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**IMPROVING IMPLEMENTATION AND FOLLOW-UP**  
***TREATY BODIES, SPECIAL PROCEDURES, UNIVERSAL PERIODIC REVIEW***

**REPORT OF PROCEEDINGS**  
**November 22-23, 2010**

The Open Society Justice Initiative, the Brookings Institution's Foreign Policy program, and UPR-Watch hosted a two-day conference in Geneva on improving the national implementation of the findings and recommendations of three of the United Nations' human rights mechanisms—treaty bodies, Special Procedures (SP), and the Universal Periodic Review (UPR). Implementation is a crucial indicator of the effectiveness of these mechanisms; however, until recently, there has been a lack of authoritative evidence concerning the impact of these mechanisms at the country level and the efficacy of their follow-up procedures. Moreover, while there have been considerable efforts to improve the working methods of the treaty bodies, Special Procedures, and UPR process at a unit level, comparatively little attention has been paid to developing a framework for cooperative follow-up procedures among these mechanisms. To that end, at a time of renewed interest in treaty body strengthening, discussions on the five-year review of the Human Rights Council, as well as the upcoming second cycle of the UPR, the conference offered an important opportunity to reflect on these common challenges and consider strategies for how best to close the implementation gap.

Over the course of the two days, experts offered concrete data and observations as to the accomplishments and challenges of each of these mechanisms and presented recommendations for how to more effectively translate their work into enhanced human rights protection on the ground. The first day assessed the state of implementation of each of the three mechanisms and addressed prospects for improved follow-up mechanisms, in addition to highlighting successful examples of implementation at the national level. On the second day, participants discussed ways in which implementation could be improved by developing a framework for cooperative follow-up procedures among the treaty bodies, Special Procedures, and the UPR. It also explored how other parts of the UN system could be involved in facilitating implementation. Conference participants included current and former treaty body members and Special Procedures mandate holders, senior UN staff, diplomats, human rights advocates, and members of national human rights institutions (NHRIs).

The following report summarizes the presentations of the speakers at the conference. A compendium of recommendations is included at the end of the report.

## **DAY ONE**

### **Opening Session**

#### ***Ms. Kyung-wha Kang, Deputy High Commissioner for Human Rights***

In her opening remarks, the Deputy High Commissioner noted that, while the UN's human rights mechanisms have the potential to transform the lives of people all over the world, the question of how to tap into and maximize this potential is critical. She noted that once the decisions and recommendations of human rights experts and bodies are issued the work has only just begun because the challenge is to bring these words from the meeting rooms of Geneva and New York to the countries concerned.

To that end, words like “implementation” and “follow-up” should not serve to obscure the roles of different stakeholders inside and outside a country, or to minimize the scope and complexities of actions that are needed to give expression to the recommendations of human rights mechanisms. We should not forget, she noted, that change within a country does not take place in a vacuum, and that to improve the effectiveness of interventions we also need to gain a better understanding of how change occurs. Doing so requires time to step back, reflect, innovate, and be keen to expand the range of strategies and approaches that can be used to enable individuals to claim their rights and states to meet their obligations. In closing, the Deputy High Commissioner noted that states have the primary obligation to ensure implementation, but NGOs, NHRIs, and the UN human rights mechanisms holistically, as a system, have a role to play.

### **Session I – Implementation & Follow-Up of Concluding Observations and Views: The UN Treaty Bodies in Critical Perspective**

#### ***James Goldston, Founding Executive Director, Open Society Justice Initiative***

Goldston's remarks highlighted the Justice Initiative's recent publication, *From Judgment to Justice*, which examines the implementation rates of the three regional human rights systems—European, Inter-American, and African—as well as the UN treaty bodies. The report makes clear that an implementation deficit currently afflicts all the regional human rights systems, although this deficit is particularly acute within the treaty bodies. According to data compiled by OHCHR's Petitions Section, compliance with the decisions of the UN Human Rights Committee (HRC)—the treaty body on which the report focused most closely—hovers at 12 percent (for what time period?). In the HRC's annual report for 2009, of the 546 cases in which a violation was found, only 67 cases received a “satisfactory” response. Presently, the Committee considers dialogue with states parties to be “ongoing” in just over half of its cases, with some dating back to the mid-1980s. In another 35 percent of cases, the state of follow-up is unclear. Some of the more specialized treaty bodies have been more successful with the implementation of Views (the Committee Against Torture has almost a 50 percent compliance rate, while the Committee on Elimination of Discrimination Against Women, although registering far fewer communications, has had a few notable successes), although the rates remain troublingly low. Notably, CEDAW's more rigorous

follow-up methods, and its more prescriptive approach to remedies, distinguishes it from a number of the other committees' approach to individual communications.

Though there is no clear pattern as to which cases are more frequently implemented, there have been cases where states will either compensate claimants (often on an *ex gratia* basis) or issue some form of individual remedy; however, larger, policy-based changes are rare. States also frequently invoke the fact that treaty body Views are not legally binding (rather, the Human Rights Committee has said there is an "obligation to respect" Views and a "duty to cooperate" with them) as a basis for not implementing, although there are instances in which successful dialogue between a committee and the state party has served an important persuasive function that can build momentum for larger reforms. Generally, successful implementation has occurred in cases with high political visibility and in cases brought against states with a sophisticated rule of law tradition. It is also frequently due to a strong civil society capable of complementing a committee's follow-up efforts and applying other domestic pressures. Nevertheless, follow-up remains grossly under resourced throughout the treaty body system. While the HRC's Special Rapporteur on Follow-Up can play an important role in pressuring states, the time and resources needed for effective follow-up are lacking. Indeed, because the special rapporteur has no independent budget, follow-up consultations are effectively limited to the three weeks during the year when the Committee is in session.

In closing, Goldston cited a number of recommendations—to the treaty bodies, to OHCHR, to the UN system as a whole, and to states—for improving follow-up and implementation. Principal amongst these include committing greater resources to support follow-up work; improving the visibility, accessibility and accuracy of information pertinent to implementation; and developing a digest of the treaty bodies' remedies jurisprudence. Treaty bodies should also provide more thorough reasoning in their decisions (this would help provide an intellectual foundation for any follow-up measures) and devote more attention to what is specifically requested of states by way of remedy. Likewise, representatives of petitioners should craft requested remedies with greater precision and give higher priority to follow-up at the domestic level. There also needs to be a more sustained approach to follow-up throughout the UN protection system, with OHCHR raising the non-implementation of treaty body decisions as often as possible, and providing data on implementation as part of its compilation document to the UPR. (Presently, OHCHR includes information about treaty body and Special Procedures recommendations in its compilation document, but nothing about individual communications.) Similarly, there should be increased, systematic coordination between the treaty bodies and the SP mandate-holders so that they may address, where appropriate, non-implementation of treaty body Views and concluding observations in the course of their duties. Greater consideration should also be given to collaboration between the UN's treaty-based and Charter-based bodies, such as the Human Rights Council. Finally, states can facilitate implementation by creating an institutional focal point responsible for monitoring compliance with individual decisions, and ensuring adequate measures are taken by the appropriate agencies of government. Ensuring formalized channels of communication among these branches is essential if implementation is to improve.

***Michael O’Flaherty, Member of the UN Human Rights Committee and Professor of Applied Human Rights, University of Nottingham***

O’Flaherty’s comments addressed implementation as it relates to both the treaty bodies’ state reporting and individual communications procedure. He noted that implementation is a matter of multi-level engagement: the national level, at the level of the treaty bodies themselves (constructing and delivery high quality outputs), and at the inter-mechanisms level (where issues of complementarity amongst mechanisms arise.) These elements are currently under review in on-going discussions on reform of the UN treaty body system, which has been pursued by treaty bodies and civil society in key meetings in Dublin, Marrakesh, and Poznan over the course of the past year.

On individual communications, O’Flaherty welcomed the Justice Initiative’s report and its call to take implementation more seriously. He accepted that the report’s conclusions present a very grave problem but cautioned that the designation of dialogue “ongoing” does not reflect the duration of time since a treaty body decision was adopted, nor does it capture cases of partial implementation. Nevertheless, the low rate of implementation underscores the fact that, at the national level, there is a problem of political will. Moreover, the mechanisms by which a particular state is able to receive treaty body findings as a matter of law varies considerably. At the treaty body level, O’Flaherty noted it is a fact that most states regard treaty body Views as recommendatory in nature. He also echoed the Justice Initiative’s recommendations that unspecified remedies are not particularly helpful to states (one open question is whether damage rewards should be calculated) and that committees should adopt more reasoned decisions, although this can be difficult to do given the array of legal traditions and cultures represented at the committee level.

Institutionally, O’Flaherty emphasized the scant resources for follow-up within OHCHR and the information/communication gaps between missions in Geneva and relevant ministries in the capital. At the national level, this could be improved by the designation of an agent responsible for engaging with international bodies, as some European countries have done as a function of their membership in the Council of Europe. Furthermore, the legal doctrine of dualism – which requires the translation of international law, through legislative action, into national law – is an impediment to the implementation of human rights. On the treaty body side, more care needs to be taken in the construction of remedies and an appropriate level of standardization, even at the prosaic level of terminology. The HRC is attempting to make efforts in this task, including the development of a digest of remedies, working in collaboration with OHCHR. More follow-up rapporteurs are also needed, either on a regional, linguistic, or case basis. A much better job could also be done of improving the visibility of implementation as an issue within treaty body reports and outputs; these documents are badly in need of a “spring-cleaning.” Finally, the potential for engagement with other human rights mechanisms, particularly UPR, is enormous.

As to concluding observations, O’Flaherty cautioned against understanding these in a similar way as Views. The dialogue between states and committees, even if it does not lead to the specific implementation of a recommendation, has great utility in and of itself. Furthermore, it is beyond capacity to measure the implementation of

recommendations, as it is almost impossible to draw causal lines between them and state action. O'Flaherty rejected the contention that treaty body recommendations should be binding; they cannot take on the nature of judicial findings. Nevertheless, the process can be strengthened, particularly through more rigorous and integrated follow up, e.g., by pooling the findings of various committees and having a collective treaty body delegation visit a particular state. Follow-up missions are also essential and are happening in an *ad hoc* way already, thanks largely to the efforts of NGOs.

***Dubravka Simonovic, Member of the UN Committee on the Elimination of Discrimination Against Women and Special Rapporteur for the Follow-Up of Concluding Observations***

Simonovic began by stating that the treaty body system needs to look not only at the harmonization of working methods, but also the substantive outputs; in this regard, she highlighted joint recommendations that have been issued by CEDAW and the Committee on the Rights of the Child. This should be a model for other treaty bodies to follow, she suggested. With respect to CEDAW's approach to follow-up of concluding observations, Simonovic noted that the Committee's methods were adopted relatively late, as of 2008 (after looking at other committee models). As a result, the Committee's approach now entails the selection of two to three concluding observations that are more important for follow-up within a period of two years. Follow-up rapporteurs are then appointed to facilitate the process, and these rapporteurs work closely with the country rapporteurs; with that approach, CEDAW was able to engage more members in the process. A model has also been developed where there are report assessments with regard to implementation. Determinations range from "largely satisfactory" (where no further information is needed); "satisfactory" (further information would be requested in next periodic report); "cooperative but incomplete" (the Committee requests further clarification and information for inclusion in next report, or recommends technical assistance); to "not implemented" (further clarification requested and implementation recommendations remain). Where a state does not respond, CEDAW sends follow-up requests and then may request bilateral meetings with state representatives.

Additional mechanisms are also being established for the continuation of follow-up dialogue with state parties, as well as a focused approach to very urgent issues that the Committee deems necessary to address in a shorter period of time. (State reporting is usually only conducted every four to five years.) Simonovic noted that information sent to the Committee by NGOs, NHRIs, OHCHR and the like are essential; such inputs, however, have been lacking from UN agencies and UN country teams. Much of this information is placed on CEDAW's website, though it could be improved. Assessment as to the efficacy of these procedures is ongoing but Simonovic stressed that more meeting time was necessary. Visibility and transparency should also be improved and reflected in the Committee's report. Technical assistance must also be better connected to the follow-up process; it seems different UN agencies are providing assistance, but treaty bodies have not seen a clear connection between such assistance and the recommendations they make. Better linkages among different parts of the UN system are therefore necessary.



With respect to Views, an increasing number of states have ratified CEDAW's Optional Protocol; yet, at the same time, CEDAW has not had a large number of complaints filed (28 at present). Five cases with violations were found, four of which have been closed upon the recommendation of the follow-up rapporteur. Simonovic noted that CEDAW presently appoints one to two follow-up rapporteurs for Views. Citing OSJI's report, Simonovic acknowledged CEDAW's more prescriptive approach to remedies and noted that there have been one to two follow-up meetings between rapporteurs and state representatives, with generally satisfactory results. Particular mention was made of the case *Opuz v. Turkey* (dealing with domestic violence), before the European Court of Human Rights (ECHR), in which the ECHR cited CEDAW jurisprudence. This shows that "main lines" of thinking by the Committee were upheld by the Court and underscores the need for substantive collaboration between regional and international mechanisms.

In terms of recommendations, Simonovic echoed the importance of states designating a national agent or bureau for implementation; improving the quality of remedies prescribed (here, CEDAW has arguably had better success in elaborating remedies because its Views do not require consensus, only a majority); making Committee reports more visible; and additional resources. In-depth expertise from OHCHR staff members, who understand the substantive nature of the treaty bodies' work, is also necessary. Finally, Simonovic concurred with O'Flaherty's assessment that the state reporting and communications procedures are "different animals," but she argued that there should be combined follow-up on common violations highlighted through Concluding Observations and Views. To that end, a more integrated approach is needed. We are already headed in that direction, Simonovic concluded, but the human rights system needs to continue to move quickly towards that goal.

***Rachel Murray, Professor of International Human Rights Law and Director, Human Rights Implementation Centre, University of Bristol***

Murray spoke about the Convention on the Rights of Persons with Disabilities (CRPD) and the Optional Protocol to the Convention Against Torture (OPCAT), both of which require states to set up and maintain national bodies that carry out certain implementation functions. OPCAT requires the set up of national preventive mechanisms (NPMs), while the CRPD, under Article 33(2), requires governments to set up a focal point for implementation – NHRIs, ombudsmen, NGOs – as well as the establishment of a national monitoring body. Murray argued that the ability of these institutions to conduct such monitoring depends on their credibility, transparency, and independence. Further, there is a need to sort out what is in the remit and responsibilities of the state and what is in the remit of the national institutions themselves. Implementation is for the state and monitoring is for the institution; there is a tendency to blur this line, which must be avoided.

NPMs and Article 33 institutions, Murray argued, need to become familiar with the UN treaty bodies and the system as a whole, which is not always the case. Furthermore, once these bodies are designated there is a need to coordinate their functions and to find best practices of each other's work. The extent to which these national bodies can then follow-up any recommendations of various treaty bodies is dependent on their

particular mandate; both OPCAT and CRPD have articles in them that make clear follow-up is with the remit of these bodies. The extent to which this can be done at the national level, however, is another issue. If it is strategically useful to do so, certain institutions may engage differently at the regional and/or international level, meaning that some institutions may engage with certain treaty bodies more extensively than others. By making these national bodies part of the formal treaty system, Murray urged the need to separate out the responsibilities of the state and national institution itself, so that the latter functions independently. Institutions must also be examined to see if they are being effective, so the question can become to what extent is it the role of the relevant UN committees to monitor not only state implementation but the extent to which the national independent institution is carrying out its functions. Under OPCAT, for instance, the Sub-Committee is directing recommendations to both the state authority and the NPM itself, which adds another tier to the implementation and follow-up process.

With respect to NHRIs, Murray noted the shift in recent years to give a higher profile to these institutions for implementation and follow-up; however, these activities remain dependent on the quality of the NHRI. Not all these institutions are credible, legitimate, or independent and many of them do not have the sufficient level of expertise with the UN system. A recent study by OHCHR, for instance, found only a moderate level of interaction between NHRIs and treaty bodies; 40-50 percent had done some follow-up activity but that was more in the context of the UPR than with treaty bodies. Many NHRIs do not have it in their budget to attend UN meetings, although there is some evidence that if you designate these bodies for monitoring, as with CRPD and OPCAT, it then shifts their attention to the international system. In concluding, Murray cautioned against thinking that NHRIs and national bodies are the solution to the challenge of implementation in all cases. There is a need to scope out what institutions are available at the national level on a state-specific basis. Moreover, both OPCAT and CRPD underscore the need for a larger system of implementation; NHRIs and other national-level bodies are only one piece of this puzzle.

## **Session II – Implementation & Follow-Up of Recommendations: Assessing State Responses to the UN Special Procedures**

### ***Ted Piccone, Senior Fellow and Deputy Director of Foreign Policy at The Brookings Institution***

Piccone focused his remarks on the findings and recommendations of Brookings' recently released study, *Catalysts for Rights: The Unique Contribution of the UN's Independent Experts on Human Rights*, which examines the on-the-ground effectiveness of the UN Special Procedures (SPs). The report illustrates that the system of SPs—the independent experts mandated by the Human Rights Council to investigate human rights themes or situations in individual states—has played an integral and, in some cases, decisive role in converting abstract international human rights principles into meaningful change. However, a lack of adequate resources, insufficient training and understanding of the local context for their work, the absence of a systematic follow-up mechanism for recommendations, and above all, a lack of state cooperation, hobble the SP mechanism.

Piccone presented findings from extensive analysis of two of the SP's primary working methods—country visits and communications—and more than 200 interviews conducted with UN staff, former and current experts, government officials, and NGO representatives. He explained that country visits, the most effective of the SP's working methods, offer mandate holders the opportunity to investigate a human rights situation on-the-ground and meet with government officials, human rights defenders, advocates, victims, and media. By combining their UN authority with well-prepared and politically skillful judgments, SPs are able to elevate attention to important and sensitive human rights problems. State cooperation is central to the success of a country visit since states must approve an expert's request for a visit and cooperate during the mission to guarantee access. Standing invitations, by which states issue an open invitation to all independent experts, make a difference in ensuring access. States that have issued standing invitations have accepted more visits on average and carry less pending visit requests than those states that have failed to issue such invitations. A regional breakdown of standing invitations shows that states in Africa and Asia have issued less standing invitations than their counterparts in Europe and the Americas.

Piccone's analysis of communications—the letters of allegation and urgent appeals sent by SPs to member states about alleged human right violations—reveals problematic trends in country cooperation. To assess state responsiveness to communications, the report analyzed nearly 9,000 communications sent by 17 thematic mandate holders from 2004 to 2008 and assigned a qualitative score to government responses. The data show that more than 50% of these communications were directed at 17 countries. The top five recipients of communications were Iran, China, Colombia, Mexico, and Nepal. Of all communications sent during this period, nearly 58% received no or immaterial responses by the respective governments. In 18% of responses, governments took steps to address the underlying allegation in some way, while 21% rejected the allegation with no evidence of an investigation of the underlying claim. Overall, states in Europe and the Americas had better scores on responding to allegations than states in Africa and Asia.

Piccone emphasized that despite some disappointing results with state cooperation, the SP mechanism represents one of the most effective tools of the international human rights system and deserves further strengthening and support from the international community. He provided concrete examples of instances when SPs influenced national-level implementation of international human rights norms through country visits and communications, including securing better treatment of political prisoners and journalists; dismissals and prosecutions of military and police officials charged with abuses; and protecting freedom of expression through decriminalization of defamation. Piccone presented seven key factors that help facilitate national level impact of SPs: the credibility of the UN; the timing of a visit as it relates to a country's political development; the quality and specificity of recommendations; the willingness and capacity of a government to cooperate; the ability of local NGOs to conduct follow-up advocacy; freedom of the media; and the ability of UN staff to support the experts and follow up on their work.



To strengthen the work of the SPs moving forward and to enhance their ability to influence national-level human rights implementation, Piccone offered several recommendations for states and relevant stakeholders to pursue in the context of the HRC's five-year review:

(1) To improve state cooperation, the Council should define "full cooperation with the Council" as mandated in the Institution Building Package (A/RES/60/521 OP 9) to include issuing standing invitations to SPs, cooperating fully during country visits, and responding within two months to all communications. A state's record of cooperation, according to these standards, should be considered during the elections process of the HRC. Any state complaint regarding SP behavior should be handled through the Coordinating Committee's Internal Advisory Committee; any effort to create an external legal committee should be opposed.

(2) To increase resources for SPs, states should reduce earmarking to specific mandates and increase voluntary contributions to the system. All mandates should receive an equal, minimum floor of resources and funding should be increased to support additional staff and country visits per year. Furthermore, there should be increased transparency of outside funding.

(3) To improve follow-up, SPs should carry out follow-up visits and systematize state responses to mandate holders' recommendations. Additionally, state cooperation with SP recommendations should be reviewed by treaty bodies, relevant UN agencies, and in the context of the second cycle of the UPR. SPs and relevant UN agencies should also help ensure wider dissemination of SP recommendations to local NGOs and NHRIs to help facilitate follow-up by national stakeholders.

(4) To improve the appointments process of mandate holders, the list of SP candidates should be expanded and diversified, and the transparency of the process increased. In terms of additional training and instruction for new SPs, mandate holders should receive instruction in diplomatic skills, communication skills, and fundraising. Moreover, experienced mandate holders should share their knowledge and experience with newly appointed experts.

***N'jat M'jid Maalla, UN Special Rapporteur on Sale of Children and Chair of Coordinating Committee of Special Procedures***

Maalla provided remarks and recommendations on the importance of implementation and follow up, complementarity with other mechanisms, and best practices. She emphasized that, while SPs need to strengthen follow-up and implementation mechanisms, these duties are the primary responsibility of states. In relation to other mechanisms, SPs have the advantage of focusing on a panoply of human rights issues and maintaining diverse mandates. To that end, treaty bodies and SPs are collaborating by referencing each other's recommendations; they are also beginning to formalize annual meetings between the treaty body chairs and mandate holders.

Maalla explained that country visits conducted by SPs are among the most effective of their working methods and should be enhanced. In addition to providing the

opportunity for local scrutiny, country visits allow experts to evaluate a country's national implementation system and respond quickly to allegations of human rights violations. To improve country visits, she suggested that mandate holders' press statements, issued at the conclusion of a country visit, be circulated widely to stakeholders in the country. Maalla emphasized that governments should begin to act immediately on recommendations issued by a mandate holder at the conclusion of a visit. Country visits also offer the opportunity to follow up on recommendations issued by other UN human rights mechanisms, and Maalla encouraged mandate holders to strategize which recommendations to reiterate.

To improve the work of SPs, Maalla made several recommendations and highlighted several ideas that are in development. First, she suggested that SPs should enhance cooperation and coordination amongst themselves. They should meet more frequently throughout the year, outside their annual meeting in Geneva. Additionally, the joint communications report that will combine all SP communications into one document—expected to be published in 2011—will help SPs coordinate their work and facilitate follow up. To improve implementation and follow up, she urged for greater resource allocation to facilitate additional country visits, and an improved interactive dialogue between mandate holders and diplomats. In formulating recommendations in annual reports and country visit reports, she urged mandate holders to issue SMART (specific, measurable, actionable, attainable, realistic) recommendations and reference other human rights mechanisms.

***Miloon Kothari, Former UN Special Rapporteur on Adequate Housing***

Kothari offered reflections about his service as a mandate holder and provided recommendations about how to improve the work of the SP mechanism. One area of that deserves more attention is the public statements issued by SPs. Kothari explained that, in his experience, these public statements are of great importance and serve to influence UN and national action, embolden civil society, and legitimize advocacy positions. Similarly, joint statements between SP mandate holders and treaty body members deserve greater attention. Though there have only been a few such statements, Kothari considered them an effective model that should be used more frequently.

In reflecting on his time as a mandate holder, Kothari shared concrete examples of where he was able to influence state action. For instance, during a country visit to Canada, he cited concluding observations of the Committee on Economic, Social, and Cultural Rights and the national parliament subsequently created a dedicated section on housing issues per his recommendations. In Mexico, he helped stop the construction of a dam during a country visit. Kothari also explained that SPs can successfully play a mediating role between government and nongovernmental stakeholders on specific issues. In Kothari's view, his achievements as a mandate holder were due in large part to effective follow-up; now his successor, Raquel Rolnik, conducts follow-up visits and circulates follow-up questionnaires that he initiated as mandate holder.

To strengthen the system moving forward, Kothari asked whether these positive implementation examples are more exceptions rather than the rule in terms of the work

of SPs. Further, he queried how the system would need to change to allow for more effective implementation of SP and treaty body recommendations? In Kothari's view, the task of "mainstreaming" human rights at the UN has failed and some UN country teams have even gone so far as to reject the human rights approach. Indeed, Kothari noted, human rights have been relegated within the UN system and make up only a fraction of the organization's work. This is a serious problem that must be addressed and SPs have a special role to play in this regard since they work outside of the UN system.

***Juan Jose Gomez Camacho, Permanent Representative of Mexico to the United Nations (Geneva)***

Camacho provided an overview of SP-member state relations and how implementation of recommendations could be enhanced. At the core of the SP-state relationship, he argued, is a fundamental conflict between reality and political will on the one hand and perception of reality and political will on the other. The perception of reality, not reality itself, is the basis for action. The problem for SPs and states is how they are perceived. Generally, states see SPs as a monolithic machinery, while SPs often think that states have the power to turn political will on or off on a whim. These understandings create serious obstacles to implementation.

With respect to SP misperceptions of state power, Camacho urged mandate holders to remember that decision-making is a complex system that involves thousands of personalities and policymakers. One cannot reduce working with a government or national authority to a dichotomy of cooperation and non-cooperation. Those SPs that understand these complexities, as Miloon Kothari did in his visits Mexico, will have more influence than others. Camacho added that there have been scenarios in which SPs are responsible for spoiling their own efforts because they do not have an understanding of political complexities.

Governments, on the other hand, do not trust SP mandate holders. Camacho explained that government officials often wonder, when SPs are conducting country visits, if they are there to judge or to help, to supervise or to partner. Government officials therefore need to receive a signal from UN mechanisms that the UN is, in fact, there to help, not to judge. Camacho further reminded the audience that SPs are indeed a highly political mechanism. They are there to help produce, or catalyze, domestic changes and so they need to recognize that their roles are inherently political. States need and benefit from SP advice but it is those mandate holders with political skills that will be the most influential in having their recommendations implemented.

**Session III – Implementation of Outcomes: Universal Periodic Review and the Follow-Up Review Process**

***Dr. Saïd Hammamoun, Senior Legal Advisor, UPR Watch***

Dr. Hammamoun began his discussion by outlining three reasons why implementation in the context of UPR deserves attention: maturation of the process, complementarity with the other mechanisms, and the lack of a harmonized model for implementation of recommendations by states.

First, based on UPR-Watch's analysis, more than 10,000 recommendations have been issued after eight of the nine UPR sessions so far; at the eighth session, an average of 128 recommendations were issued per country, compared to 18 at the first session. Second, the relevance and the wording of many UPR recommendations have been rightly criticized for their vagueness; for their incompatibility with the UPR's goals; and for lack of a thematic approach in their presentation. Finally, the way in which states have responded – by accepting or rejecting them, by noting them for further consideration, or by giving an unclear answer – to UPR recommendations varies greatly and affects the implementation process.

On the issue of complementarity with treaty bodies and Special Procedures, Hammamoun noted that this topic has been (and still is) approached from two angles: (1) fragmentation, insofar as the UPR could potentially weaken the UN human rights system (e.g., when recommendations from the other mechanisms are rejected at the UPR, and (2) incoherence, in that the UPR could lead to an entirely different assessment of the human rights situation in a country than the other two mechanisms (e.g., Tunisia, Sri Lanka). Moreover, the UPR's legal framework (Resolutions 60/251 and 5/1) does not help clarify this issue. Complementarity and the added value of the UPR are raised in 5/1 in only very broad terms.

According to the statistics compiled by UPR Watch for the first seven sessions of the UPR, 676 recommendations to states explicitly mentioned the treaty bodies and Special Procedures. State answers to these recommendations were as follows: 66% and 44% were accepted, respectively; 10% and 26% were rejected; and 22% and 30% received no clear answer. When it comes to the non-accepted recommendations (rejected, unclear answer or simply noted by the states) it is difficult to assess with certainty if a state's non-acceptance is due to a lack of political will, a lack of institutional capacities, or a kind of "tolerance threshold" vis-à-vis recommendations from the treaty bodies and Special Procedures.

Hammamoun emphasized that no common model has as yet been developed when it comes to implementation, noting that the institutional package 5/1 is broadly worded and states that the recommendations should be implemented "primarily by the states concerned" and, "as appropriate, by other relevant stakeholders". However, two meaningful developments are worthy of note. First, a steering dynamic is starting to take place, which is headed towards harmonization of the implementation process at the national level. Examples of this dynamic include the creation of interdepartmental committees, national action plans, etc. Second, the good practice of states producing interim reports is gaining ground, although models vary.

Still, some practices need to be remedied. Dr. Hammamoun suggested the insertion of an "alert procedure" under item 6 of the HRC agenda, which would allow the Council to address situations where states adopt measures that contradict prior commitments they made during their UPR review (for instance, Egypt's two-year extension of the Emergency Law in May of 2010). Furthermore, a framework of measurable benchmarks for implementation should be developed. Key components of this framework include:

- a) Developing a methodology for the implementation process that would include: i) a model for follow-up that could be elaborated within interdepartmental or steering committees; ii) action plans; iii) an inclusive and consultative approach to assess to what extent civil society and NHRIs are effectively involved in the implementation and consultation process; and iv) more widespread use of interim reports. The scope of implementation could also cover recommendations issued at the UPR as well as voluntary pledges, such as those made when a state runs for membership of the HRC and/or during their UPR.
- b) Encouraging accession, signature, ratification and withdrawal of reservations towards international human rights instruments by states. Better cooperation with the other two human rights mechanisms – Special Procedures and treaty bodies – should also be encouraged.
- c) Strengthening national human rights systems, in their legal and institutional aspects (constitutions, NHRIs, administration of justice).
- d) Verifying actions undertaken in the field and identifying difficulties therein. Only concrete measures or actions should be taken into consideration; difficulties encountered should not only be identified, but efficient remedies should be put in place.

***HEM Omar Hilale, Permanent Representative of Morocco to the UN Office in Geneva & HRC Review Facilitator***

Ambassador Hilale began by noting that this conference was well timed, as the work and functioning of the HRC, especially the UPR mechanism, are currently being reviewed. He discussed two critical elements with regards to the objectives of this panel and the current review of the UPR. The first element is the follow-up of UPR recommendations; this is the most crucial step of the entire UPR process because it is the only element that can measure the realization of mechanism's ultimate objective, i.e., the improvement of human rights situations on the ground. This review phase is also important in order to judge the efficacy and credibility of the UPR mechanism, as well as the involvement of the states, in the promotion and strengthening of human rights. Indeed, the UPR's founding documents stipulate that each state is accountable to the HRC with regards to following up on the recommendations issued at its previous review, as well as the progressive implementation of those recommendations. To that end, the ever-increasing number of recommendations issued during the UPR poses challenges to effective follow-up and implementation; it also points to the need to find a productive consensus that would be most likely to help states and the international community draw the best results from the UPR process.

The second crucial element is that the evaluation of implementation and voluntary commitments is somewhat premature and difficult to measure in such a short period of time. Developing countries, in particular, face resource and institutional deficiencies. Still, many countries -- Bahrain, Colombia, the Czech Republic, South Korea, Romania, Switzerland, the United Arab Emirates, and the United Kingdom -- have taken the initiative to introduce an update on the implementation of recommendations received



and the commitments they made during their UPR review. One must be aware, however, that these are only examples of good practices and are voluntary undertakings limited to a few countries; they do not constitute a representative sample.

On the relationship between the Kingdom of Morocco and the UPR, Ambassador Hilale noted that Morocco has been particularly engaged, during and after its membership on the HRC, in the elaboration of the UPR modalities. The country hosted and facilitated a number of activities dedicated to the mechanism. Morocco's review resulted in 13 recommendations, 11 of which were accepted and 2 that were subject to further examination. The majority of the accepted recommendations have already been implemented, such as the ratification of the Convention on the Rights of Persons with Disabilities and its Additional Protocol, as well as the withdrawal of reservations to CEDAW. With regards to the implementation of its voluntary commitments, Ambassador Hilale noted that Morocco introduced a periodic report to the Committee on the Elimination of Racial Discrimination, in addition to hosting a visit of the Working Group on Enforced Disappearances.

With respect to the ongoing revision of the UPR, it is worth recalling that the first session of the Working Group on the Review of the Work and Functioning of the HRC, held last month, reserved a segment on UPR-related discussions. That first step proved very enriching in terms of concrete and productive suggestions, based on best practices and the elements learned from the first UPR cycle, which is still underway. In this context, a statistical evaluation of the proposals received during the first session shows that the number of concrete suggestions concerning the UPR was about 486 out of a total of 1,565, or 31 percent (followed by the Special Procedures with 427 suggestions, and the work methods and procedural rules with 267 suggestions.) Given these numbers, member states have expressed a high level of interest and a real commitment in order to benefit as much as possible from the UPR process.

In his capacity as facilitator of the UPR-related questions in the framework of the HRC review, Ambassador Hilale explained that he had thus far organized three informal reunions, during which the examination of proposals was undertaken at three levels: (1) general questions with regards to the foundation, the principles and the objectives of the UPR, as well as the order of review, the periodicity, the gap or pause between the first two cycle; (2) questions linked to the process and modalities of the UPR, such as the focus of the second and following cycles, the content of reports, the duration of the review, the recommendations, the role of different actors, and the adoption of the outcome report; and (3) questions regarding follow-up, including the implementation of recommendations, technical and financial assistance and the link with the other human rights mechanisms. Ambassador Hilale praised NGOs for their very active role in this process, both at the working group level and during informal consultations. Their contributions and concrete proposals have provided much food for thought and he hoped that this dynamism would continue during the next phase of informal negotiations.

***Michel Forst, Secretary General, Commission Nationale Consultative des Droits de l'Homme (CNCDH) & UN Independent Expert on Haiti***

With regard to the review of the Council, Mr. Forst invited the attendees to consult the document prepared by CNCDH and to read the document jointly produced by the International Conference of National Human Rights Institutions. On the UPR and its link with other procedures and bodies, Forst noted that HRC Resolution 5/1 makes clear that the UPR should “complement and not duplicate other human rights mechanisms, thus representing an added value.” However, the issue of the UPR’s complementarity with other human rights mechanisms is not clearly resolved in practice, which generates two challenges: (1) how to ensure that the UPR does not cast a shadow over the works of treaty bodies and Special Procedures, but rather helps promote them, and (2) how to ensure that these mechanisms do not function in “closed circuit,” with recommendations moving back and forth without a precise and defined articulation.

CNCDH has tried to avoid these two obstacles by producing a study titled “*Les droits de l'Homme en France, regards portés par les instances internationales*,” which compiles in one volume all the observations and recommendations issued to France during its UPR, as well as the observations of the treaty bodies and Special Procedures. It also added the recommendations of the monitoring bodies of the Council of Europe and some emblematic condemnations of France issued by the European Court of Human Rights. Forst recommended the study for at least three reasons. First, it underlines the above-mentioned mirror effect of the recommendations that were raised by all these mechanisms. Second, because of the shared recommendations, it provides a quick reference of the issues France must address, e.g., prison conditions, issues related to immigration and asylum, questions pertaining to the treatment of ethnic minorities, and discrimination in the administration of justice. Finally, it shows how the UPR forces states to account for their implementation of recommendations. Indeed, France, which expressed a desire to present a mid-term report on its implementation of UPR recommendations, has had to undergo serious self-examination in this regard.

In light of the French experience, Mr. Forst made several recommendations. First, he highlighted the importance of systematically revisiting, in the UPR outcome report of each country, the recommendations issued by treaty bodies and Special Procedures while clearly distinguishing them from recommendations issued by other states, i.e. their peers, during the UPR. Only the latter should be subject to “approval” or “rejection” by the state under review. Second, echoing earlier remarks by Michael O’Flaherty, Forst underscored the importance of the fact that, when it comes to the preparation of the UPR and its follow-up, these responsibilities are widely distributed amongst various state ministries and departments. These same responsibilities arise (or should arise) in the preparation and follow-up of reports to and from treaty bodies; to that end, Forst recommended the appointment of a high-level mechanism in charge of interdepartmental coordination. Third, Forst cautioned that the UPR mechanism relies on the good will of states; it is a voluntary tool to promote human rights, not a protection mechanism. In that regard, there is no guarantee against possible abuse of the UPR process: nothing prevents states, for instance, from staging questions by friendly delegations. Indeed, some review sessions had seen this occur, where massive or systematic human rights violations were never even mentioned during the course of a

state's review. Similar, there is nothing in the UPR process that prevents the recommendations issued from being "substandard," i.e., falling below states' human rights obligations.

Finally, Forst reminded the audience that Resolution 5/1 has planned for UPR outcomes to include "an assessment undertaken in an objective and transparent manner of the human rights situation in the country under review, including positive developments and the challenges faced by the country." This element, however, has disappeared in subsequent documents. In view of this fact, Forst agreed with other commentators who have recommended that a working group of five independent experts be set up, appointed for the duration of the UPR cycle and according to the same modalities as those used in the designation of Special Procedures mandate holders. This group would be charged with monitoring the elements mentioned above. In closing, Forst also acknowledged the fact that the UPR has expended considerable resources in terms of personnel, documentation and translation, which has clearly affected the work of the other mechanisms, whether through delays in translation or lack of personnel, or simply through a general lack of means to accomplish their mandates effectively. Forst witnessed this shortfall himself in his work as a UN independent expert on Haiti. This inevitably raises the question of a cost/benefit ratio: a careful assessment must be made as to whether the financial investment in the UPR is, in fact, proportional to the expected result. If the budget allocation choices are not legitimate in view of the revisions to Resolution 5/1, then perhaps a new resource equilibrium should be found.

***Rachel Brett, Representative for Human Rights and Refugees, Quaker UN Office in Geneva***

Brett began by noting that implementation is the actual action that is incumbent upon the state; follow-up is a means to implementation and is primarily done by others, although parts of the government may also be involved. A lesson learned from the experience of treaty body reporting to take into the UPR is the need for broad, national-based consultations beforehand but an element of this has been forgotten: the intention of is also to have consultation *amongst* different parts and levels of the government itself. Indeed, Brett emphasized that the right part of the government must be engaged in the process from the beginning, not just during the "Geneva bit." Brett advocated instituting a "reverse" broad national consultation after the review in the Human Rights Council, the purpose of which would be to reengage national actors, NHRIs, government departments, and civil society actors in developing a plan of action for implementation. This is particularly necessary given the large number of recommendations now being issued (and accepted) through the UPR process.

The next question is what implementation actually requires the state to do. This is what the state needs to figure out and, again, government action may require any number of acts. For instance, there may be cases where a government might legitimately be unable to implement a recommendation that depends, for instance, on a legislative process; the government may propose the recommendation, but the legislative body may not take it up, or not take it up for several years. Again, this is why you need "buy-in" from within multiple levels of government at an early stage. Brett also pointed out the need for actors to identify what the government perceives as the need for assistance with

implementation, against which it can then be determined what mechanism might be the best suited to provide such assistance. Implementation could then also be judged from the perspective of whether the assistance that a state or government might require is, in fact, being provided.

Turning to the second round of the UPR process, Brett considered some opportunities that the system could provide for follow-up, such as the OHCHR compilation report. In this regard, Special Procedures and treaty bodies would have an interest in their own follow-up in relation to the UPR, since their states have either rejected or accepted certain recommendations. This then allows treaty body members to follow up on why a state rejected particular recommendations and take those considerations into account as part of the reporting process. The pressure to submit overdue treaty body reports occasioned by the UPR has also led, Brett contended, to increased reporting and a more open approach to Special Procedures (e.g., more standing invitations issued), thereby bringing certain states more into the regular monitoring process and reinforcing them in that way.

#### **Session IV – The Role of States: Positive Examples of Implementation at the National Level**

##### ***Ambassador Alicia Arango, Permanent Representative of Colombia to the UN Human Rights Council***

Ambassador Arango provided an extensive overview of Colombia's interaction with each of the mechanisms. She explained that the preparation process for the UPR served as a catalyst for compliance with the other mechanisms. To prepare for its review, the Colombian government first addressed outstanding SP communications by determining which governmental agency was responsible to respond to them and then by organizing all communications and responses into a public database. This process helped strengthen interagency coordination and increased government transparency. In addition, the government caught up on its treaty body reporting in preparation of its UPR. In accordance with recommendations generated during the UPR, Colombia: enacted a national policy on Afro-Colombians; signed the Declaration on Indigenous Rights; ratified the Conventions on Persons with Disabilities and Elimination of Racial Discrimination; and resumed its series of *Mesas de Garantías*, in which human rights defenders meet with government officials on a regular basis. She also pointed out that treaty body recommendations and conclusions have positively impacted Colombian law. The legal codes on children, women, and gender equality have all grown out of treaty body recommendations and conclusions.

In terms of cooperation with Special Procedures, Ambassador Arango explained that Colombia respects the mandate holders' independence and contribution to human rights promotion. At the same time, she stressed that, in order to be credible, Special Procedures must act impartially and in a spirit of cooperation with governments. Colombia has hosted four SP visits in 2009 alone, the most of any state. While many mandate holders have successfully promoted human rights and protected victims in Colombia, the Ambassador invoked the 2009 visit of the Special Rapporteur on Extrajudicial, Summary, and Arbitrary Execution as particularly influential. After

reviewing his recommendations, the Colombian government requested that the OHCHR Field Office work in conjunction with government officials to follow up on the recommendations and combat extrajudicial executions. The Field Office has helped facilitate compliance and the government recently approved an extension of its mandate for another three years.

***Murray Hunt, Legal Adviser to the UK Parliamentary Joint Committee on Human Rights***

Hunt offered observations about the implementation of international human rights norms/recommendations and how international mechanisms could better work with national parliaments. Parliaments could potentially play a key role in the implementation of international norms precisely because international standards are political and legal in nature. The ability of parliaments to effectuate and legitimize these norms makes them critical actors in the implementation process. Where parliaments can work to implement international standards, Hunt argued, results will be more effective and more legitimate. To that end, the Joint Commission is at the heart of implementation of international standards in the United Kingdom. While the Commission is not explicitly tasked with addressing national compliance with international standards, it has interpreted their mandate to that effect.

Hunt offered three examples of impact facilitated by the Joint Commission. As a general practice, the Committee comments on relevant bills and introduces parliamentary debates on issues of compliance with international standards. In the case of the European Court of Human Rights, the Committee follows up with the relevant ministerial office, inquiring how it will follow up on the Court's judgment. The Committee thereafter pursues dialogue on implementation and reviews the action plan presented by the Ministry. In relation to the UN treaty bodies, the Committee encourages parliamentarians to comment on the UK's record on reporting and tries to reference treaty body conclusions in domestic debates on legislation. Hunt explained that the Committee has no systematic follow up method for Special Procedures but that it does refer to their findings and recommendations frequently. In the Committee's successful pursuit to abolish the offences of blasphemy and blasphemous libel under common law, for instance, it referred to the findings and recommendations of the Special Rapporteur on Freedom of Religion and Belief.

Hunt made several recommendations to strengthen implementation of international standards. First, states should be encouraged to establish parliamentary human rights units and resource them properly. Special Procedures and treaty bodies should maintain close contact with these units as they could provide useful information on the local context. To ensure that these parliamentary units are legitimate, Hunt suggested that a set of guidelines be created to guide them, much like the Paris Principles do for national human rights institutions. Guidelines for parliamentary units should include that they should: receive information from governments on implementation and impose a timetable; submit questionnaires to relevant agencies on implementation; work with civil society; propose amendments that align with international standards; act as a point of contact for coordination on implementation; provide guidance to domestic officials



on international judgments and recommendations; report on implementation of recommendations; and keep all recommendations under review.

***Olawale Fapohunda, Managing Partner of the Legal Consortium of Nigeria***

Fapohunda provided an overview of the impact of human rights mechanisms in Nigeria and offered recommendations on how to improve implementation. Foremost, he urged participants and conference organizers to improve education in Africa about these mechanisms, where there is very little knowledge about how to access or leverage these tools. Nigeria and its human rights landscape, he explained, are largely affected by its diversity and federalist structure. Nigeria first sought a seat on the Human Rights Council in its pursuit to secure a seat on the Security Council. Nonetheless, its membership on the Council encouraged the government to improve its human rights record.

Fapohunda noted that Nigeria's UPR was particularly effective in encouraging national level change. It was the first time that government officials, civil society activists, and private sector representatives opened a dialogue on human rights. For instance, the UPR review was the first time the opposition openly discussed controversial issues like the criminalization of LGBT issues. In terms of tangible results, the UPR led to the withdrawal of the punitive provisions of Nigeria's anti-LGBT law, the creation of a national action plan for human rights and a multi-sectoral committee to oversee it, an anti-torture bill, the creation of a committee tasked with investigating allegations of torture, and the institutionalization of a dialogue on human rights.

In its performance with Special Procedures, Nigeria has issued a standing invitation and hosted several visits. The Special Rapporteurs on Torture and Extrajudicial, Summary, and Arbitrary Executions discovered that prisoners awaiting trial in detention were waiting 5-17 years on average for judicial action. Since the visits of these mandate holders and the publication of their recommendations, the Nigerian government passed a prisoner's bill in parliament that requires prisons to refuse new detainees when they are at capacity. This legal reform, catalyzed by the visits of Special Procedures, helps secure legal representation for Nigerian prisoners. Moving forward, Fapohunda recognized several challenges and issued recommendations to strengthen national level implementation. He urged governments to stop justifying their own failures by invoking the imperfect records of the United States and European Union countries, and insisted that Nigerian and African NGOs improve resources and education to ensure better participation in UN activities. Moreover, advocates and practitioners should better educate local groups in Africa and elsewhere about UN human rights mechanisms and standards.

***Katharina Rose, International Coordinating Committee of National Human Rights Institutions in Geneva***

Rose explained how NHRIs have helped facilitate national level implementation of recommendations generated by human rights mechanisms and how they can strengthen implementation. NHRIs, she explained, are particularly well suited to help implementation since they bridge the gap between national and international systems.

She offered several examples of successful implementation facilitated by NHRIs. In Uganda, a health unit was created in the Uganda Human Rights Commission following a recommendation issued by the Special Rapporteur on Health, who visited in 2005 and conducted a follow-up visit in 2007. Furthermore, representatives of the NHRI intervened during the mandate holder's interactive dialogue with the Council to comment on the recommendations. Moving forward, Rose suggested that the Council decluster the interactive dialogue so that equal time is allotted for each mandate holder's presentation, dedicate time on the agenda to follow-up issues, and allow space on the agenda for interventions by NHRIs.

Rose also provided successful implementation examples of work done by treaty bodies and the UPR. In Australia, Human Rights Committee jurisprudence was used as an interpretive tool in an inquiry presented by parliament. In Panama, the UPR was particularly effective at encouraging national level implementation. For instance, in its preparatory stage, government officials convened a consultative body. As a result of recommendations generated during the process, Panama ratified the Optional Protocol to the Convention Against Torture and established a standing consultative body that has since been used for subsequent treaty body reporting. Furthermore, the government developed a plan of implementation for UPR recommendations and has produced periodic reports on implementation of recommendations. Looking ahead, Rose suggested that interim reporting on UPR progress be incorporated into HRC Agenda Item No. 6, so as to ensure periodic reporting.

***Ahmad Zia Langari, Director of the Afghan Independent Human Rights Commission (AIHRC)***

Langari offered comments on how these UN mechanisms have influenced human rights in Afghanistan. In 2005, he organized a workshop for the Ministry of Foreign Affairs on treaty body reporting. Since then, the Ministry has sought and received funding to prepare reports, which AIHRC has helped produce. AIHRC has also been instrumental in producing Afghanistan's national UPR document and presented several statements at the HRC. In terms of Special Procedures, the human rights unit in the Ministry of Justice has been tasked with following up on recommendations. The unit is also responsible for informing the Ministry of Foreign Affairs with data and information for UN treaty body reporting. Langari urged governments to consider recommendations generated by mechanisms at a higher level and to devise national level action plans with goals and timelines.

**DAY TWO**

**Session V - Enhancing Cooperation Among UN Treaty Bodies, Special Procedures and UPR**

***Michael O'Flaherty, Member of the UN Human Rights Committee and Professor of Applied Human Rights, University of Nottingham***

In O'Flaherty's comments on the relationship between the UN Human Rights Council and the treaty bodies, he noted that the two have a long-standing relationship and that there has always been an awareness of the potential to enhance relationships; at the

same time, however, the relationship has to be worked out with great care. This means that a thorough respect must be maintained for the autonomy of the two systems; likewise, the relationship between the Council and treaty bodies must not become hierarchical.

That said, O’Flaherty focused on the relationship between the treaty bodies and the UPR in particular, noting that there has been a number of positive developments: (1) the national consultation process that precedes most UPR reports has had a knock-on beneficial effect for most treaty body work (e.g., states have drawn on treaty body findings as a basis for addressing UPR); (2) the effort to get a UPR report written has put in place the mechanisms and capacities for preparing reports to the treaty bodies; (3) the UPR has “grabbed attention” to human rights amongst states; (4) in the UPR process itself, states are crafting questions to each other based on treaty body findings; (5) UPR has been used as an opportunity to press for ratification of human rights treaties and the withdrawal of reservations; (6) the compilations prepared for the UPR have proved a useful resource for the treaty bodies to focus on key problems and issues.

O’Flaherty offered a shorter list of concerns and worries: (1) UPR is sapping energy from the treaty body system, such that the treaty body dialogue gets the “residual energy” of states that are vigorously engaging with the UPR; (2) similarly, NGOs are focusing much energy on the UPR to the detriment of the treaty body reporting process; (3) capacity required of the OHCHR to service the Council and UPR has drawn resources away from the treaty bodies; and (4) the small incidence but prevalent risk of contradictory findings. O’Flaherty noted, however, that this is happening less than expected.

Concerning enrichment of the relationship, O’Flaherty called for greater invocation of UPR findings by treaty bodies, where those findings are “on the button.” UPR findings could also be cross-referenced in treaty body concluding observations, and vice versa, to develop a system of mutual follow-up. O’Flaherty stressed, however, that such findings should not be invoked in individual communications procedures, unless pleaded by the parties. A mechanism to avoid future contradictions between both systems would also be wise but need greater thought, particularly as review of the Human Rights Council continues. National consultation processes might also be enriched, so as to become part of a greater national debate – a “motor” for these national debates would create a fertile foundation for renewed calls for national human rights plans of action. Other possibilities including exploring how the Council might take on a role akin to the Committee of Ministers in the Council of Europe system, so as to serve as an enforcement arm. Is there a role for the Council in this regard or are the dangers of a hierarchical relationship developing too great that this would not be prudent? Finally, O’Flaherty proposed an annual meeting of the treaty body chairpersons with the bureau of the Council, to discuss matter of mutual interest. This idea would be relatively easy to put into practice.

***Bacre Waly Ndiaye, Director, Human Rights Council and Special Procedures Division, OHCHR***

Noting that the need to discuss ways to improve the implementation of recommendations stemming out of the UN human rights machinery is an essential

component of the review of the Human Rights Council's work as a whole, Mr. Ndiaye began his remarks by stressing that the UPR is one of the great reforms introduced by the Council. While the UPR is not a perfect mechanism, the vibrant and very wide participation of states, national institutions, UN agencies, and civil society in the process is very encouraging and was hardly predictable four years ago. Now, the implementation and follow-up of recommendations made in the UPR's first cycle is the great challenge of its second cycle.

Within the scope of its mandate, the OHCHR has been at the frontline of the discussions on the UPR's second cycle, examining shortcomings, achievements and discrepancies of the process. For example, OHCHR believes that additional attention should be given to the situation of least developed countries, land-locked developing countries and other small developing island states, which face particular challenges in attaining the realization of human rights, especially economic, social and cultural rights. There is also clearly a need to enhance complementarity between the treaty bodies, the Council and its mechanisms, particularly the UPR and the Special Procedures, as well as other UN mechanisms with a view to making them more efficient and ensuring that their recommendations have a greater impact on the ground. This is a crucial matter; however, Mr. Ndiaye cautioned that, because the review process has not yet reached its final stage, stakeholders should take care not to pre-empt the results of these discussions.

Nevertheless, some constructive and positive elements may be pointed to. First, the UPR process has boosted the Special Procedures and treaty body mechanisms by dwelling significantly on their findings. For instance, the UN compilation report prepared by the OHCHR is one of the main pillars of the UPR process and states participating in the discussion have commonly and increasingly referred to that document to extract the contributions, concerns or comments of the other mechanisms with a view to either pose questions or make recommendations. Secondly, in preparing their own reports for the UPR, states under review have often had to set into motion new internal processes and arrangements; in this regard, it has been often mentioned to the Secretariat that such tools would then be used to prepare other documents under the various UN convention procedures. This *de facto* technical complementarity is of particular importance, Mr. Ndiaye averred, since it will eventually pave the way to a possible overcoming of one of the most striking deficiencies of the treaty body system: the accumulation of overdue reports. Thirdly, in preparing for the UPR processes, many states seized the opportunity to assess their level of cooperation with the UN system as a whole. In some instances, invitations were extended to specific Special Procedures, while in other cases standing invitations were launched or visits organized. Finally, the various trainings organized by OHCHR have enabled it to share information on the overall UN system and thus boosted knowledge about its work and activities amongst national stakeholders.

What remains to be considered and anticipated:

(1) Although the details of the second UPR cycle are not yet known, it is clear that the implementation of recommendations will represent a challenge to the international

community. Many UPR recommendations were based on treaty bodies or the Special Procedures own recommendations and therefore the credibility of the latter will be at stake when assessments of the follow-up to the former are made. It is important for the Council to conceive a system that will take all elements of the human rights spectrum into consideration when dealing with follow-up; that system will have to be efficient but realistic and linked closely to the provision of technical cooperation or advisory services.

(2) It will be important for the treaty bodies and the Special Procedures to find ways and means to prioritize their own recommendations. This will be crucial since one cannot expect the HRC to have the possibility to do so during the short UPR review with serious political constraints, which are, by definition, not faced by the other mechanisms. This impetus to rationalize, streamline and prioritize will have to be translated into deeds by the Treaty Bodies or the Special Procedures as soon as possible.

(3) There remains a risk of duplication and contradiction between the deliberations of the various bodies. It will be very difficult to establish a system of cross-checking of the various recommendations since, once they are made by states during the UPR review, they become their own recommendations, even if initially they were partly or entirely those of other bodies. This challenge can be overcome to a certain extent if texts are clear and precise and thus not vulnerable to different levels of interpretation.

Mr. Ndiaye closed his remarks by expressing his confidence that the meeting would provide new and refreshing ideas for the review process.

***Tania Baldwin-Pask, Adviser, Amnesty International***

Pask noted that it felt like human rights advocates have been in the “era of implementation” for quite some time and underscored the need to increase the cooperation between the human rights bodies: lack of information exchange between the treaty bodies and Special Procedures was a source of surprise for many years. The lack of communication with desk office and country specialists was even more pronounced. That situation, however, has been improving and more regular cooperation is taking place, though it tends to be built around mandates where there is an obvious link, even when there are a number of relevant mandate holders. Still, there is much more scope for improvement. In particular, Pask suggested that the Special Rapporteur on Torture, if he/she could not seek a visit to a country where there is widespread and/or systematic torture, could refer that situation to the UN Committee Against Torture for consideration under its Article 20 procedure. Similar synergies between CEDAW and the new Working Group could also be developed in the time to come.

With UPR, a new world of possibilities for cooperation presents itself. Pask noted that the dissemination of the compilation reports in conjunction with the UPR present the potential for treaty body and Special Procedures findings to reach a widespread audience, especially stakeholders at the national level. An important outcome of the UPR process can and should be the development of a national implementation plan, which incorporates treaty body and Special Procedure recommendations. However, for enhanced cooperation to be effective, the treaty bodies and Special Procedures need to



better coordinate their activities and this poses some challenges. For example, despite calls to do so, the treaty bodies have not yet agreed on the need to prioritize their recommendations to feed into the UPR process, far less how to do so; yet this will be absolutely crucial if they are to have an impact on the UPR and the outcome of the reviews. This prioritization process could perhaps be an eventual function of the new Working Group on Follow-Up or perhaps it requires an entirely new mechanism. Increased coordination around follow-up also highlights inconsistencies between human rights bodies (among treaty bodies, between treaty bodies and Special Procedures mandate holders) and some though needs to be given how to resolve this situation. Recommendations from experts must also be crafted so that it is clear what steps states must take in order to bring their actions into conformity with international law and standards.

In practical terms, it is helpful that the annual meeting of both Special Procedures and treaty body Inter-Committee and chairperson meetings take place at the same time and generally in the same location, and that there is a time for experts to meet formally. There are other times throughout the year when Special Procedure mandate holders and treaty body members are in Geneva/in session at the same time; these might also be good opportunities to bring people together. Lastly, an area requiring on-going attention requiring follow-up and coordination is the issue of reprisals against those who interact with the human rights bodies. Action must be taken swiftly against such incidents of reprisals and must be followed up as a matter of priority.

***Vitit Muntarbhorn, Professor of Law, Chulalongkorn University and Former Special Rapporteur on Situation of Human Rights in Democratic People's Republic of Korea***

Muntarbhorn began by reflecting on his experiences as Special Rapporteur on the Sale of Children and in the DRPK. He first highlighted the need to check and balance the abuse of power – no one should have a monopoly on anything, even in the protection of rights – and noted that, to that end, the UN is comprised of five pillars: treaty bodies, Special Procedures, UPR, complaints procedure (dealing with persistent violations), and “everything else” (e.g., civil society advocacy, use of the Security Council, etc.) This fifth pillar is very important, Muntarbhorn argued, and one should never trust one pillar alone in the power game.

Reflecting on his experience as a SP mandate holder, Muntarbhorn emphasized the importance that mandate holders be independent and be an advocate in the most humble sense of the word. Mandate holders undertake their work *pro bono*; they are not UN “employees” and this is critical to their effectiveness and independence. Muntarbhorn also highlighted the “three little A’s” of being a Special Procedure: being analytical; being accessible; and being active and enabling. He noted that Special Procedures are particularly important in that, unlike the treaty bodies, not all procedures are consensual, the mandate for North Korea being one such example. One cannot just wait for the consent of the government but the UN must be there to engage with people.

However, mandate holders' linkages with the Human Rights Council is often too abbreviated and, to date, SP mandate holders have not had a direct presence at the UPR. To this end, it is important to see the Special Procedures as linked to a broader system and that they need to have greater access to other UN organs, such as the General Assembly (as he did). As an observation on SP working methods, Muntarbhorn noted improvement on various fronts, e.g., more joint missions and communications, training/orientation for new SPs, an annual meeting for mandate holders, and greater linkage with the treaty bodies. The Special Procedures Coordinating Committee is also a particularly useful innovation.

Looking ahead on key issues, Special Procedures should be able to access the totality of the UN system, including the Security Council where appropriate and the field level. There is much more opportunity to link up and build action with UN country teams at the local level. More adequate resourcing, as always, would also be welcomed. Furthermore, SP mandate holders should be able to trigger special meetings of the Human Rights Council, which should be cross-linked with the General Assembly (and possibly the Security Council), as part of the development of an early warning system. Special sessions should be used more equitably and frequently in the context of the UN system as a whole, to trigger actions where they matter. Special Procedures should also have more time and space to discuss their reports and recommendation before the Council; critically, mandate holders should appear before the UPR. Interactive dialogues in the UPR should open the door to direct dialogue with the country under review. Muntarbhorn also noted that there should be an annual report on state cooperation with the Special Procedures, which could be done informally by NGOs or more formally by the UN itself. This report should be aired to the Human Rights Council, the General Assembly, and perhaps even the Security Council. Lastly, the Special Procedures coordination mechanism should be well-supported to reinforce the independent nature of the SP system and to further the "three A's."

## **Session VI – Recommendations for Strengthening Implementation of the Human Rights System**

### ***Bertrand Ramcharan, Professor of International Human Rights Law, Geneva Graduate Institute of International Studies and Former Acting High Commissioner for Human Rights***

Ramcharan began his remarks by asking the audience to keep three ideas in mind: concepts, cooperation, and conflict. Building on the UPR-Watch panel's call from the day prior on the need for a thematic approach, he emphasized the importance of having strategic concepts to bring various UN mechanisms together. There are five such concepts, Ramcharan argued: (1) national protection systems; (2) national preventative systems (particularly the role of national institutions inside a country); (3) the role of judges in the implementation of recommendations; (4) the critical need for human rights education; and (5) national implementation of the right to development.

On conflicts, Ramcharan emphasized the importance of specialized agencies, UN country teams, and the leaders of international organizations (e.g., World Bank). These actors are crucial but, in order to have them work with you, they must have confidence

in what you do and the risks to them must not be that great. To this end, it would be useful for the human rights movement to do a world report on national protection systems in every country; this links to confidence-building amongst UN agencies by giving them a list of the key recommendations country by country that can be shared with UN country teams. These teams cannot come on board unless these recommendations are prioritized and selective. Finally, for cooperation to be effective there must be strategic concepts to engage with and you must engage in confidence building. OHCHR and the High Commissioner herself must act as the spearhead in this process.

***Anders Kompass, Senior Director, Field Operations and Technical Cooperation Division, OHCHR***

Kompass spoke from his perspective in the field – Colombia, Mexico, and Guatemala – and he endorsed Ramcharan’s remarks on the OHCHR as a leader in the human rights movement. Kompass noted that there are big gaps – in knowledge, politics, capacity, and implementation – between what one hears in Geneva and what happens on the ground. OHCHR has many field offices in some of the toughest countries but overcoming these gaps remains one of the UN’s biggest challenges. Indeed, it has been pioneering work for the OHCHR in the past 10-15 years, with very few resources, to be present in countries by invitation and to establish sustaining relationships with national interlocutors. These relationships give the OHCHR’s country teams tremendous credibility and allow them to better assess and analyze what is happening on the ground. It has also allowed the teams to have a tremendous impact at the national level.

There is a growing demand within the UN system to work more closely with OHCHR and to learn more about the different human rights mechanisms that the UN offers. These mechanisms are attractive “entry points” for the country teams because it gives them an opportunity to engage national stakeholders with the recommendations emanating from Geneva and to follow-up and facilitate the development of national action plans. The country teams’ role is not to forget the recommendations that have been taken up through the UPR system, treaty bodies, and Special Procedures. Still, human rights remain a sensitive, political, and difficult issue to work with. To that end, there is a need for better cohesion, support, and solidarity from the leadership within the UN system and from the international community. When country teams do not feel that they have sufficient support from New York or Geneva it is going to be extremely difficult for them to work on these issues.

***Walter Kalin, Professor, University of Bern and Former Special Rapporteur on the Human Rights of Internally Displaced Persons***

Kalin defined implementation as having a positive impact on the ability to ensure human rights for real people in real situations and offered three hypotheses. First, implementation does not happen in Geneva. Second, implementation does not happen automatically at the national level. Third, implementation does not happen if there is not follow-up at the Geneva level.

On the first hypothesis, Kalin analogized Geneva to an episode from Star Trek. While giving his recommendation at a recent HRC meeting there, he felt like his remarks were

evaporating somewhat like smoke in the meeting room; implementation has to happen at the domestic level. Kalin felt the situation was somewhat better in his experience as a former member of the Human Rights Committee, where he had the sense that country representatives learned something from the dialogue. The UPR has also been more promising since states accept certain recommendations through that process, although that is only the first step. On the national level, however, implementation does not happen automatically due to a lack of knowledge, lack of dissemination, and a lack of political will. The lack of political will can be due to “bad will,” complex domestic systems, or competing priorities. Lacks of capacity at the institutional level and in terms of resources are also complicating factors.

Kalin argued that the UN country teams are vital, as it is within the country itself that things happen. It is not only the country teams that have to be on board, however: NHRIs, donors, academia are all important actors, as are government counterparts, members of the judiciary, and parliaments. At the headquarters level, talking to members of agencies – talking about what works, criticizing them where necessary – is also very helpful. Kalin has been working with partners outside of the agencies as well, such as the Peacebuilding Commission and DPA/DPKO, which has been useful.

Turning to the Geneva bodies, Kalin felt that that the Human Rights Council was still not doing enough to follow-up on Special Procedures recommendations made. Too often he felt that the Council only acknowledged SP reports and mandate holders need more resources to allow for follow-up visits, which are vital. On treaty bodies, vigorous follow-up and assessments are also lacking; it happens but it is not systematic. On the UPR, the second round should very much focus on whether or not state commitments have been honored.

## **Closing Session**

### ***His Excellency Mr. Sihasak Phuangketkeow, President of the Human Rights Council***

Ambassador Phuangketkeow began his remarks by emphasizing his firm belief in the importance of implementation, noting that the main challenge ahead is ensuring that the norms and standards of the international human rights systems are translated into actions. To that end, while states’ willingness to act is the first and foremost condition to obtaining tangible results, the implementation of international human rights obligations does not depend on political will alone. Rather, in many instances, obligations are not fulfilled because states lack necessary mechanisms, capacity and resources, or because the high number of recommendations emanating from human rights mechanisms make them difficult to prioritize.

The Ambassador outlined several ways that the international community has an important role to play in addressing these practical gaps. First, technical cooperation and exchange of best practices should be given more attention and higher priority in the entire UN human rights system. At the same time, efforts should be made by all mechanisms to make their recommendations more focused, more country specific and achievable within a reasonable timeframe, while recognizing the imperative of capacity-

building. Enhancing synergy among the work of all these mechanisms is also crucial. In particular, he noted, cross-reference to recommendations emanating from the various mechanisms and a more holistic approach to follow-up should be encouraged.

Turning to the review of the Human Rights Council, the Ambassador noted that the five-year review provides a valuable opportunity to make improvements where necessary to enhance the effectiveness of the Council. For instance, the Council should be able to make a real impact on the ground, leading to the improvement of human rights for all peoples. Further, the Council should do better in addressing chronic and urgent issues and situations involving serious violations of human rights, to react more swiftly and effectively to these situations, and develop tools for constructive dialogue and engagement. Finally, the Council should be able to streamline its work to ensure that time and resources are used in the most effective way to fulfill all of its mandates given.

In the context of the Council's review, discussion has begun on means to promote implementation. Here, the next cycle of UPR will be a particularly crucial test of actual implementation. Proposals have been made to rationalize UPR recommendations in thematic clusters and to ensure that they are action-oriented and detailed enough to facilitate their implementation. Proposals have also been put forward to ensure better implementation of Special Procedures' and UPR's recommendations, including by dedicating additional resources. Finally, proposals to enhance the synergies amongst the various human rights mechanisms have been discussed. In concluding, the Ambassador underscored the importance of ensuring that civil society is included at all stages of review, and in particular at the implementation phase, as civil society actors play a crucial role in using the recommendations stemming out of the UN human rights machinery to engage in a constructive dialogue with governments.



## RECOMMENDATIONS

### I. Improving Follow-Up of the Mechanisms

- Make treaty body, UPR and Special Procedure recommendations more specific and actionable and disseminate them as widely as possible in local languages.

#### Treaty Bodies

- Appoint new and additional follow-up rapporteurs with adequate resources to monitor implementation of treaty body Concluding Observations and Views. These resources should include support for in country follow-up missions.
- Improve the visibility, accessibility and accuracy of information pertinent to state implementation. State replies need to be more precisely classified by OHCHR and clearer criteria should be developed for what constitutes satisfactory implementation.
- Continue efforts to harmonize treaty body working methods and develop common methods for follow-up across treaty bodies. Consideration should particularly be given to the proposed creation of a dedicated Treaty Body Follow-Up Coordination Unit, or senior coordinator responsible for follow-up, within OHCHR.
- Develop a digest of remedies jurisprudence, in order to improve the specificity and practicability of implementing treaty body Views. Similarly, prioritize treaty body Concluding Observations to enhance implementation on the ground and assist follow-up rapporteurs in their monitoring efforts.

#### Special Procedures

- Prioritize follow-up visits and communications with countries visited to assess status of implementation of recommendations. Extra resources should be allocated to support these purposes.
- Present preliminary findings and recommendations at the close of a visit and make them as specific as possible to allow immediate attention to follow-up and implementation by all key actors, including civil society and NHRIs.
- OHCHR should compile and systematize government responses to Special Procedures communications in a regularly updated and publicly accessible database.
- States should be encouraged to submit reports on implementation of a mandate holder's recommendations at least one year following a country visit.

#### Universal Periodic Review

- Implementation of outcomes of the first UPR must be a priority for the second cycle of the UPR. In order to facilitate the provision of assistance for effective follow-up and implementation, states should submit national action plans that outline timeframes, responsible agencies, and consultative processes for UPR recommendations.
- Consolidate and organize UPR recommendations thematically.
- Have states report on an interim basis to the HRC about implementation of UPR recommendations, as several states have begun to do.
- The UPR is a valuable political process that should not replace country specific scrutiny by the HRC, Special Procedures, or treaty bodies.

## **II. Improving Collaboration**

### Collaboration Amongst Treaty Bodies, Special Procedures, and the UPR

- Treaty bodies and Special Procedures should invoke and follow up on UPR recommendations in their reporting and recommendations. Similarly, the UPR should continue to refer to treaty body and Special Procedures findings and recommendations as part of the review process.
- Include recommendations that have already been issued by treaty bodies and Special Procedures in states' outcome reports, but distinguish them clearly from the recommendations issued by peers during the UPR.
- Provide information on the non-implementation of treaty body Views as part of the UPR process. Presently, OHCHR does not include this information in its reports to the UPR.
- Invite Special Procedures mandate holders to participate in UPR sessions as it relates to their country visits and reports.
- With additional support from OHCHR, institutionalize cooperation between the treaty bodies and the Special Procedures so that they may address, where appropriate, lack of or partial implementation of their respective decisions and recommendations.

### Human Rights Council

- HRC members must “fully cooperate” with the body. This includes full cooperation with Special Procedures and treaty bodies, including country visits, standing invitations, prompt and serious replies to communications, ratifications and withdrawal of reservations to treaties, and timely reporting. A state's record of cooperation should be considered when running for a seat on the Council.
- In cases of urgent concern, five or more Special Procedures mandate holders should be able to trigger special sessions of the Human Rights Council.
- Devote more time to discuss state follow-up to Special Procedures recommendations and call attention to those states that fail to implement recommendations. Similarly, devote greater attention to implementation of treaty body Concluding Observations and Views.
- Ensure space for interventions by NHRIs during Council sessions.
- In increasing its coordination with treaty bodies and Special Procedures, the Human Rights Council must continue to respect the autonomy of each mechanism as independent components of the UN human rights system.

### Enhanced Cooperation Throughout the UN System

- Resources allocated to human rights mechanisms must be increased in order to effectively mainstream human rights throughout the UN system. Collaboration among and between these mechanisms and other UN agencies must also be enhanced.
- Improve cooperation between UN Country Teams and human rights mechanisms to ensure information sharing, effective monitoring, and technical assistance to support implementation. Because UN Country teams are essential for effective follow-up and implementation, the Secretary General, in collaboration with the High

- Special Procedures mandate holders and treaty body members, with support from OHCHR, should inform and seek information from relevant UN agencies to improve information sharing, best practices, and targeting of technical assistance. The creation of a dedicated unit or senior coordinator for follow-up within OHCHR would facilitate these efforts.

### **III. Implementation at the National Level**

#### States

- Reply promptly to follow-up inquiries of treaty bodies and Special Procedures, and develop a national action plan for implementation following the UPR process. As part of this process, identify what technical assistance is required from international agencies and/or other states.
- Appoint a properly resourced national agent and/or legislative body responsible for monitoring the implementation of recommendations and decisions by international human rights mechanisms.
- Establish formalized channels of communication between government agencies and among executive, legislative, and judicial branches to facilitate inter-agency cooperation and clarify implementation responsibilities.
- National consultation is critical to the quality of state reporting before human rights mechanisms. States should consult widely with civil society and NHRIs in undertaking their reporting procedures.

#### NHRIs and Civil Society

- Special Procedures and treaty bodies should systematically engage national and legislative human rights institutions (NHRIs, ombudspersons, and/or parliamentary committees) to ensure better understanding of local context, monitor follow up and facilitate implementation.
- In bridging the gap between international and national systems, NHRIs play a critical role in calling attention to human rights concerns. NHRIs should increase public education and awareness of Special Procedures, treaty bodies, and UPR as tools for facilitating improved implementation of international norms.
- NHRIs should follow up on the implementation of observations and recommendations; in so doing, they should remain closely engaged with treaty body members and Special Procedures mandate holders. Likewise, Special Procedures and treaty bodies must engage national and legislative human rights institutions to ensure better understanding of local contexts and facilitate implementation.
- Common criteria need to be elaborated for how NHRIs can best engage in monitoring implementation. Guiding principles should likewise be developed for legislative and/or parliamentary human rights monitoring.
- International and local NGOs and NHRIs should work with current members of treaty bodies and Special Procedures to host follow-up missions.