

NGO CONSULTATION ON THE STRENGTHENING OF UN TREATY BODIES

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Since its origin, the Center for Legal and Social Studies (CELS) has believed that the use of the international scenario constitutes a fundamental strategy of intervention for the defense and promotion of human rights. CELS was founded during the last dictatorship in Argentina as an urgent response to the enforced disappearances and other atrocities that characterized the regime. After the return to civilian rule in 1983, CELS successfully expanded the scope and nature of its agenda. While preserving its flagship work on memory and justice for the crimes of the dictatorship, CELS added the focus of institutional violence and citizen security; social, economic and cultural rights; strengthening of the democratic justice system; prisons and criminal justice; human rights and mental health; freedom of expression; and civilian control of the armed forces. CELS has always considered its international work as a fundamental tool towards producing change in all of these areas, which, in turn, has a positive impact at the regional and global level.

CELS has closely followed the process initiated in 2009 by the United Nations High Commissioner for Human Rights in order to reflect on proposals which would enable the UN Treaty Body System to be more coherent, coordinated and effective. In this regard, CELS was one of the signatories of the NGO response to the Dublin statement¹. As strengthening the regional and international human rights protection systems is key to improving the promotion and protection of human rights on the ground, CELS highly appreciates this new opportunity to contribute to the current debates meant to reinforce the effectiveness of the UN treaty bodies.

Taking into account the latest developments in the treaty bodies strengthening process, including the Marrakesh Statement (June 2010)², the Poznan Statement (September 2010)³ and the recent Civil Society Consultation in Seoul (April 2011)⁴, on this occasion, CELS has decided to focus its proposals mainly on measures meant to improve the follow up procedures carried out by the treaty bodies in order to impact the levels of implementation of their outputs by State parties.

¹ Response by Non-governmental organizations to the Dublin statement on the Process of Strengthening the United Nations Human Rights Treaty Body System, November 2010. Available at http://www2.ohchr.org/english/bodies/HRTD/hrted_process.htm#response

² Available at http://www2.ohchr.org/english/bodies/HRTD/hrted_process.htm#marrakesh

³ Available at http://www2.ohchr.org/english/bodies/HRTD/hrted_process.htm#poznan

⁴ Seoul Statement on Strengthening the UN Human Rights Treaty Body System. Available at http://www2.ohchr.org/english/bodies/HRTD/hrted_process.htm#seoul

I. ENHANCING PARTICIPATION OF NATIONAL AND LOCAL NGOS

It is essential to take advantage of different forms of technology, like webcasting and video conferences to improve the actual level of interaction between national NGOs and the treaty bodies. In the past, CELS has had the invaluable opportunity to provide oral briefings to members of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights through video chat. It would be highly beneficial for NGOs of the global south in general if that opportunity to contact members of the treaty bodies and/or their Secretariat would be formally institutionalized. Such instances of participation should be available during pre-sessions and sessions within the reporting procedure, general discussion days for the elaboration of General Comments and different stages within the processing of individual communications. UN field offices can play a crucial role in enabling this contact.

II. TOWARDS A COMPREHENSIVE AND EFFECTIVE FOLLOW UP SYSTEM.

The promotion and protection of human rights on the ground requires treaty bodies' outputs to be fully and adequately implemented by the States Parties concerned⁵. In order to better monitor the State parties' efforts to domestically enforce the decisions adopted by the treaty bodies, their follow up procedures need to be systematically developed, harmonized and strengthened⁶.

A. Improve the quality of the decisions: identify specific measures required to assure compliance.

The wording of the decision itself represents a crucial factor when it comes to assuring its implementation at the national level. The terms in which remedies for the violation of human rights are described, are essential for establishing the concrete measures that State parties need to undertake in order to fulfill their obligations. National implementation mechanisms by the State party concerned and monitoring tools employed by different stakeholders including, civil society actors, national human rights institutions and treaty bodies themselves, will significantly benefit from the identification of the specific actions that need to be carried out to

⁵ In this regard, CELS welcomes the recent Report of the Inter-Committee Meeting Working Group on Follow-up to concluding observations, decisions on individual complaints and inquiries. See HRI/ICM/2011/3-HRI/MC/2011/2, 4 May, 2011. Available at <http://www2.ohchr.org/english/bodies/icm-mc/documents12.htm>

⁶ CELS agrees with the importance of differentiating the notions of "follow up" and "implementation" highlighted by the Seoul Statement. See, Seoul Statement on Strengthening the UN Human Rights Treaty Body System, Parr. 7. a.

bring national practices in line with international human rights law⁷. Thus, CELS suggests that the dispositive part of Views within individual communications as well as Concluding Observations should be clearly targeted and formulated with greater detail and precision.

Furthermore, CELS fully endorses the Seoul Statement's appeal for recommendations that call for structural change, including reforms in national legislation, to be made systematically so as to ensure as much as possible the non-repetition of similar violations in that same country⁸.

B. Institutionalize civil society participation at the follow up stage.

Civil society has a fundamental role to play within the follow up process of both individual communications and Concluding Observations. Notwithstanding the information submitted by State parties, non-governmental organizations can provide treaty bodies with valuable data regarding the measures, if any, implemented at the domestic level. Their contribution could be essential in order to assure a comprehensive diagnosis of the actual level of compliance. Thus, during the meetings in which follow up is discussed by the respective Treaty Body, time should be formally allocated for substantial interventions by NGOs. As mentioned above, the follow up stage should also count with institutionalized instances for national and local NGOs to orally brief the experts and/or the Secretariat through video conferencing.

Furthermore, information on follow up submitted by civil society actors and national human rights institutions should be made publicly available online.

C. Hold public hearings to evaluate implementation.

Considering the practice of the organs of the Inter-American System for the Protection and Promotion of Human Rights⁹, UN treaty bodies should hold public hearings¹⁰ meant to collect

⁷ In this regard, also see the doc. *"Follow-Up and Implementation of Decisions by Human Rights Treaty Bodies"*, which contains a summary of recommendations of the Expert Seminar held on 10 September 2009 by the Human Rights Implementation Centre, Bristol University. Available at <http://www.bristol.ac.uk/law/research/centres-themes/hric/hricdocs/semrep2009.pdf> CELS was among the participants of the Seminar. Moreover, see the discussion paper submitted jointly with the Cairo Institute for Human Rights Studies (CIHRS), Federation Internationale de l'Action des Chrétiens pour l'Abolition de la Torture (FIACAT), International Rehabilitation Council for Torture Victims (IRCT), REDRESS and World Organisation Against Torture (OMCT) during the CAT NGO meeting, May 2011.

⁸ Seoul Statement, Parr. 10.b.

⁹ Article 48 of the Rules of procedure of the Inter-American Commission on Human Rights, state: "Follow up. Once the Commission has published a report on a friendly settlement or on the merits in which it has made recommendations, it may adopt the follow-up measures it deems appropriate, such as requesting information

and discuss information on the implementation of their Views on individual communications. Petitioners, as well as, other relevant stakeholders should be allowed to participate.

At the same time, the modality recently adopted by some treaty bodies of requesting within one to two years after the evaluation of the State Party's report, to submit written information on the implementation of a few priority issues, should be complemented with public hearings in which the State party should be asked to thoroughly explain the concrete measures adopted to comply with the specific recommendations at stake¹¹. In this context, civil society organizations should be allowed to formally present their assessment on the levels of fulfilment.

D. Develop a specific database on follow up. Carry out periodic assessments.

In order to better monitor the actual compliance with treaty bodies' decisions, the OHCHR should develop and periodically update an online database disaggregated by country in which specific information on follow up to Views and Concluding Observations should be posted¹². As previously mentioned, apart from the data presented by State parties, submissions by civil society and national human rights institutions should be included.

Ideally, the database should also contain information on follow up to recommendations by Special procedures and the outcome of the Universal Periodic Review (UPR).

from the parties and **holding hearings in order to verify compliance with friendly settlement agreements and its recommendations...**" (Emphasis added) Available at <http://www.cidh.oas.org/Basicos/English/Basic18.RulesOfProcedureIACHR.htm>

Also see Inter-American Court of Human Rights, Rules of procedure, Art. 63.3. Moreover, the mechanisms employed by the Inter- American Court on Human Rights for evaluating compliance in different cases can be found in <http://www.corteidh.or.cr/supervision.cfm>

¹⁰ Article 68 of the Rules of procedure of the Inter–American Commission on Human Rights states the public nature of the hearings before the organ. It establishes: "...Article 68. **Hearings shall be public.** When warranted by exceptional circumstances, the Commission, at its own initiative or at the request of an interested party, may hold private hearings and shall decide who may attend them. This decision pertains exclusively to the Commission, which shall notify the parties in this regard prior to the beginning of the hearing, either orally or in writing..." (Emphasis added)

¹¹ In this regard, see article 66 "Hearings of a General Nature" of the Rules of Procedure of the Inter- American Commission on Human Rights.

¹² Undoubtedly, the separate webpage established by the Committee against Torture represents a valuable precedent.

Based on the information collected within the country database, treaty bodies should periodically assess the degree of implementation achieved and demand explanations in the case of partial or non-compliance.

E. Develop procedural and reporting guidelines for follow up.

The adoption of procedural and reporting guidelines for follow up were key topics of discussion within the Inter-Committee Meeting working group on follow-up to concluding observations, decisions on individual complaints and inquiries held on January 2011. Among the issues to consider when it comes to the drafting of the guidelines is the inclusion and use of progress indicators to assess actual levels of compliance. In this regard, CELS suggests to consider as a possible model, the *“Guidelines for the preparation of progress indicators in the field of Economic, Social and Cultural rights”*, approved by the Inter-American Commission on Human Rights¹³.

Moreover, in order to help assure an effective follow up process, Reporting Guidelines for Follow Up should include at a minimum, the following information requests:

- a) contact data and periodic activities of the national focal point or coordinator for the implementation of Concluding Observations and Execution of Views designated by the State party;
- b) description of the “Implementation map” that would disaggregate within each State party the specific governmental branches and agencies involved in particularly fulfilling the different measures required to comply with treaty bodies’ outputs; and
- c) compliance schedules.

F. Assess State parties’ institutional mechanisms for implementation.

In order to assure full compliance of State parties with the obligations established by each of the respective treaties, it would be important to incorporate within the elements of the Periodic Review an analysis of the institutional mechanisms that they have devised in order to guarantee the implementation of treaty bodies’ Views and Concluding Observations.

¹³ Inter-American Commission on Human Rights, OEA/Ser.L/V/II.132, Doc. 14, 19 July 2008. Available at <http://www.cidh.oas.org/pdf%20files/Guidelines%20final.pdf>

G. Carry out a study of best practices.

CELS welcomes the recommendation of the Inter-Committee Meeting working group on follow-up to carry out a research project of best practices on implementation to date¹⁴. In this regard, it would be important to also gather and analyze positive examples of follow up procedures and practices among the regional human rights systems. Given the nature of the treaty bodies, the experience of the Inter- American Commission on Human Rights in monitoring the execution of friendly settlements and reports on the merits should be particularly considered.

NGOs and national human rights institutions should be called upon to submit meaningful examples.

¹⁴ See HRI/ICM/2011/3-HRI/MC/2011/2, Op. Cit., p.17.