

**The development of grading systems on the  
implementation of UN treaty body recommendations and the potential  
for replication to other UN human rights bodies<sup>1</sup>**

*A contribution to the Geneva Academy of International Humanitarian Law and Human  
Rights Academic Platform Project on the 2020 review of UN treaty bodies*

*Research question N°16:*

*What would be the potential impact of treaty body reform on other international human  
rights mechanisms (Universal Periodic Review, Special Procedures, Human Rights  
Council)?*

*March 2017*

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## 1. Abstract

The UN Committee against torture (CAT) adopted in 2015 an innovative system to follow up, assess and grade the implementation of its recommendations to States. The new follow-up procedure largely draws on the precedent established by the UN Human Rights Committee, although it is also more comprehensive. It offers a range of new opportunities for human rights defenders and practitioners both to increase the visibility on the implementation of CAT recommendations, as well as encouraging States parties to do more to comply with those recommendations. The CAT and the Human Rights Committee now stand at the forefront of an emerging trend of improved assessment of the implementation of UN human rights bodies' recommendations. Despite the formidable potential which the evaluation and grading system provides, much remains to be done to make the most of them. They need to be better promoted and disseminated to a broad range of actors. They should also be harmonised and made more accessible. Other treaty bodies and fellow UN human rights bodies such as Special Procedures or the Universal Periodic Review should draw on the positive precedents established by the Human Rights Committee and the CAT. As other treaty bodies are considering the adoption of follow up and assessment systems, notably in preparation for the 2020 review, other UN human rights bodies could draw inspiration from the system established by treaty bodies to better follow and track implementation of their recommendations. The paper constitutes a contribution to the [research question N°16](#) of the Geneva Academy academic platform on the 2020 review of treaty bodies.

## 2. Setting the stage: a large gap between discourse and facts on implementation

UN human rights treaty monitoring bodies regularly pledge (e.g. [Poznan statement 2010](#); [annual meetings of treaty body chairs](#)) to improve the way they follow up on their recommendations (or “Concluding Observations” as per UN terminology) to States. Civil society actors also regularly call and encourage treaty bodies to improve the way they support and track the implementation of these recommendations (e.g. [Coalition of NGOs, 2015 & 2016](#), [Ploton 2014](#)). The Human Rights Council (HRC, e.g. [May 2016 Glion Human Rights Dialogue](#)) and its mechanisms such as the Universal Periodic Review (UPR, e.g. [Res. A/HRC/30/L.26 of September 2015](#)) and Special Procedures (SPs [e.g. 2016 statement of the Chair of the Coordination Committee of Special Procedures](#)<sup>2</sup>) also regularly pledge to improve the follow-up and implementation of their own recommendations and resolutions.

The rhetoric on the need to improve the follow-up, evaluation and impact of the recommendations of UN human rights bodies is widespread and largely accepted. Yet what is required to transform discourse into facts is literally a paradigm shift. The UN human rights machinery and its governmental and non-governmental allies and counterparts need to radically rebalance the efforts and focus on the formulation of resolutions and recommendations, to follow-up and assessment in the places where these are to be

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<sup>2</sup> “ensuring implementation and follow-up to (Special Procedures) recommendations is among (their) priorities”  
p. 3

acted upon, that is at the local and national level. As it has been argued about treaty bodies, UN human rights bodies as a whole primarily remain “process driven rather than rights and results driven”<sup>3</sup>. Much efforts and attention are invested into the formulation of resolutions at the Human Rights Council. Recommendations formulated as part of the UPR, Special Procedures and Treaty Bodies receive primary attention from both the drafters and their lobbyists at the stage of formulation, much more than on their actual implementation. The level of competition between human rights experts, diplomats, NGOs, NHRIs and lobbyists is quite high in terms of the formulation of recommendations, and these different actors compete to ensure that their issues of concern will be properly reflected in the resolutions or recommendations. Yet similar efforts are very seldom to be equally seen to verify, if possible through reliable means, the level of implementation of these resolutions on the ground. “Concrete evidence” including “based on the perspective of rights holders”<sup>4</sup> is required to assess the actual implementation of the UN human rights resolutions and recommendations on the ground, which is in the places where they are meant to be implemented. The paradigm shift required to rebalance formulation with implementation and evaluation could involve that UN human rights bodies would formulate less recommendations and instead dedicate more resources to assessing the evaluation of previous recommendations, and disseminating the results of their evaluation. The elaborate follow-up and grading systems adopted in recent years by several UN treaty bodies (TBs), and the related score cards or grades reflecting the TBs’ assessment of the level of implementation of recommendations provides a unique and remarkable exception in the current context of overwhelming absence of visibility on implementation of UN resolutions and recommendations. The system was mainly pioneered by the UN Human Rights Committee (HR Ctte). It focuses on the level of compliance with some of its recommendations, 12 to 18 months following the review of States parties. The innovative and effective system adopted by the UN Human Rights Committee has been replicated and even improved by other TBs. As such, the TB follow-up and evaluation system presents a formidable potential for development, both within the TBs themselves but also externally, as they could be replicated by fellow UN human rights bodies such as the HRC, UPR or SPs.

### **3. The Human Rights Committee’s pioneering approach**

#### *2.1. Follow up to recommendations (or concluding observations)*

In 2013, the UN HR Ctte, the body that monitors the implementation of the Covenant on Civil and Political Rights (ICCPR), was the first UN treaty body to adopt an elaborate system to follow up and track the level of implementation on some of its recommendations (maximum four) to States ([UN Human Rights Committee 2013](#)). The procedure codified a practice which the Committee initiated in

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<sup>3</sup> Ploton. 2014. More ambition required to reform UN treaty bodies, op.cit.

<sup>4</sup> Ibid

2012<sup>5</sup>. It is based on a simple scale of grades ranging from A to E, reflecting the best level of implementation for a recommendation (grade A) to the worst level (grade E). The grades are adopted by the Committee on the basis of information provided by the State party and other actors, notably civil society or National Human Rights Institutions (NHRIs). Contributions to the Committee's follow-up reviews are expected 12 months after the review of periodic reports, based on the 2 to 4 recommendations which the Committee identified as requiring priority attention<sup>6</sup>. These 2 to 4 recommendations need to be implemented by the State party within the 12 months after the review of periodic reports, as opposed to other recommendations for which a longer timeframe is provided (around 4 years generally<sup>7</sup>). The 12 months' timeframe, which is relatively short to implement important and often difficult recommendations, is nonetheless suitable to encourage States parties to focus their efforts and prioritise them in the year following reviews in Geneva. Such prioritisation schemes are not unique to the UN Human Rights Committee, and four other treaty monitoring bodies have adopted similar procedures to prioritise the implementation of some recommendations<sup>8</sup>.

A Special Rapporteur for follow-up on concluding observations and a Deputy are elected amongst HR Ctte members. At the time being they are Sarah Cleveland (USA) and Yadh Ben Achour (Tunisia). They are in charge of preparing draft evaluation reports and grades on the basis of information provided by the State party on follow-up, 12 months after the review. The draft evaluation report and the grades reflecting the level of implementation are discussed and adopted in plenary during public sessions of the Committee. The Committee's follow up reports and grades are available on the Committee's website<sup>9</sup>. Additionally, the Committee's Secretariat regularly updates and publish a global overview on the status of States parties under the follow-up procedure (e.g. [Human Rights Committee 2016](#)). The Centre for Civil and Political Rights, a Geneva based NGO which played a leading role in the adoption of the procedure<sup>10</sup>, publishes overviews of the Committee grades on its website after each Committee session (e.g. [Latest assessment on the implementation of HR Committee recommendations](#)). The Centre has also supported the preparation and submission of civil society follow up reports in over 30 countries worldwide<sup>11</sup>. An FAQ (CCPR Centre 2016) on the HR Ctte's follow-up and grading system is also available in the Centre's website<sup>12</sup>.

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<sup>5</sup> The first HR Ctte follow up report which mentioned grades on recommendations was adopted during the 104<sup>th</sup> session in March 2012 ([HR Ctte 2012](#)). The grades mentioned in the report were slightly distinct from the grades codified in the 2013 procedure. For instance, they did not include a grade E.

<sup>6</sup> CCPR/C/108/2. § 6&7.

<sup>7</sup> Longer lapses for the subsequent State periodic report are provided by the Committee in countries where implementation of the ICCPR is seen as less problematic. Shorter lapses are given to States which seemingly encounter more problems in implementing the ICCPR.

<sup>8</sup> These are the Committee Against Torture, Committee for the Elimination of Racial Discrimination, Committee for the Elimination of Discrimination against Women and Committee on Enforced Disappearances

<sup>9</sup> <http://goo.gl/vXPK5H>

<sup>10</sup> CCPR/C/108/2, *op.cit.*, §17.

<sup>11</sup> Available on the CCPR Centre's website [www.ccprcentre.org](http://www.ccprcentre.org)

<sup>12</sup> <http://ccprcentre.org/follow-up-and-assessment>

The detailed criteria or grades<sup>13</sup> used by the HR Ctte are as follows:

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**Reply/action satisfactory**

A Reply largely satisfactory

**Reply/action partially satisfactory**

B1 Substantive action taken, but additional information required

B2 Initial action taken, but additional information required

**Reply/action not satisfactory**

C1 Reply received but actions taken do not implement the recommendation

C2 Reply received but not relevant to the recommendation

**No cooperation with the Committee**

D1 No reply to one or more of the follow-up recommendations or part of a follow-up recommendation

D2 No reply received after reminder(s)

**The measures taken are contrary to the recommendations of the Committee**

E The reply indicates that the measures taken go against the recommendations of the Committee

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Thanks to the HR Ctte's innovative approach, more than 60 countries from all world regions have been assessed on their level of compliance with the Committee's priority recommendations. Examples of grades A, which reflect the full implementation of the recommendation, can be found in countries such as Mongolia (on the reform of the judiciary; [HR Ctte 2012](#)) or Angola (on the universal registration of child birth, [HR Ctte 2014](#)). Likewise, a grade E has also been adopted by the Committee when Indonesia undertook a range of executions ([HR Ctte 2015](#)) of individuals sentenced to the death penalty for drug crimes, in contradiction with the HR Ctte's recommendation; or when Colombia enacted a reform of the military justice system which was deemed contrary to the HR Ctte's recommendation to have civil courts investigate violations committed by the armed forces ([HR Ctte 2013](#)). The grades adopted by the HR Ctte since 2013 constitute a growing body of evidence on the impact of the recommendations at the national level. The HR Ctte follow-up reports and the grades, although hardly accessible, give a unique visibility on the efforts of governments and other actors to comply with the Committee's recommendations. They also provides a growing body of statistical data and empirical evidence which are of direct and primary relevance for the "scholarly neglect[ed]" study of the domestic impact of UN treaty body recommendations" ([Krommendijk 2015](#)). As such, the system has a potential to substantially improve the way we can study and understand the implementation of HR Ctte recommendations and their impact ([Ploton 2015](#)).

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<sup>13</sup> CCPR/C/108/2, *op.cit.*, §17.

## *2.2. Follow up to individual complaints*

The grading system is also used by the HR Ctte to follow up on state compliance with its views related to individual complaints (or “Communications” as per UN terminology). In States which have ratified the First Optional Protocol to the ICCPR, individual complaints may be brought to the HR Ctte’s attention. The views subsequently adopted by the HR Ctte are transmitted to States, and as with recommendations to States parties, the HR Ctte uses since October 2013 the same set of grades to reflect the level of enactment of its views on individual complaints by States parties (e.g. see example of grades in HR Ctte report below).

*Example of the Committee grades adopted on the case Al Gertani VS Bosnia and Herzegovina during the 113<sup>th</sup> session of the HR Ctte (March-April 2015). CCPR/C/113/3. P. 6.*

### **Committee’s assessment:**

- (a) **Effective remedy, including adequate compensation: C1**
- (b) **Release (or adequate opportunity to challenge all grounds on which his detention is based): A**
- (c) **Full reconsideration of the reasons for removal to Iraq and the effects thereof on his family life, prior to any attempt to return the author to his country of origin: C1**
- (d) **Publication of the Views: A**
- (e) **Non-repetition: C1**

The HR Ctte follow-up reports on individual communications are available on the webpages of the [sessions](#)<sup>14</sup> during which they were adopted. Committee members designate a Rapporteur on follow-up to views. In addition to the complainant and the defendant, third parties such as NGOs can submit contributions to the HR Ctte on measures taken by States parties to comply with HR Ctte views. The Rapporteur on follow-up to views may, as for the Rapporteurs on recommendations, request meetings with representatives from States parties.

Although the majority of HR Ctte views on individual complaints are not adequately followed or enacted by States parties, positive examples of implementation can be found in several cases. For instance, the HR Ctte found in 2015 that Australia had fully complied with 3 out of 4 of its views with regards to the case “Horvath<sup>15</sup>”, and adopted grade A for these 3 views (CCPR/C/113/3):

- Adequate compensation had been provided to the victim
- A suitable legislative review was undertaken
- Non repetition of the violation had been guaranteed

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<sup>14</sup> <http://goo.gl/tHuUQI>

<sup>15</sup> [Communication No. 1885/2009](#)

Other examples of initial or substantial action taken with regards to HR Ctte views can be found in various countries from the Global South (e.g. in Maharjan VS Nepal<sup>16</sup>).

As stated by [Joseph](#), the grading system on individual complaints “serves to place sustained pressure on recalcitrant States” (p. 96). As with the implementation of Committee recommendations, the use of grades for individual complaints could not only considerably improve the visibility on the level of implementation of the HR Ctte views at the national level. Yet the grades on follow-up to HR Ctte views suffer from the same lack of attention and dissemination as the grades on recommendations to States parties. It is not possible for individuals without a sound knowledge of the procedure and the Committee to access the information about the grading system, and the adopted grades themselves.

#### **4. Opportunities and challenges around the HR Ctte’s current procedure**

Despite the above mentioned opportunities provided by the HR Committee’s follow up system on both recommendations and views, it still remains poorly known, and underused by human rights actors and activists. Although the follow up reviews of countries like the US<sup>17</sup> or Hong Kong<sup>18</sup> (China) have received substantial attention, many human rights actors still either do not know, or do not use the follow up system (or both). Civil society actors and National Human Rights Institutions (NHRIs) for example, can provide information and they can even suggest grades on their own assessment of the level of implementation of the Committee’s recommendations. As evidenced in the Committee’s follow-up reports, these contributions are vital sources of information for the Committee’s follow up work. Yet few NGOs and even fewer NHRIs contribute to the HR Ctte’s follow up procedure by submitting reports ahead of the follow-up reviews. Much remains to be done in outreach, capacity strengthening and research to use the Committee’s follow up procedure to its full potential.

##### *3.1. Absence of outreach strategy*

The most stringent limitation currently affecting the HR Ctte follow up procedure relates to its lack of suitable visibility, and the limited efforts to disseminate the grades adopted by the Committee. At the time being, the UN Office of the High Commissioner for Human Rights (OHCHR), which acts as the Secretariat of the Human Rights Committee, do not undertake any outreach activity specifically related to the grades adopted by the HR Ctte. The adoption of the follow-up reports are not mentioned alongside country reviews and other ordinary tasks of the Ctte in regular OHCHR mailings and advertisements (e.g. [see end of session news](#)). Actually, the grades appear nowhere else than in the details of the follow-up reports, which themselves can only be found by those who are more familiar with the Ctte’s working methods (see below example).

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<sup>16</sup> Case 1863/2009, as assessed in report CCPR/C/112/3

<sup>17</sup> E.g. see “UN Report Card Gives US 'Failing Grade' on Human Rights” 30 July 2015. <http://www.commondreams.org/news/2015/07/30/un-report-card-gives-us-failing-grade-human-rights>

<sup>18</sup> E.g. see “UN rights panel calls for open elections in Hong Kong” 24 October 2014. <https://viewhk.wordpress.com/2014/10/24/un-rights-panel-calls-for-open-elections-in-hong-kong/>

*Example of the Committee grades adopted on Chile during the 104<sup>th</sup> session of the HR Ctte (March 2012). CCPR/C/104/2. P.3.*

**Evaluation – paragraph 9:**

[D1]: The State party does not provide any information on banning persons convicted of human rights violations from exercising public functions.

[B1]: Recalling the principles set out in paragraph 4 of general comment No. 31, the State party should be asked to provide additional information in its next periodic report on the manner and circumstances of the application by the Supreme Court of progressive prescription and on measures taken to ensure that it does not give rise to impunity for human rights violations (para. 9).

Neither the Committee nor the OHCHR make a statement when the follow up reports are issued, nor are they circulated proactively to relevant stakeholders. The reports are made available on the webpages of each Committee sessions once they are adopted (currently, this means on average 2 to 6 months after the end of each session, e.g. see [the webpage of the 116 session](#)).

The justifications for the current lack of visibility given to the grades adopted by the HR Ctte on follow-up can be partially put down to different factors, including lack of will and competing priorities for key actors in the system, notably the Secretariat, as well as a limited outreach capacity in the Secretariat.

Enhancing the visibility of the HR Ctte's follow-up and grading system could not only contribute to boosting the level of implementation of the recommendations. Given that treaty bodies have been chronically under-resourced, it could also entail additional spin offs such as increasing public and financial support to their work (e.g. [Ploton 2014](#)).

### *3.2. Opportunities to disseminate the grades within the UN system and in courts*

The grades adopted by the HR Ctte provide an authoritative evaluation of the implementation of a major international human rights law standard by a quasi-judicial bodies. Within the UN alone, both the grades on recommendations and on complaints are currently not reflected but could be:

- In the OHCHR's Universal Human Rights Index<sup>19</sup>
- In the list of documents corresponding to each country reporting cycle on the treaty bodies webpage
- In the compilation of UN information used in preparation for Universal Periodic Review (UPR) reviews
- As background information on States applying for Human Rights Council or Security Council membership

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<sup>19</sup> <http://uhri.ohchr.org/en>

- In the reports of UN Special Procedures as relevant (e.g. Special Rapporteur on torture, Special Rapporteur on freedom of expression, Special Rapporteur on extrajudicial executions, etc)
- In thematic and country-specific reports of the Human Rights Council
- In reports of fellow treaty bodies (e.g. Committee against torture, Committee on the elimination of discrimination against women, etc)
- In UN country teams national human rights plans

Additionally, the grades adopted on the follow-up to individual complaints provide a relevant indication about States' capacity and/or willingness to comply with the views from the body charged with the interpretation of the ICCPR. As such, the grades on complaints could be reflected in the proceedings of regional and national courts, as an important element of a quasi-judicial body's jurisprudence.

### *3.3. Other opportunities to strengthen the procedure*

Some of the more technical issues which should be addressed with regards to the current HR Committee's follow up and assessment system include:

- The need to better define the criteria for grades:** criteria for each grades need to be spelt out further. The existing procedure only provides general guidance on these criteria (see above). A more detailed set of guidelines and/or comment would help.
- The need to deal with non-priority recommendations:** as mentioned above, the HR Ctte follow-up procedure is only based on the 2 to 4 recommendations, out of an average total of 25, which are flagged as requiring priority attention by the State party. Although the focus on a restricted number of recommendations is likely to facilitate action taking, it also contributes to posing the question of how much attention is given to the other, less pressing recommendations. As detailed below, the new Committee against torture (CAT) procedure addresses with this limitation of the the HR Ctte procedure.
- The need to prioritise implementation over reporting:** the HR Ctte's follow-up procedure currently mixes inter-changeably "the provision of information" by States parties, and "measures taken". While the latter is obviously more desirable than the former, it is not always clear in the Committee grades whether these reflect the need for more or better implementation, or more reporting, and vice-versa.
- The need to deal with States failing to submit follow-up reports:** grades are currently only adopted on States which submit the follow-up reports requested by the Committee one year after the reviews. This is problematic for at least two reasons: grades may not be adopted in instances when other actors have submitted info (thus a disincentive for non-state actors to submit reports until States do); and it is a potential incentive for States not to submit a follow-up report. States which fail to submit follow-up reports should as a rule be given grade "D" which evidences a lack of cooperation with the Committee's follow-up procedure.

- e) **The need to clarify when and how follow-up reviews take place:** so far, the decisions on which countries are to be reviewed for follow-up at each Committee session have not always appeared very clear nor consistent. The current practice is based on a mix of established practice (but not policy) and decisions by the Committee's Rapporteur on follow-up. This constitutes another potential disincentive for non-state actors to engage in the process as they actually can't really figure whether and when the follow-up review will take place so long as the State does not report on follow-up.
- f) **The need to facilitate the engagement of NGOs and NHRIs:** In addition to clarifying the timeframe for follow-up reviews and the adoption of grades mentioned above, the Committee should reach out to NGOs and NHRIs ahead of the follow up reviews so as to encourage their inputs to complement and balance the information provided by States parties in their follow-up reports.
- g) **The need to allocate suitable resources to the procedure:** as stated above, treaty bodies' work has been and continues to be under-resourced. A [2016 report of the UN Secretary General](#) on the process of treaty body strengthening provides an array of elements on the costs of the treaty body system, and the scarce resources available to cover those (e.g. see Annex XX of the report on the costs of webcasting treaty body sessions). Implementing the follow up procedures is resource intensive and it requires the continued dedication of the Ctte Rapporteurs and their support staff over time. The current resources available to the HR Ctte follow-up procedure are scarce (less than one full time staff support). They ought to be consolidated and ideally increased in order to match the expectations in terms of follow up and assessment of recommendations.
- h) **Other issues relating to subsequent follow up reviews:** including whether States can be downgraded or upgraded after a first assessment<sup>20</sup>; and questions as to how the assessment of non-priority recommendations can be improved, given that the procedure is solely focused on the 2 to 4 priority (or follow-up) recommendations.

## 5. Similar procedures adopted by fellow UN treaty bodies

The grading system pioneered by the Human Rights Committee has so far partially been replicated by the UN Committee on the Rights of Persons with Disabilities (CRPD) and the [Committee on Enforced Disappearances](#) (CED). However, the CRPD has only replicated the grading on follow up to the individual complaints (e.g. see [report of the 13<sup>th</sup> session](#)), and not on follow-up to recommendations to States parties. The grades used by the CRPD and the CED are mostly similar to the HR Ctte's. So far, CED has only used the grades for follow-up to recommendations, and not individual complaints. The Committee on the Elimination of Discrimination against Women (CEDAW) uses a simpler [assessment system](#) based on the following 4 categories:

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<sup>20</sup> This was discussed by HR Ctte members on at least one occasion during a 2015 session.

- Implemented
- Partially implemented
- Not implemented
- Lack of sufficient information to make an assessment

As for the HR Ctte and the CED procedures, the CEDAW assessment system is only based on some of the recommendations to States, not all. The adoption by these three treaty bodies of elaborate procedures to foster the implementation of recommendations and/or views is certainly welcome. Yet they bear a similar potential for development and similar challenges to those listed above on the HR Ctte. Namely, these procedures, which are still relatively new, will need to better trickle down to the grass roots and to human rights defenders and practitioners. Several actors, including NGOs and some treaty bodies themselves regularly encourage (e.g. [Poznan statement](#) § 27, [2016 meeting of treaty body chairs](#)) those treaty bodies which do not yet have follow-up procedures to adopt one, and/or to harmonize the different existing procedures.

#### *4.1. The Committee against torture's new procedure*

The [follow-up and grading procedure](#) recently adopted by the CAT not only builds on the positive and effective elements of the preceding HR Committee procedure. It also integrates innovative elements which address some of the above mentioned existing challenges encountered with the HR Committee procedure. It is focused on Concluding Observations, and according to the main architect of this new procedure Jens Modvig<sup>21</sup>, there are no plans for such a grading system to be adopted for follow-up to individual complaints to the CAT.

To counter some of the challenge noted above about the Human Rights Committee, the CAT procedure integrates 3 different sets of grades:

- A first set of grades (ranging from 0 to 3) relates to the quality of the follow-up information submitted by the State (§ 19)
- A second set of grades (ranging from A to E) relates to the level of implementation of the recommendations. That system is almost entirely similar to the HR Committee's. (§20)
- A third set of grades relates to an innovative development, as the CAT now recommends that States adopt implementation plans (§11) for the recommendations that are not flagged as requiring priority attention. These grades range from A to C reflecting the quality of State's implementation plans. (§21)

Therefore, the CAT's new procedure will tackle the need to differentiate between the actions taken by States to comply with recommendations, and the way they report back to the Committee. But even more importantly, the CAT's new procedure is also tackling the issue of recommendations which are not

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<sup>21</sup> Verbal exchanges with the author, 27 November 2015. Jen Modvig was the CAT Rapporteur on follow up at the time when the procedure was established, and he was elected as the Chair in April 2016.

flagged as requiring priority attention within the 12 months after the reviews in Geneva. By encouraging States to come up with implementation plans for these recommendations, the CAT has found a creative and effective way to foster the implementation of its recommendations. Without creating a new obligation on States (the procedure “encourages” States to follow that route), this new development is likely to contribute at least to give more visibility on steps taken at the national level following reviews to comply with recommendations.

Finally, the new CAT procedure also drew inspiration from the HR Ctte procedure on two useful points:

1. Any remaining issues under the follow-up procedure are to be automatically integrated in the subsequent review cycles, through the questions asked by the Committee to the States in preparation for the subsequent reviews (§ 29-31). Interestingly, the CAT procedure is more elaborate than the HR Ctte’s on this point.
2. Like the HR Committee, the CAT also foresees to seek a dialogue with States on the follow-up phases, including through face-to-face encounters between the CAT Rapporteur on follow-up and State representatives (§26-28).

Although the CAT follow-up procedure is unique and innovative notably as it constitutes the first precedent of a UN human rights body systematically encouraging States to adopt implementation plans on recommendations, it is nonetheless complex and it could be argued that 3 sets of grades makes the procedure overtly complex. Additionally, by distancing itself quite substantially from the follow-up procedures of fellow treaty bodies, the CAT contributes to the fragmentation of treaty body procedures, an issue which features prominently on the treaty body strengthening agenda.

## **6. Opportunities and potential risks for human rights defenders and practitioners**

As detailed in the above sections, the follow up procedures adopted by the HR Ctte, CAT and other treaty bodies offer broadly speaking two range of opportunities for human rights defenders:

- Formal opportunities: such as the submission of reports as part of the Committee’s follow up procedures, which may or may not include suggested assessments and grades on the level of implementation of recommendations
- Informal opportunities are countless and can be divided into three consecutive phases:
  - Before the adoption of Committee assessments or grades: invitation of Committee experts at the national level to disseminate concluding observations and advocacy towards high level officials; national events and workshops to discuss and disseminate recommendations; preparation of national implementation plans for the recommendations, etc

- Upon adoption of Committee assessment or grades: if the sessions are public and livestreamed online, such as with the HR Ctte, public discussions around the sessions can be organised at the national level, possibly in cooperation with UN country teams.
- Following the adoption of grades: disseminate the grades broadly, including to relevant stakeholders such as the national media, members of the 3 branches, NGOs, NHRIs, law enforcement agencies, professional unions, etc

The TB follow-up procedures offer considerably more opportunities than risks for human rights defenders. One notable exception concerns threats and reprisals. The UN has considerably improved its institutional response to reprisals and threats against individuals cooperating with its human rights bodies, for instance with the adoption by TBs of the [San José Guidelines](#) in 2015. Yet it should remain an individual decision of human rights defenders as to whether contributing to the follow-up procedures, and particularly suggesting grades and commentaries on the level of implementation of recommendations, could put them at risk of reprisal.

#### **7. Can or should States be graded for the compliance with international human rights standards?**

One of the key lessons learned of the establishment of elaborate follow-up and grading procedures within UN treaty bodies, in the author's experience, is that they provide a unique and unprecedented insight into the impact of recommendations at the national level. There is also some evidence that they encourage and incentivise implementation. Whereas much concern and doubts were expressed during the discussions on the adoption of the grades on the acceptance by States parties, and the overall relevance of the approach, its early years of functioning have proved to be overwhelmingly positive. In several instances such as in Mauritania<sup>22</sup>, it can be asserted that the grades have made a significant contribution to encourage national decision makers to take decisive action in follow-up to the urgent recommendations of treaty bodies. The HR Ctte's adoption of a procedure which many thought would face unsurmountable State resistance echoes the UN Subcommittee on the Prevention of Torture's (SPT) unique ability to access all places of deprivation of liberty, which also faced fierce opposition during the negotiations around that treaty. The SPT, HR Ctte and CAT precedents also demonstrate that treaty bodies can actually be considerably creative and innovative in the implementation of their mandates, without necessarily having to renegotiate the treaties or seeking State endorsement at the UN General Assembly or Human Rights Council.

The author's experience working on the HR Ctte follow-up procedure in countries such as Armenia, Mauritania or Mozambique evidenced that States were curious and willing to engage with the process, primarily to evidence the steps they had taken to comply with the Ctte's recommendations. As

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<sup>22</sup> See <https://goo.gl/1AjSHI>

exemplified by the above mentioned instances of Grades E, those are also helpful to expose blatant failures to comply with Committee recommendations. The grades adopted by treaty bodies constitute powerful and relevant indicators for the work of [National Mechanisms on Reporting and Follow-up \(NMRFs\)](#)<sup>23</sup>. These national bodies which forms and shapes vary across regions and countries are responsible for compiling information ahead of reporting to international human rights bodies, and coordinate follow-up and implementation measures. They are normally located at the level of the Executive branch, and they often take the shape of an inter-ministerial committee on human rights. Some NMRFs integrate representatives of NHRIs and civil society. The treaty bodies' follow-up procedures offer important opportunities to facilitate and streamline the work of NMRFs on implementation of recommendations. The grades are additional incentives for NMRFs to seek to achieve substantial results with regards to the treaty body recommendations. However, this specific aspect of the NMRF's work remains so far mostly unexplored and entails much potential for development. It is hoped that the recently launched OHCHR [practical guide](#) on NMRFs and the study on existing NMRFs referenced above will be followed by several initiatives by both state and non-state actors to strengthen NMRFs and foster their use of the treaty bodies' follow-up procedures and grades.

## **8. A large potential for development and replication**

The sophisticated procedures on follow-up and the grading systems adopted by several UN treaty bodies, on a trial and error basis ought to serve as a primary source of inspiration and benchmarking by follow international, regional and national human rights bodies. This section explores some of the potential for adoption of grading systems within fellow UN human rights bodies.

### *6.1. Treaty bodies*

Not all TBs have adopted follow-up procedures. The Committee on the Rights of the Child and the Committee on Economic, Social, and Cultural Rights, for instance, do not currently have any formal follow up procedure or practice on either recommendations or individual complaints. As part of the ongoing process of treaty body strengthening, and the implementation of GA resolution 68/268, new proposals are formulated to streamline and harmonise the working procedures of TBs. Follow-up to recommendations is quite inevitably one of the areas where harmonization and streamlining is required. Proposals most recently discussed as part of an [Geneva Academy workshop held in Dublin](#) in July 2016, “the need to consider further the possible establishment of a joint follow-up mechanism serving all of the treaty bodies”<sup>24</sup> was mentioned, as well as that “a joint follow-up mechanism could also develop policies for in-country visits”<sup>25</sup>

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<sup>23</sup> See the OHCHR study on existing NMRFs.

<sup>24</sup> §26

<sup>25</sup> Ibid

## 6.2. Universal Periodic Review

The existing formal UPR follow-up methodology is primarily based on the submission by States under review (SuR) of mid-term reports which reflect steps taken by SuRs to implement UPR recommendations. It should be noted that not all SuRs provide these follow-up reports, and no formal mechanism is envisaged to assess the level of implementation of recommendations by the end of a regular UPR 5 year implementation cycle. The NGO UPR Info has developed considerable efforts both at the policy and programmatic level to facilitate and improve the implementation of recommendations. As part of their follow-up programme, UPR Info undertake in-country activities aimed at fostering the engagement of relevant actors in the implementation of UPR recommendations, notably through cooperation between state and non-state actors<sup>26</sup>. UPR Info have also developed their own methodology and grading system to assess the level of implementation of recommendations: the Implementation of the Recommendation Index (IRI). The IRI was not in use any longer, was based on data sourced from state and non-state actors by UPR Info at mid term between two UPR reviews<sup>27</sup> (i.e. after 2.5 years on average). The index ranged from 0 which evidenced an absence of implementation, to 1 which reflected the full implementation of a recommendation, and an intermediate level characterized as “partially implemented” (see example below). The score was calculated mathematically on the basis of information received by UPR info by consulted stakeholders, who included SuRs, as well as NGOs who provided inputs to the review, NHRIs and UN agencies when possible or relevant.

UPR Info IRI index as mentioned in *“Beyond promises”*

Percentage:	Implementation level:
0 – 0.32	Not implemented
0.33 – 0.65	Partially implemented
0.66 – 1	Fully implemented

UPR Info’s IRI constituted the first and only existing consistent methodology to assess the level of implementation of UPR recommendations. It was based upon the inputs provided by the main actors who are insiders to the UPR review (i.e. SuR and national non state actors). UPR Info have used the data and statistics obtained from this methodology to disseminate figures and data on the level of implementation of recommendations. The IRI constituted a pioneering attempt at using a unique methodology to assess the level of implementation of UPR recommendations. UPR Info have widely

<sup>26</sup> <https://www.upr-info.org/en/upr-process/follow-up>. Referenced 29 September 2016.

<sup>27</sup> [UPR Info. Beyond promises. 2014.](#) §7 : Methodology

used and disseminated these data, notably to claim that “48 percent of UPR recommendations triggered action by midterm, meaning that the recommendations were either fully or partially implemented only 2.5 years after the initial review”<sup>28</sup>.

Nevertheless, the IRI was based on mathematical calculations which involved no or limited independent expert assessment. The index or grades calculated under the IRI were a plain reflection of the opinion of respondents to the surveys undertaken by UPR Info. Unlike the above mentioned procedures among treaty bodies, the IRI was not the result of an assessment and a discussion among expert insiders. The need for a formal follow-up methodology continues to be regularly highlighted (e.g. see remarks made during a panel on the UPR in Dublin in February 2016<sup>29</sup>). It [has even been asserted](#) that the 3<sup>rd</sup> UPR cycle, which is to initiate in 2017, should primarily focus on implementation of the recommendations formulated during the 2 initial cycles. There are different ways in which grades on UPR implementation could be adopted and disseminated. For instance, they could be prepared by the OHCHR in consultation with civil society and other UN human rights bodies (a suggestion inspired from the [International Service for Human Rights \(ISHR\) strategy](#) on the UPR 3<sup>rd</sup> cycle)<sup>30</sup>.

### *6.3. Special Procedures*

As highlighted above, Special Procedures mandate holders regularly [pledge to better follow-up](#) on the implementation of their recommendations to States, and the fact that compliance and implementation are essential parts of their mandates. In his 2016 statement presenting the report of the 2015 meeting of the 22<sup>nd</sup> annual meeting of special procedures, the Chairperson reiterated that implementation of recommendations was a priority, which nonetheless remained “primarily the responsibility of States”<sup>31</sup>. If that assertion constitutes by all means a truism, it has been and is still being mentioned too often as an easy way out for UN human rights bodies to refrain from engaging meaningfully into what they could do themselves to support, facilitate, monitor and assess the implementation of their own recommendations.

One of the notorious differences between the recommendations of SPs and TBs is that recommendations of the former are often only made public several months after a country visit, in some instances more than one year after the actual visit<sup>32</sup>. These delays in the publication of the recommendations, during sessions of the HRC, contribute to weaken the visibility and relevance of recommendations. Some Special Procedure mandate holders have individually decided to undertake follow-up reviews on the

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<sup>28</sup> Idem, Executive summary.

<sup>29</sup> <https://goo.gl/FIKpG9>. Referenced 15 October 2016. “there is no official follow-up mechanism in charge of assessing the level of implementation of recommendations by each States”

<sup>30</sup> § 3.b

<sup>31</sup> P.4

<sup>32</sup> For instance, the report of the November 2014 visit of the Special Rapporteur on Human Rights Defenders to Burundi was only made public in December 2015

implementation of their recommendations, and-or follow up visits at the national level. These Special Procedures include the Special Rapporteur (SR) on torture who has undertaken desk reviews of follow up information received by States and NGOs on the implementation of their recommendations to several countries, most recently in [a report from 2011](#). The SR on torture and the SR on human rights defenders also count among the SPs who undertake some follow up visits at the national level, for instance in Ghana where the former conducted a follow-up visit in October 2015 following an earlier visit in November 2013<sup>33</sup>; and in Togo where the latter conducted [a follow-up visit](#) in 2013 following an earlier visit in 2008. The Working Group on Enforced and Involuntary Disappearances (WGEID) has published in September 2015 a similar report on follow-up to their recommendations to States to the SR on torture's, based on inputs from States primarily. The report focuses on recommendations made following visits to Mexico and Timor Leste. The common element between the follow up reports of the SR on torture and the WGEID is that they do not use a standardised methodology or nomenclature to assess the level of implementation of their recommendations. Vague formulas such as "progress has been made" or "a number of recommendations still need to be addressed"<sup>34</sup> are used.

The use of follow-up reports among at least some of the SPs, which are based upon the submission of information by States and non-state actors, demonstrates that with little or no additional efforts, SPs could adopt a similar grading system to that which was adopted by various treaty bodies. Such a system could contribute, as with treaty bodies, to considerably improve the visibility on the level of implementation of their recommendations, including to focus where it is more problematic (either country wise or issues wise). Grades on the implementation of SP recommendations could also provide useful resources providing the overall picture on the track record of States cooperation with these UN bodies in larger for a such as the HRC, General Assembly or even Security Council.

#### *6.4. Human Rights Council*

Unlike TBs and SPs, the Human Rights Council, which is a political body, does not have the ability to undertake investigative visits to States. It can mandate Commissions of Inquiry as it recently did on Burundi (September 2016)<sup>35</sup> and fact finding missions. The HRC has, on occasion, integrated a monitor and evaluation component in their resolutions, whereby the stakeholders commissioned to undertake the substance of the resolution, oftentimes the OHCHR or States, are requested to report back on the implementation of the resolution or some provisions pertaining to it (e.g. January 2016 [report of the High Commissioner for Human Rights](#) on Implementation of Human Rights Council resolutions S-9/1 and S-12/1). While the integration of elements on monitoring, evaluation, and reporting back on implementation of the resolutions is welcome, the HRC still suffers from a lack of structural, formal,

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<sup>33</sup> <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16523&LangID=E> Referenced 15 October 2016.

<sup>34</sup> WGED report, §36

<sup>35</sup> <http://www.ohchr.org/CH/NewsEvents/Pages/DisplayNews.aspx?NewsID=20619&LangID=E>. Referenced 16 October 2016

and continuous methodology to assess the level of implementation of its resolutions on a scale that would enable a comparative analysis of the level of implementation of all resolutions. Inspiration from treaty bodies and their grading system could be pursued and grades could be systematically adopted at a fixed moment following the adoption of resolutions, for instance after 12 months, as part of an implementation report which could be compiled by OHCHR or the Secretary General (a suggestion inspired from the [ISHR joint civil society paper](#) on strengthening the HRC at 10<sup>36</sup>). The Advisory Council of the HRC, or an independent Working Group of experts<sup>37</sup> insofar as it is neutral from the HRC itself, could possibly play a role in the adoption of such grades.

## 9. Conclusion

As highlighted in the above sections, the innovative follow-up and grading systems developed by treaty bodies, particularly the Committee against Torture's, constitute an important breakthrough in the overwhelmingly accepted desire to improve the implementation of UN human rights recommendations. Key elements of a robust follow-up and grading system include, inter alia: the need for a transparent, thorough and clear methodology; buy-in and acceptance from a wide range of relevant stakeholders; encouraging the adoption of implementation plans; expert and independent assessment; widespread dissemination and differentiation between substance and form. Much remains to be done to strengthen, streamline, highlight and replicate the existing procedures within treaty bodies themselves. The ongoing process of TB strengthening provides a suitable avenue to do so. As [it has been previously argued](#)<sup>38</sup> strong support from the High Commissioner for Human Rights is required for the ongoing process of TB strengthening to be effective, and to notably deliver good results on follow-up, Other UN human rights bodies, namely the HRC, UPR and SPs would be well advised to take inspiration in these TB practices, and aim to use them and improve them for the sake of their own mandates.

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<sup>36</sup> §B.2

<sup>37</sup> ISHR joint civil society paper, §B.5

<sup>38</sup> The High Commissioner's "ability to strengthen treaty bodies in a meaningful way will be a key determinant of his tenure"

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