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## Domestic implementation of UN human rights recommendations

A guide for human rights defenders and advocates

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June 2013

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## Acronyms

<i>Convention on the Elimination of All Forms of Discrimination against Women</i>	CEDAW
Human Rights Law Centre	HRLC
Human Rights Committee	HRC
<i>International Convention on the Elimination of All Forms of Racial Discrimination</i>	CERD
<i>International Covenant on Civil and Political Rights</i>	ICCPR
<i>International Covenant on Economic, Social and Cultural Rights</i>	ICESCR
<i>International Covenant on the Rights of Persons with Disabilities</i>	ICPRD
International Service for Human Rights	ISHR
National Human Rights Institutions	NHRI
Non-Government Organisation	NGO
<i>Universal Declaration of Human Rights</i>	UDHR
Universal Periodic Review	UPR

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# 1. Introduction

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## 1.1 Purpose and scope

The UN human rights system comprises several bodies which periodically make recommendations to States to assist them in implementing their international human rights obligations. Whilst these conclusions and recommendations are known by different names - UN treaty bodies produce 'concluding observations and views'<sup>1</sup>, Special Procedures issue 'recommendations', and Universal Periodic Review 'outcomes' – they are known collectively as 'UN recommendations'. Effective follow-up by civil society is vital to ensuring that these UN recommendations are implemented and lead to an improvement of the human rights situation on the ground.

The implementation rate of UN recommendations is generally poor. To illustrate, of the 546 Individual Communications (or complaints) determined by the Human Rights Committee that are being monitored by the Office of the High Commissioner for Human Rights' (OHCHR's) Petitions Unit, in only 67 cases have 'satisfactory' responses been received (where the State's response addressed the merits of the Committee's findings).<sup>2</sup>

This paper considers ways in which NGOs may use follow-up strategies and initiatives to contribute to the implementation of UN recommendations at the national level. The paper presupposes some familiarity with the UN human rights system, particularly the Special Procedures, UPR and treaty bodies.<sup>3</sup>

Of course, implementation of UN recommendations is ultimately the responsibility of States. However, as human rights defenders well know, external pressure and expert guidance is sometimes required before States will act in accordance with their human rights obligations. The non-binding nature of UN recommendations, and the lack of international enforcement mechanisms mean that NGOs play a vital role in following up on recommendations. NGOs may need to employ the full spectrum of advocacy tools to ensure domestic implementation.

There is a broad range of possible follow-up strategies to press for the implementation of recommendations. How appropriate and effective each might be depends on context. This paper is intended for a diverse audience, working in different countries and sectors, and with different areas of expertise. A range of strategies is outlined and it is hoped that NGOs will identify those which are most appropriate to their domestic political, legal, economic, and social contexts and their organisation's goals, resources, and working methods.

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<sup>1</sup> 'Views' are treaty body opinion on cases brought to their attention through individual communications.

<sup>2</sup> Report of the Human Rights Committee, UN Doc. A/64/40 (Vol. 1) (2008-2009) [232]; for a detailed analysis of this statistic see: Open Society Justice Initiative, *From Judgement to Justice* (2010), available at [http://www.soros.org/initiatives/justice/articles\\_publications/publications/from-judgment-to-justice20101122](http://www.soros.org/initiatives/justice/articles_publications/publications/from-judgment-to-justice20101122), p.119.-121.

<sup>3</sup> For an explanation of treaty bodies' mandates and functions, please see the International Service for Human Rights' *Simple Guide to the UN Treaty Bodies* (2010), available at <http://www.ishr.ch/guides-to-the-un-system/simple-guide-to-treaty-bodies>.

Part two discusses the need to consider implementation and follow-up of recommendations from the early stages of engagement with UN human rights mechanisms. This will include when:

- (a) deciding which mechanism to engage with;
- (b) drafting complaints, reports and recommendations;
- (c) building domestic coalitions; and
- (d) engaging all levels and branches of government.

Part three considers national-level strategies to promote effective follow-up and implementation of UN recommendations, including:

- (a) publicising and 'popularising' the recommendations;
- (b) engaging and influencing decision-makers and other actors within the executive, legislature, judiciary and statutory bodies; and
- (c) monitoring and reporting on implementation.

Part four examines ways in which effective follow-up can be pursued in international fora, including through:

- (a) utilising the formal follow-up procedures of UN human rights bodies;
- (b) including UN recommendations in NGO reports, Individual Communications, and contact with Special Procedures (such as requests for country visits);<sup>4</sup> and
- (c) working with international actors, including donors and UN offices.

Case studies of ways in which NGOs have employed these strategies are included throughout the paper.

## 1.2 Acknowledgements

Much of the information contained in this guide was made available through interviews with representatives from domestic and international human rights NGOs. Our thanks to those who generously gave their time to assist with this project.<sup>5</sup>

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<sup>4</sup> Special Procedures can, for example, investigate allegations of widespread or systematic human rights violations (if they are sufficiently documented) – see eg: <http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/Allegation.aspx>.

<sup>5</sup> Particular thanks to Asger Kjaerum (International Rehabilitation Council for Torture Victims); Laila Matar (Cairo Institute for Human Rights Studies); JoAnn Kamuf Ward (Human Rights in the U.S. Project, Human Rights Institute, Columbia Law School); Tatiana Bejar, (Urban Justice Centre); Mariana Duarte (Centro de Estudios Legales y Sociales, Conectas Derechos Humanos and Corporacion Humanas); Patrick Mutzenberg (CCPR Centre); Jem Stevens (Association for the Prevention of Torture); Emily Chew (YWCA Australia); Gauri Bhopatkar (IWRAW Asia Pacific); Roland Chauville (UPR Info); Daisuke Shirane (International Movement Against All Forms of Discrimination and Racism); Homayoun Alizadeh (South-East Asia Regional Office, Office of the United Nations High Commissioner for Human Rights).

## 2. Preparing for Implementation

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### 2.1 Introduction

The efficacy of the human rights mechanisms, in terms of producing useful recommendations and seeing these implemented, requires engagement by civil society at all stages of the cycle of reporting. Strategies to follow-up on recommendations should be considered well before UN recommendations are issued. This section discusses ways in which NGOs can prepare to maximise effective implementation from the early stages of their engagement with UN human rights mechanisms.

### 2.2 Selecting a mechanism

Many human rights violations could be raised under several different UN human rights mechanisms. For example, a case involving violence against women could be examined by the Committee on the Elimination of Discrimination Against Women, the Committee Against Torture, the Human Rights Committee, by the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences, or by the Human Rights Council during a Universal Periodic Review session, among others.

#### ***Case study: NGO engagement with the Committee Against Torture on abortion***

Encouraged by briefings and lobbying by civil society groups, including Amnesty International, in 2009 the Committee Against Torture added its voice to that of three other UN human rights treaty bodies that had made recommendations to Nicaragua to review its legislation imposing an absolute ban on the provision of abortion services. In its recommendations the Committee cited the opinion of the other three treaty bodies: the Human Rights Committee, the Committee on the Elimination of Discrimination Against Women, and the Committee on Economic, Social and Cultural Rights.

By having several treaty bodies make a similar call, evidence of consensus on the need for reform from different human rights perspectives is created. This should provide advocates for reforms with powerful arguments to complement those being advanced at national level. In the case of Nicaragua, to date there has been no legislative change regarding abortion. On an issue as intractable as abortion – where the forces against reform are powerful and well-funded – engagement with UN mechanisms is probably best seen as a piece of a far broader, long-term strategy to effect human rights change, effected at national, regional and international levels.

Many factors will be relevant to the selection of the mechanism where a particular human rights issue should be pursued.<sup>6</sup> Among these considerations should be the extent to which recommendations or findings from a given mechanism are likely to be implemented in an effective and timely manner.

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<sup>6</sup> For example, whether the issue requires an individual or systemic remedy, whether the complainant/s wish to remain anonymous and resources available to develop the complaint, among others.

**Comparing different styles of recommendations:**

These sets of recommendations made to Pakistan show how the specificity of recommendations can vary between different mechanisms:

UPR recommendations for Pakistan relating to the status of women:

*Continue to spearhead progress toward gender equality and development for women in areas of education and employment.*

*Continue improving the situation of women through pro-women policies.*

*Continue with appropriate measures to eradicate discrimination and violence against women.*

CEDAW recommendations for Pakistan:<sup>7</sup>

*The Committee recommends that a definition of discrimination against women in line with article 1 of the Convention, which encompasses both direct and indirect discrimination, and provisions on the equality of women with men in line with article 2 (a) of the Convention, be included in the Constitution or in other appropriate legislation.*

*The Committee urges the State party to, without delay, implement the judgment of the superior court to eliminate informal dispute resolution forums (jirgas) and to ensure that members of such forums who have participated in decisions that constitute violence against women are held accountable.*

*The Committee encourages the State party to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and to accept, as soon as possible, the amendment to article 20, paragraph 1, of the Convention concerning the meeting time of the Committee.*

The UPR recommendations, in contrast with those from CEDAW, lack detail and provide no means by which to measure implementation.

Issues that you should consider in relation to each potential mechanism include:

- (a) whether the relevant State party generally responds to recommendations and findings from a particular body. For example, a particular State may be very sensitive to what is said about it in the Human Rights Council, but pay little attention to the Concluding Observations and Views of treaty bodies. This would weigh in favour of using the Special Procedures or UPR to address the human rights issue in question;
- (b) whether the mechanism in question has effective follow-up procedures (institutional follow-up procedures are discussed in section three below);
- (c) whether the mechanism tends to issue findings and recommendations that lend themselves to effective implementation. For example, UPR participants tend to issue

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<sup>7</sup> June 2007, UN Doc CEDAW/C/PAK/CO/3.

high-level or general recommendations, while the Committee on the Elimination of Discrimination Against Women (CEDAW) tends to be more prescriptive;<sup>8</sup>

- (d) whether the mechanism considers recommendations already made through other human rights mechanisms, which provides NGOs with the possibility to reinforce previously made recommendations and point to lack of implementation.

None of these issues should necessarily determine which mechanism you select, or rule out a particular mechanism, but they are worth keeping in mind from the outset with a view to choosing the most effective option for your action or campaign.

### 2.3 Framing recommendations

NGO submissions to treaty bodies, the UPR, and Special Procedures often include suggested recommendations and these should be crafted in such a way as to maximise the possibility of their being translated into legislative, policy, institutional and programmatic advances. Generally, recommendations will be more likely to be accepted and implemented by States if they are specific (i.e. provide concrete advice on steps needed to be taken to implement treaty obligations), measurable (the recommendation can include suggested indicators by which to measure improvements); and time-limited.

NGOs should also be aware that certain types of recommendations are more likely to be implemented by States. For instance, recommendations that require the State party to amend or repeal legislation have a high rate of implementation.<sup>9</sup> In addition, States are generally more likely to pay compensation to an individual victim than to introduce large (and potentially costly) structural changes (for example, new compensation schemes or oversight mechanisms).<sup>10</sup>

Of course, proposed recommendations around systemic change and preventive measures should still be included in NGO reports and communications. After all, these are often the changes that are required for meaningful and sustainable improvements. However, recommendations for structural and systemic reform should be as clear and prescriptive as possible.

#### **Case study: Cameroon - non-implementation of vague recommendations**

In *Mazou v Cameroon* the Human Rights Committee found that the applicant had been unlawfully removed from his position as a magistrate, and found that ‘the State party has an obligation to reinstate the author of the communication in his career, with all the attendant consequences under Cameroonian law, and must ensure that similar violations do not recur in the future.’

Seven years later, the Human Rights Committee’s Special Rapporteur on follow-up (see below, 4.2(a)) was informed that the applicant had been reinstated to his position, but no information about preventive measures was offered.

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<sup>8</sup> Open Society Justice Initiative, *From Judgement to Justice: Implementing International Human Rights Decisions* (2010) available at: [http://www.soros.org/initiatives/justice/focus/international\\_justice/articles\\_publications/publications/from-judgment-to-justice20101122](http://www.soros.org/initiatives/justice/focus/international_justice/articles_publications/publications/from-judgment-to-justice20101122), p. 127.

<sup>9</sup> *From Judgement to Justice*, op.cit, p.127.

<sup>10</sup> *From Judgement to Justice*, op.cit, p.129.

A more specific articulation of the required preventive measures may have placed additional pressure on the Cameroonian government to respond to this aspect of the Committee's findings.

Some of the treaty bodies (HRC, CEDAW, CERD and CAT) identify specific recommendations within their Concluding Observations and request that the State party report back on their progress in relation to these recommendations within six months to two years (depending on the particular treaty body). These recommendations are known as follow-up recommendations.

The number of follow-up recommendations and criteria for selecting them varies according to the treaty body. Usually, around three follow-up recommendations are identified.<sup>11</sup> They tend to be recommendations that require immediate action (HRC and CERD); constitute an impediment to the implementation of the Convention as a whole (CEDAW); or can be relatively easily implemented within the timeframe specified (CEDAW and CAT).<sup>12</sup>

NGOs are able to use the status and priority afforded to follow-up recommendations to place additional pressure on Governments to work towards implementation. To inform the choice of follow-up recommendations, before and during the review, NGOs should highlight those recommendations that are urgent and able to be implemented within the timeframe allowed to the State party by the treaty body.

#### **Case study: Togo – HRC 2011 follow-up recommendations**

In its April 2011 *Concluding Observations on Togo* (UN Doc CCPR/C/TGO/CO/4), the HRC identified three recommendations as follow-up recommendations. Togo was instructed to provide within one year, information on the assessment of the implementation of the following recommendations:

- (a) investigate and prosecute the serious human rights violations committed during and after the presidential elections of 24 April 2005 [10];
- (b) adopt specific legislation to define and criminalise torture [15]; and
- (c) take steps to investigate all allegations of torture and ill-treatment and all deaths in detention [16].

There are signs of these recommendations being implemented to some extent, although in the case of two government-established Commissions established to investigate human rights violations committed in 2005 (and before), it is understood that the recommendations made by these Commissions have yet to be implemented.

#### **Case Study: Yemen – CAT 2009 follow-up recommendation on human rights defenders**

During the Committee Against Torture's periodic review of Yemen in 2009/2010, the Sisters' Arab Forum for Human Rights lobbied the Committee to recognise and condemn attacks against their organisation and other human rights defenders.

<sup>11</sup> ISHR, *Simple Guide to the UN Treaty Bodies*, op. cit., p.21.

<sup>12</sup> Ibid.

The Committee included the following paragraph in its Concluding Observations on Yemen and identified it as a follow-up recommendation, requesting a response within a year:

32. The Committee expresses its serious concern at information of threats against, and intimidation and harassment of, members of the non-governmental organization Sisters' Arab Forum for Human Rights, which coordinated an alternative joint submission to the Committee prior to its consideration of the State party at its forty-third session, and also briefed the Committee during the current session. The Committee is concerned that such threats and intimidation may be related to the peaceful activities of this non-governmental organization in promoting and protecting human rights, and in particular with monitoring and documenting cases of torture. The Committee deeply regrets that the State party has not replied to the letter sent by the Committee's Chairperson on 3 December 2009, drawing the attention of the State party to this issue and requesting the State party to provide information on the measures taken to implement, especially with regard to the organization's chairperson, articles 12, 13, and 16 of the Convention, and paragraph 20 of the provisional concluding observations of the Committee.

The Committee reiterates its request to the State party, as a matter of urgency, to provide information on the measures taken to implement, especially with regard to members of the Sisters' Arab Forum for Human Rights, articles 12, 13 and 16 of the Convention and paragraph 20 of the Committee's final concluding observations.

## 2.4 Building and maintaining coalitions

NGOs often work in coalitions to prepare reports to treaty bodies and the UPR and, in some cases, complaints, communications and requests for inquiries. There are several advantages to this approach, one being that the coalition can be mobilised to develop and implement follow-up strategies once UN recommendations have been released.

Research conducted by the Open Society Justice Initiative has found that in the case of the HRC, cases related to personal liberty and discrimination were more likely to be implemented, possibly due to the natural domestic constituency that draws attention to the case and advocates for implementation.<sup>13</sup> This finding accords with anecdotal evidence that Governments are more likely to act on particular UN recommendations when they are being pressured to do so by multiple domestic stakeholders.

With this in mind, NGOs should consider the role that the coalition may play in follow-up when determining whether and how to engage with the UN human rights system. NGO reporting projects should be presented as an ongoing process which involves lobbying and advocacy after the UN recommendations have been issued.

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<sup>13</sup> *From Judgement to Justice*, op. cit., p.127.

***Case study: coalition works on follow-up to CEDAW's concluding observations on Australia***

Australia was reviewed by CEDAW in July 2010. In preparation for the review, a coalition of Australian women's and human rights NGOs worked together to prepare a comprehensive NGO Report, which was endorsed by 135 NGOs.

The reporting process was led by the YWCA and Women's Legal Services Australia with the assistance of an NGO Report Project National Advisory Group consisting of representatives from around 30 organisations. Many of these organisations had been involved in the preparation of a shadow report for Australia's CEDAW review in 2005. Organisational ties were been maintained between reporting periods, which facilitated the formation of the NGO coalition for the 2010 review.

Since the Concluding Observations were issued in July 2010, the Advisory Group has continued to meet periodically to prepare resource sheets designed to make the Concluding Observations accessible for domestic NGOs; coordinate lobbying and educational activities; and to develop a National Implementation Action Plan outlining concrete and time-bound steps that the government should take to implement key aspects of the 2010 Concluding Observations. The National Implementation Action Plan was distributed to all Federal Parliamentarians on International Women's Day 2011.

## 2.5 Engagement with government

Often a single government department or ministry (for example, the Department of Justice, or the Department of Foreign Affairs) will be responsible for engaging with the UN human rights mechanisms. However, it is rarely the case that all the relevant human rights issues lie within the ministerial portfolio responsible for responding to the review.

The Government department or ministry engaged in the review may take responsibility for communicating with and involving all branches and level of government (including provincial or State governments). However, to ensure that the information flow is comprehensive and effective, NGOs may wish to:

- (a) forward the list of issues developed for periodic reviews by treaty bodies<sup>14</sup> to relevant parts of government;
- (b) forward NGO shadow/alternative reports to government departments at the time they are submitted;

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<sup>14</sup> List of issues are prepared by the various treaty bodies in preparation for the examination of a particular country – they are generally intended to form the framework for the dialogue between the body and the State at a forthcoming session. Some treaty bodies (HRC and CAT) now prepare the lists before a State is due to report so that the State's response to the list can constitute its periodic report as well as a framework for dialogue; the others prepare their lists of issues after receiving a periodic report but before the State's appearance. Further information on lists of issues can be found on the website of the Office of the High Commissioner for Human Rights – see: <<http://www2.ohchr.org/english/bodies/treaty/glossary.htm>>.

- (c) encourage governments to include representatives from various departments (State and Federal) in their delegation to treaty body reviews and the UPR.

By ensuring that all relevant government departments are involved in the process from the outset, NGOs can enhance the accuracy and relevance of the dialogue and the actual and perceived legitimacy of the outcomes. Importantly, by ensuring that those who will ultimately be responsible for implementation are involved from the start, NGOs can build relationships and generate good will that can make a vital contribution to successful follow-up.

Maintain regular communication with State officials, where possible, prior to, during, and after a review, with a view to encouraging government to consider NGOs as partners in the process of human rights monitoring and reporting. Government may then be more willing to receive NGO input or advice on the implementation of recommendations.

***Case study: USA includes a State Government representative in its UPR delegation***

The USA sent a large delegation to its UPR in Geneva in November 2010, including senior officials from eleven U.S. departments and agencies, a representative of local authorities (the head of the Los Angeles County Human Relations Commission), and two advisers from civil society groups.

In their statement to the HRC, the UPR delegation noted that ‘For the United States, the UPR is a conversation in Geneva, but also one at home with our own people, to whom we are ultimately accountable.’

### 3. Domestic Follow-Up Strategies

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#### 3.1 Introduction

Domestic NGOs can make a significant contribution to follow-up by publicising UN recommendations, engaging and influencing relevant actors, monitoring and reporting on implementation and building and maintaining coalitions.

***Case study: Japanese NGOs publicise and disseminate CERD concluding observations***

After Japan’s review by CERD in February 2010, the International Movement Against All Forms of Discrimination and Racism (IMADR) translated the Concluding Observations into Japanese and shared the translated text with (all) concerned groups and individuals in Japan. A press release including the translation was also sent to the Japanese media. Three newspapers and one news agency covered the CERD review in their papers.

Following the dissemination of information, a public meeting was held at which NGO members who went to Geneva shared first-hand information with participants.

IMADR also published a book in Japanese entitled “Elimination of Racial Discrimination in Japan Faces the Last-Minute Challenge” containing all the relevant documents and articles concerning the CERD consideration. The book includes the transcript of the dialogue between CERD and the

Japanese government during the session. So far, about 1,000 copies have been sold.

Together with other NGOs, IMADR has been negotiating with the Government for the comprehensive implementation of the CERD recommendations. Part of their bid to keep the pressure on has included detailing how to engage with ICERD and CERD, in a guide written for fellow civil society activists.

***Case study: Bangladesh - concluding observations used to advocate for law reform***

In its 2004 and 2011 Concluding Observations on Bangladesh, the CEDAW Committee called on the Government to expand the application of the Constitutional guarantee of equal rights for men and women, and to conduct a review of its laws with a view to harmonising domestic legislation with obligations under CEDAW within a clear time frame. Women's groups in Bangladesh had formed a CEDAW Forum as early as 1992. These groups have won significant battles with the Government over the years, including prompting it to withdraw Bangladesh's reservations to articles 13(a) and 16(1)(f) of the Convention in 1997. They disseminated the CEDAW Committee's 2004 and 2011 Concluding Observations to Government, civil society, professional associations, and the media.

***Case study: Vietnam – Working Group on dissemination***

In Vietnam, women's groups working on issues around trafficking and domestic violence set up a CEDAW group responsible for disseminating the concluding observations amongst NGOs and Government agencies and conducting CEDAW training for organisations working on women's rights.

### 3.2 Publicising and disseminating UN recommendations

Successful follow-up is facilitated if the broader public and relevant institutions are aware of UN recommendations, and NGOs are often well placed to ensure that UN recommendations are disseminated beyond those Government and non-Government organisations directly involved in the review process.

### 3.3 Engaging and influencing relevant actors

#### ***(a) Executive government***

The engagement and commitment of the executive government is key to the successful implementation of UN recommendations. The need to engage all branches and levels of government is discussed in section 2.5 above.

Governments may respond to UN recommendations, either formally (as is the case with the UPR), or informally (as is the case with treaty body reviews and views). Effective follow-up and implementation is greatly assisted if initial responses contain clear commitments from the executive. NGOs may wish to request (either directly or through the relevant UN mechanism) that Governments provide responses by a specified date and include specific responses to each recommendation as well as a timeline and plan for implementation, developed in consultation with civil society.

NGOs should continue to engage members of the executive, Ministerial advisors, and departmental staff throughout the implementation period. Engagement with the executive is facilitated by the identification of a government contact point for NGOs and periodic consultations on implementation between government and civil society.

***Case study: letter to the Australian Government regarding responses to the UPR***

Following the UPR of Australia in January 2011, the Australian NGO Human Rights Law Centre sent a letter to the responsible Minister (the Attorney-General), together with a memorandum in relation to the Australian government's engagement with, and response to, recommendations arising from the Universal Periodic Review.

The letter called on the Australian Government to:

- engage with civil society in relation to the implementation of UPR recommendations;
- establish a website dedicated to Australia's UPR;
- develop a public document that outlines details of the Government's response to each recommendation; engage with all branches and levels of Government;
- establish and publicise dedicated focal points within Government responsible for responding to UPR recommendations; and
- present an interim report on implementation to the Human Rights Council under Agenda Item 6.

***Case study: Poland's Inter-Ministerial Working Group on UPR Implementation***

Poland's response to the report of the Working Group on the Universal Periodic Review included a commitment to streamline the implementation of the recommendations of the Human Rights Committee by extending the mandate of Poland's Inter-Ministerial Committee for Matters Concerning the European Court of Human Rights to integrate decisions of the Committee.

**(b) Legislature**

Parliamentarians are 'essential actors' in the protection and promotion of human rights. According to a report by the Inter-Parliamentary Union entitled 'Parliament and Democracy in the Twenty-First Century':

Parliamentary activity as a whole – legislating, adopting the budget and overseeing the executive branch – covers the entire spectrum of political, civil, economic, social and cultural rights and has thus an immediate impact on the enjoyment by the people of their human rights...<sup>15</sup>

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<sup>15</sup> Inter-Parliamentary Union, *Parliament and Democracy in the Twenty-First Century* (2006), available at: [http://www.ipu.org/PDF/publications/democracy\\_en.pdf](http://www.ipu.org/PDF/publications/democracy_en.pdf).

Parliamentarians should therefore be aware of UN recommendations made in respect of their State.<sup>16</sup> Parliaments can also provide a forum for public debate and discussion and a platform upon which executive government may be scrutinised and held accountable for its human rights record.

NGOs have a role to play in raising awareness by disseminating information both to individual parliamentarians and appropriate legislative or inquiry committees. NGOs may also advocate for the executive government to inform parliament of UN recommendations and the status of implementation efforts. These communication and accountability channels should, ideally, be institutionalised so that they are more likely to be maintained regardless of the political will of the government of the day.

***Case study: Belgium – raising concluding observations in question time<sup>17</sup>***

The League of Human Rights in Belgium successfully lobbied a parliamentarian (known for his commitment to human rights) to raise questions about follow-up and implementation of the Concluding Observations of the Human Rights Committee in parliamentary question time. The parliamentarian asked the Minister of Justice about recent UN recommendations. The questions placed the UN recommendations on the public record and raised awareness of Belgium's compliance with its obligations under the ICCPR.

***Case study: South Africa's Parliamentary Liaison Programme***

In South Africa, all national reports submitted under human rights treaties are debated in parliament. Parliament is mandated under the 1996 Constitution (sections 42(3) and 55(2)) to scrutinise and oversee Government actions, and it uses this mandate to examine the Government's human rights record. In the course of debate, parliament holds public hearings, calls in ministers and requests documents and reports from a wide range of departments and citizens' groups. Members of parliament are included in national delegations to the treaty bodies, ensuring that they better understand the treaty bodies' recommendations.

***Case study: The United Kingdom's Joint Committee on Human Rights***

The UK's parliamentary Joint Committee on Human Rights is tasked with considering matters relating to human rights in the United Kingdom.

The functions of the Joint Committee include leading scrutiny of compliance with UN human rights treaties. This involves monitoring implementation of the Concluding Observations of UN treaty bodies. According to the Committee, it also 'serves a wider purpose of directing domestic parliamentary and public attention to the extent to which the Government's policy is in accordance with the provisions of those human rights treaties by which the Government is bound in international law, stimulating debate about the treaties themselves and the human rights principles which they embody. By focusing attention on the implications of each of these treaties in each reporting round we would also hope

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<sup>17</sup> Interview with CCPR Centre, 16 December 2010.

proactively to influence the Government in its policy stance as it prepares to submit its next periodic report to the monitoring body'.<sup>18</sup>

The Committee meets at least once per week during parliamentary session. In discharging its functions, it very often seeks written submissions from government, legal practitioners, non-government organisations and associations, and human rights advocates.

**(c) Judiciary**

UN Recommendations, particularly the Concluding Observations and Views of treaty bodies, can be used to inform the interpretation and application of domestic human rights laws. This means judges can use them when deciding how domestic human rights law should operate – especially those laws which are directly based on international obligations.

NGOs can contribute to judicial understanding and application of UN Recommendations by referring to them in the course of litigation (either as parties or *amicus curiae*) and ensuring that the legal community, including lawyers and judges, is aware of relevant recommendations. This does not mean the recommendations will necessarily be followed by the Courts in making their decisions (they are not binding as a matter of law). It just means that they can help to shape the legal thinking involved.

**(d) NHRIs and Ombudsman**

National Human Rights Institutions (**NHRIs**) and Ombudsmen are not responsible for implementing UN recommendations. However, they can play an important role in monitoring and reporting on implementation, as key national level actors in the broad human rights framework. In 2009 OHCHR did a survey on NHRI engagement with treaty bodies, and around 40-50% of respondents had engaged in some follow-up activity.<sup>19</sup>

The International Roundtable on the Role of National Human Rights Institutions and Treaty Bodies identified the following four ways in which NHRIs could contribute to effective follow-up.<sup>20</sup>

- (a) monitor State dissemination of information to all relevant actors on concluding observations and recommendations of treaty bodies and support public awareness thereon;
- (b) support and host follow-up meetings to concluding observations and recommendations of treaty bodies with the participation of Parliament, Ministries and

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<sup>18</sup> Joint Committee on Human Rights, *The Committee's Future Working Practices: Twenty-Third Report of Session 2005-06* (2006), from <http://www.parliament.the-stationery-office.com/pa/jt200506/jtselect/jtrights/239/239.pdf>, accessed 1 July 2009, [65].

<sup>19</sup> Report available at <http://nhri.ohchr.org/EN/Documents/Questionnaire%20-%20Complete%20Report%20FINAL-edited.pdf>.

<sup>20</sup> *Conclusions of the International Roundtable on the Role of National Human Rights Institutions and Treaty Bodies*, HRI/MC/2007/3, 7 February 2007, available at [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/1c1014317d376624c125728800586f24/\\$FILE/G0740362.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/1c1014317d376624c125728800586f24/$FILE/G0740362.pdf).

public authorities, non-governmental organizations (NGOs) and other relevant actors of civil society;

- (c) monitor the effective implementation of the concluding observations and recommendations of treaty bodies and provide guidance on possible courses of action; and
- (d) engage with members of Parliament and Ministries and other public authorities regarding the implementation of concluding observations and recommendations.

**(e) National mechanisms**

Both the UN *Convention on the Rights of Persons with Disabilities (CRPD)* and the *Optional Protocol to the Convention against Torture (OPCAT)* establish national-level implementation machinery intended to facilitate implementation.

The CPRD establishes two 'national monitoring mechanisms':

- (a) a 'focal point' or 'coordination mechanism' within government for matters relating to implementing the Convention; and
- (b) one or more independent mechanisms, to promote, protect, and monitor the implementation of the Convention.

The CPRD requires civil society, particularly persons with disabilities and their representative organisations, to be involved and to participate in the monitoring process.

Article 17 of OPCAT requires States Parties to establish an independent National Preventive Mechanism (NPM) to conduct preventive monitoring visits to places of detention. States Parties are required to establish, designate or maintain one or several national bodies for this purpose within one year of ratification.

The relevant NGOs in countries that have established NPMs should work with the official mechanisms to ensure effective implementation of UN recommendations – in particular those of the Committee against Torture and Subcommittee for Prevention of Torture.

**(f) 'Standing national reporting and coordination mechanisms'**

State mechanisms at the national level that ensure coordination between relevant stakeholders on the preparation of reports for UN human rights bodies; and monitor and press for implementation of recommendations, have been encouraged by the United Nations High Commissioner for Human Rights. She has noted the importance of these 'standing national reporting and coordination mechanisms' (SNRCMs), which:

- (a) analyse and cluster recommendations from all human rights mechanisms, thematically and/or operationally (according to the institution(s) responsible for implementing them);

- (b) identify relevant actors involved in the implementation of the recommendations and guide them throughout the process;
- (c) lead periodic consultations with NHRIs and civil society actors to cooperate on reporting and implementation processes;
- (d) liaise with members of the Judiciary to inform them on treaty bodies' recommendations and to collect and disseminate judicial decisions relevant to international human rights law; and
- (e) serve as a central base — or core facilitator — of various drafting sub-committees that may also need to draw on a larger pool of specialist experts relevant for specific reports.<sup>21</sup>

**Case study: Portuguese National Human Rights Committee**

The Portuguese National Human Rights Committee (PNHRC) was established in April 2010, in response to several recommendations made during UPR December 2009. Its mandate incorporates several of the elements highlighted by the UN High Commissioner on Human Rights, including the involvement of civil society in the implementation of recommendations and the drafting of report for the submission to UN human rights bodies.

### 3.4 Monitoring and reporting on implementation

NGO reports on implementation are vital in ensuring governmental accountability and enhancing national-level follow-up to UN recommendations. Monitoring and reporting may take various forms and be directed towards different audiences. Depending on the legal context and available resources, it may be possible to develop a set of indicators against which to measure implementation. Reports on implementation may be designed to influence government, maintain NGO networks, inform reports back to UN bodies, or be used as a tool to engage media.

**Case study: Egypt - 100 Days Campaign**

The Forum of Independent Human Rights Organizations, a coalition of Egyptian human rights NGOs, launched the *One Hundred Days Campaign*, in which they monitored the Government's implementation of the recommendations it had accepted during the UPR of Egypt in February 2010. The Forum of Independent Human Rights Organizations tracked and reported on the performance and activity of the Egyptian government in 100 days between the UPR session and the issuance of the final report.

The report, *Human Rights in One Hundred Days*, generated significant media interest and provided a comprehensive, evidence-based account of Egypt's commitment to implementation of the UPR

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<sup>21</sup> Strengthening the United Nations Human Rights Treaty Body System, A Report by the United Nations High Commissioner for Human Rights, Navanethem Pillay, June 2012  
<http://www2.ohchr.org/english/bodies/HRTD/docs/HCREportTBStrengthening.pdf>.

recommendations to present to UN bodies in Geneva.

## 4. International Follow-Up Strategies

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### 4.1 Introduction

The role of international mechanisms and bodies in national-level follow-up is currently the subject of much interest and debate in international fora. The need to promote effective follow-up has been considered by the open-ended intergovernmental working group on the review of the work and functioning of the Human Rights Council and in the context of ongoing discussions around reform of the treaty bodies.<sup>22</sup>

This section does not consider international-level institutional reform. Instead, it discusses ways in which domestic NGOs may use existing international tools and networks to improve national-level implementation.

### 4.2 UN follow-up procedures

#### **(a) Treaty Body rapporteurs on follow-up**

The Human Rights Committee was the first treaty body to create a formal follow-up procedure in 1990. The role of the HRC's Special Rapporteur on follow-up is defined in the HRC's Rules of Procedure and allows the Special Rapporteur to "make such contacts and take such actions as appropriate for the due performance of the follow-up mandate". This may include:<sup>23</sup>

- (a) making recommendations for further action by the Committee;
- (b) reporting to the Committee on follow-up activities; and
- (c) including information on follow-up activities in the Committee's report to the General Assembly.

CERD and CAT have similar procedures.<sup>24</sup> CEDAW does not have a permanent Special Rapporteur of follow-up and instead the relevant country rapporteur for periodic reviews and assigned committee members for individual communications are responsible for follow-up.<sup>25</sup>

Follow up Rapporteurs may conduct follow-up missions to countries that are failing to meet their implementation obligations. These missions can promote effective follow-up by creating opportunities

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<sup>22</sup> See, for example, *The Dublin Statement on the Process of Strengthening of the United Nations Human Rights Treaty Body System*, available at <http://www2.ohchr.org/english/bodies/HRTD/docs/DublinStatement.pdf> [17].

<sup>23</sup> Rule of Procedure of the Human Rights Committee, CCPR/C/3/Rev.8 (Sept 22, 2005).

<sup>24</sup> Rules of Procedure of the Committee Against Torture, CAT/C/3/Rev.4 (August 9, 2002); Rules of Procedure of the Committee on the Elimination of Racial Discrimination (adopted August 15, 2005).

<sup>25</sup> Rules of Procedure of the Committee on the Elimination of Discrimination Against Women, UN Doc A/56/38, Appendix 1.

for NGOs to discuss implementation issues with government representatives and NHRIs, filling information gaps, starting a cross-sector dialogue about follow-up and implementation.

**(b) Interim reports**

Many countries, including Argentina, Bolivia, France, Romania, and Colombia, have produced interim reports detailing progress that has been made in implementing the UPR recommendations that they accepted. Progress reports could include a description of concrete actions that have been taken by a Government in implementing each of the specific UPR recommendations. A number of countries have also presented such interim reports to the UN Human Rights Council under Item 6 of the Agenda.<sup>26</sup>

**(c) Cross-referencing UN recommendations**

States may be held accountable for the implementation of UN recommendations in subsequent UN reviews. For example, if a State does not implement a recommendation contained in Concluding Observations, the subject matter of that recommendation may be made the subject of an Individual Communication before the same treaty body, or a different one. NGOs may also wish to refer to Concluding Observations, Views, and Special Procedures' recommendations in their UPR submissions and advocacy materials.

**Case study: cross-referencing recommendations in Norway's reviews**

In the Individual Communication to the Human Rights Committee *Leirvåg et al v Norway* (1155/2003), the authors cited the Committee's Concluding Observations on Norway's fourth periodic report under the Covenant, in which the Committee "reiterated its concerns over section 2 of the Constitution which provides that individuals professing the Evangelical-Lutheran religion are bound to bring up their children in the same faith and held that this provision of the Constitution is 'incompatible with the Covenant.'"<sup>27</sup> The authors also raised a similar Concluding Observation of the Committee on the Rights of the Child.<sup>28</sup> In the event, the authors were successful and the Committee found a violation of article 18(4) of the Covenant.<sup>29</sup>

### 4.3 Working with international actors

International actors, including donors, diplomatic missions, UN Country Offices and international organisations may be better placed to influence Governments than domestic NGOs. In such cases, it may be a strategic follow-up strategy to indirectly influence government through other actors.

Contact with third states can include contacting the embassy of a particular State at local level, either through the Ambassador, the Head of Mission, or Deputy Head of Mission, or the designated human rights focal point within the Embassy. In addition, it can be worthwhile trying to meet with officials from third states - for example, parliamentarians and officials from the foreign ministry - when they are visiting your country.

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<sup>26</sup> For example, the Czech Republic, Switzerland and Colombia.

<sup>27</sup> CCPR/C/82/D/1155/2003, Views adopted 3 November 2004, para 7.2.

<sup>28</sup> Ibid, para 7.3.

<sup>29</sup> Ibid, para 14.7.

***Case study: influencing the Honduran Government through donor commitments***

The Centre for Civil and Political Rights invited donors based in Geneva to attend a briefing on the Human Rights Committee's Concluding Observations on Honduras. Donors committed to incorporate the HRC's recommendations in their plans for government support.

***Case study: ICRC gains access to Madagascar's prisons***

In 2007 the Human Rights Committee issues Concluding Observations on Madagascar and found that "Conditions of detention are said to be deplorable, and detainees are reportedly not provided with sufficient food. The Committee is concerned that frequently persons being held for questioning are not separated from convicted prisoners, and minors are held with adults".<sup>30</sup> The International Committee of the Red Cross used the Concluding Observations as a basis upon which to request access the Madagascar prisons.

***Case study: OHCHR South-East Asia Regional Office works with NGOs on follow-up***

Since 2009 the Office for the High Commissioner for Human Rights' regional office in South East Asia has maintained a database containing all UN recommendations that have been directed towards countries in the region and a record of Government responses to those recommendations. The database is publicly available and searchable by thematic issue.<sup>31</sup>

The Regional Office is planning to launch a revised version of the website, which provides a function for NGOs to provide information on follow-up strategies and the status of implementation in their countries.

The revised database will provide an important tool for information-sharing and network-building for NGOs and other actors (for example UN agencies and country offices) within the region.

#### 4.4 Applying pressure through the human rights system

A State's interest in particular roles within inter-governmental human rights bodies can be an opportunity to focus attention on that State's record on implementing human rights recommendations.

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<sup>30</sup> HRC, Concluding Observations on Madagascar, CCPR/C/MDG/CO/3, 11 May 2007 [22].

<sup>31</sup> The database is available here: <http://bangkok.ohchr.org/database/Default.aspx>.

***Case study: Ireland's NHRI connecting membership of the Human Rights Council with implementation of recommendations***

At the time that Ireland had presented its candidacy for membership of the Human Rights Council, the Irish Human Rights Commission (IHRC) made a statement during the adoption of the outcome report of Ireland's UPR, to the effect that progress on implementing the recommendations set out in the Report on Ireland's Universal Periodic Review should underscore Ireland's application for membership of the Human Rights Council.<sup>32</sup>

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<sup>32</sup> <http://www.ihrc.ie/newsevents/press/2012/03/15/ihrc-calls-for-progress-on-upr-recommendations-to/>.