts with appointed focal points on follow-up in each Committee. Although this proposal was seen as interesting, most of the experts found it too ambitious at this stage and considered that the Council of Europe's model is not pertinent to the TB system. In addition, they expressed their reservation about delegating follow-up to recommendations by TBs to a political organ such as the Human

Rights Council. They suggested instead exploring the possibility of having a common Special Rapporteur on Follow-up for all TBs.

The experts further addressed the absence of an appropriate legal framework at the national level to give effect to TB decisions, a fact which is often invoked by States to justify their failure to implement the recommendations. They agreed that **the Secretariat should send a questionnaire to States requesting them to provide information about the national mechanisms and regulatory framework to implement TB decisions**. The possibility of elaborating model legislation could also be explored. As a result of the information collected, mainly through the responses to the questionnaire, the Secretariat should prepare a paper on the existing national mechanisms enabling implementation of TB recommendations.

The experts also highlighted that there is an **urgent need to upgrade the Petitions database** so that all information on follow-up to individual cases can be easily retrieved when needed. For this reason, it would be necessary to have additional staff assigned to this task in the Information Management and Technology Section and the Petitions Section.

II. Increasing effectiveness and systematisation of recommendations under the individual communications procedure

Common approach to remedies proposed by TBs under the different treaties

The experts addressed the issue of having a common approach to remedies proposed by TBs when violations of the treaties are found. It was pointed out that the jurisprudence of the different TBs is not very consistent with regard to remedies. According to one expert, this is due to the fact that the framework for remedies is different under each treaty. Others mentioned that, in order to overcome the current shortcomings CAT is working on a general comment on article 14 of the Convention against Torture (remedies), whereas the HRCttee is preparing a background paper on how to develop its jurisprudence in that respect. A proposal was discussed to consider including in the final decisions, to the extent possible, not only specific and targeted remedies for the victim in question, but also general recommendations in order to give meaning to the obligation of non-repetition of the violation, such as changes in law or policy. This approach is currently followed by CEDAW and CERD. There was consensus among the experts on the **need to have a coherent framework of reference for remedies** so that, depending on the treaty in question, TBs could make, to the extent possible, both targeted recommendations for the victim as well as general recommendations. The experts also agreed to **extend to other TBs the practice initiated recently by the Human Rights Committee to request authors to indicate the kind of remedies they would like to obtain**.

Increasing coordination among TBs, and between TBs and regional mechanisms

In order to increase coherence and harmonization of jurisprudence, most experts welcomed the idea of **expanding the practice of mutual cross-referencing of findings and Concluding Observations by TBs**. They also expressed their openness to **refer to the jurisprudence of the regional human rights systems in a more systematic manner**, in order to promote the development of consistent standards of protection.

The experts further mentioned that the possibility of **holding ad hoc inter-committee meetings on issues related to substantive rights or procedural aspects** should be explored, for instance by experimenting with model cases to determine whether or not there is

congruence among the different Committees. Meetings on substantive or procedural issues could also be envisaged between TBs and regional bodies.

During the discussion, some experts flagged the idea of a single body to deal with communications or a joint working group on communications. It was recalled that the idea of a unified body had been advanced by CERD in 2006. While acknowledging that these proposals presented advantages and disadvantages, several experts pointed to the lack of political conditions for their implementation, as they would require Treaty amendments. Still they agreed that the possibilities of a joint body/Working Group needed to be further explored. However, one of the experts questioned the wisdom of going back to any proposal already rejected by the States parties, indicating that for the time being holding ad hoc inter-committee meetings on substantive issues would be sufficient to improve the functioning of the system.

III. Increasing accessibility and visibility of the communications procedures

In view of the increasing number of communications received by the Secretariat, the experts proposed that a page limit be set to submissions, i.e. 50 pages (not including annexes), and that a summary of 5-6 pages describing the relevant facts and exhaustion of remedies be requested from the authors in case of lengthy submissions. The experts also agreed that a deadline of six months-one year should be given to authors for their replies to the Secretariat's Contact Letters requesting additional information.

The experts mentioned that the **Treaty Body Jurisprudence Database is an essential tool** in assisting the Committee members and the Secretariat in their work **and that its completion is urgent**. The experts considered that in order to speed up the process, it is necessary to have additional staff in the Information Management and Technology Section and the Petitions Section assigned to this task. Some experts suggested that UN could explore the possibility of building upon existing databases on jurisprudence of TBs (e.g. the database of the Netherlands Institute of Human Rights - SIM) in order not to "reinvent the wheel". **The Database should also contain information on follow-up to recommendations**. In addition they highlighted that the webpages on the individual complaint procedures of the Treaty Bodies should be brought up to date and made available in all six official languages of the United Nations and comply with the International Internet Accessibility Standards. The present OHCHR website should also be restructured to give TB's generally more visibility.

The experts also raised the issue of the visibility of the Committees' work and expressed support for the initiative of **issuing press releases containing summaries of relevant cases recently adopted** and agreed to use the opportunity whenever possible to **refer to findings on relevant cases during press conferences or, as CEDAW has done, in the opening or closing statements by the Chairs**.

IV. Review of best practices regarding application of rules of procedure and methods of work

Use of terminology

The experts noted the inconsistency in terminology among TBs. Treaty bodies' findings are called "Views" for the HRCttee and CEDAW, "Decision" for CAT, while CERD uses the term "Opinion". Although there have been some proposals for standardization (e.g. to adopt the term "Decision" for all TB findings on individual communications), no agreement on the matter could be reached in light of the different wording of the treaties themselves.

Criteria for granting State party's request to deal with admissibility of the communication separately from the merits ("split requests"); interim measures and protection measures

The experts opted for **standardization of working methods regarding splits** for the sake of legal certainty. They took note of the current practice on granting interim measures, but considered that further discussions between TBs are needed in order to agree to a common approach on the matter.

Deadlines for submissions from the parties

The experts also referred to the practice that has been developed by the Secretariat with regard to specific deadlines that are given to both the author and the State party in the framework of the written complaint procedures (e.g. deadline given to the author to provide his/her comments on admissibility and merits, reminders in case of non-compliance with the deadline). The existing practice was endorsed by the experts who considered that there was no need to review or codify it in the RoPs. Nonetheless, they were of the view that, for sake of transparency, **the Secretariat could consider reflecting this practice into common guidelines which could further be endorsed by the Committees and made public.**

Special rapporteur drafts

The practice developed by the HRCttee for cases which do not meet the admissibility criteria but where the authors insist that they should be examined by the Committee (so-called "Special Rapporteur Draft") was also considered during the discussion. Some experts were reluctant to accommodate the requests from the authors on how the Committees should deal with their cases and found it counter-productive to enter in such kind of negotiations with them when it is clear that their cases do not meet the criteria for registration. The practice of the HRCttee was not widely supported. Instead, some experts were in favour of having such cases dealt with by a letter issued by the Special Rapporteur/Working Group for new communications, on behalf of the Committee, informing the author that his/her case cannot be registered. There was general agreement that the practice of the HRCttee should be further clarified in order to underscore the powers of the Special Rapporteur for new communications.

V. Other issues

The experts noted that CEDAW had recently dealt with the issue of friendly settlements and the use of amicus curiae briefs in the framework of individual communications. Although none of these are reflected in the RoP of TBs and the practice of using them is currently very limited, the experts agreed that this subject would benefit from further discussions between TBs. Some experts referred to the practice developed in this regard by regional human rights systems and requested the Secretariat to prepare a background paper on the matter.

The experts also recommended that a future workshop, as a follow-up to the expert meeting, be organized; they proposed for discussion, *inter alia*, the following issues:

- Applicable standard of burden of proof (one of drawbacks of TBs being the "written procedure" and absence of testimony and hearings);
- Deference to domestic authorities/evaluation of facts and evidence (claim that Committees are not a court of fourth instance, e.g. HRCttee and CAT);

- Composition of the Committees, independence and impartiality of experts; grounds for mandatory recusal (e.g. where the author of a communication is of the same nationality as the expert, or any other conflict of interest);
- Access to the system of individual communications (identifying domestic partners that could assist the alleged victims in bringing cases to the system, e.g. the Ombudsman institution at national level); and
- Feasibility of introducing hearings into individual complaint procedure.