

NGO Statement: Strengthening the Treaty Body Individual Communications Procedures

Introduction

Individual Communications procedures have the potential to play a critical and constructive role in:

- enhancing the promotion, protection and fulfilment of human rights;
- assisting States to properly understand and discharge their human rights obligations;
- contributing to the accountability of perpetrators of human rights violations; and
- securing access to effective remedies for victims of human rights violations.

The current Treaty Body strengthening process has, to date, inadequately addressed the need to strengthen, streamline and coordinate the Individual Communications procedures. Bearing this in mind, and particularly in so far as they relate to the Individual Communications procedures, the undersigned NGOs support and endorse the Response by NGOs to the Dublin Statement on the Process of Strengthening Treaty Bodies (November 2010), and the Seoul and Pretoria Statements on the Strengthening and Reform of the UN Human Rights Treaty Body System (April and June 2011 respectively). We acknowledge that many of the recommendations below have also been informed by the Report of the Inter-Committee Meeting working group on follow-up to concluding observations, decisions on individual complaints and inquiries (January 2011), as well as the Marrakech and Poznan Statements on Treaty Body Reform (June and September 2010). We also recognize the input of the Human Rights Implementation Centre at Bristol University, INTERIGHTS, and the Open Society Justice Initiative to the wider discussion regarding implementation of regional and international human rights decisions.

Imperative and Opportunity for Reform

At present, most of the Individual Communications procedures suffer from a lack of visibility, both within the UN Treaty Body system and also globally as mechanisms of justice for victims of human rights violations. The procedures of the Convention on the Elimination of Discrimination Against Women (CEDAW) and the Convention on the Elimination of Racial Discrimination (CERD) are underutilised, while those of the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT) are struggling with a backlog of pending cases. The Individual Communications procedures to the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention for the Protection of all Persons from Enforced Disappearances (CPED) recently entered into force, while procedures under the Convention on the Rights of the Child (CRC), the Convention on Migrant Workers (CMW) and the International Covenant on Economic, Social and Cultural Rights (CESCR) are pending entry into force or are still under development.

Having regard to these factors, it is imperative that the Treaty Body strengthening process includes concrete reforms to:

- raise the profile of Individual Communication procedures;
- improve access to the procedures;
- enhance State respect for and cooperation with the procedures;
- streamline and coordinate working methods and rules of procedure to reduce delays and enhance timeliness and efficiency;
- enhance access to effective remedies for victims;
- strengthen implementation and follow up of Views;
- identify and standardise existing good practices;
- ensure integration of a gender and child rights perspective in the processes of and substantive considerations under the procedures; and
- contribute to a robust, coherent international human rights jurisprudence.

As set out in the Seoul Statement, it is also imperative that the process of Treaty Body strengthening is itself guided by human rights principles and provides for the full participation of local, national, regional and international NGOs.

1. ACCESSIBILITY AND RESPONSIVENESS OF THE INDIVIDUAL COMMUNICATIONS PROCEDURES

The procedural and substantive accessibility and responsiveness of the Individual Communications procedures for victims is central to their purpose of protecting human rights and providing access to remedies for violations.

The recommendations below flow from the following principles:

- By becoming party to an Individual Communications procedure, a State recognises the competence and authority of the Treaty Body to receive and consider communications from individuals claiming to be victims of human rights violations under the treaty and undertakes to cooperate fully with the procedure.
- Treaty Bodies are “quasi-judicial organs” (M Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2nd ed., 2005) 669) whose Views are “arrived at in a judicial spirit” and constitute “authoritative” interpretations of the treaty. As such, they are “determinative” of States’ rights and obligations (Human Rights Committee, General Comment No. 33, paras 11 and 13).
- States have an obligation to ensure access to effective remedies for violations of human rights.

Recommendations for States

Consistent with the principles above:

- a) States should take positive steps and measures to ensure understanding of the Individual Communications procedures and to facilitate access to such procedures,

particularly for disempowered, disadvantaged and marginalised individuals and groups.

- b) States should make information on the procedures available in an easily understandable and readily accessible format. This information should be made available in national and local languages and in accessible formats, including for persons with disabilities and children. Measures should include targeted information specifically aimed at the legal profession.
- c) States should consider providing legal aid to persons seeking to access Individual Communications procedures, understanding that this may be a legal obligation in exceptional cases (see, e.g., HRC, GC No. 32, para 10).
- d) States should provide access to an interpreter where it is necessary for an indigent person to access a procedure (HRC, GC No. 32, para 13).
- e) States should ensure effective access to the procedures for persons with disabilities on an equal basis with others including through the provision of sign language interpreters, accessibility of information in alternative formats, accessibility to procedures, and the provision of reasonable accommodation.
- f) States should cooperate fully and in good faith with the Treaty Bodies, including by providing submissions, relevant domestic judicial decisions and responding to correspondence expeditiously, without unreasonable delay, and without raising frivolous or unnecessary legal, technical or procedural claims.
- g) States should ensure the widespread dissemination of Treaty Body jurisprudence and ensure the inclusion of such jurisprudence in legal and judicial education.
- h) States should agree to requests from Treaty Bodies to carry out country visits where relevant.
- i) Under no circumstances should States hinder or obstruct access to the procedures.
- j) States must not engage in, and must take all necessary steps to prevent and redress, reprisals and retaliation against any person who seeks to access the procedures.

Recommendations for OHCHR and Treaty Bodies

In line with the principles above, and consistent with the right to a fair hearing and equality before the law, OHCHR and Treaty Bodies should take the following steps and measures to enhance both procedural and substantive access to the Individual Communications procedures:

- a) Guarantee equal access and equality of arms to all parties, including, where appropriate, by referring unrepresented complainants to legal counsel or human rights advisers to assist in the formulation of a communication. Treaty Bodies should also give particular consideration to the difficulties faced as a result of gender-based discrimination and discrimination faced by members of disadvantaged or marginalised groups.
- b) Respecting the confidential nature of the communications procedure, including the identity of the author(s), the registration and consideration of Individual Communications should be open and transparent. Committees should inform the public when communications are being discussed by marking it on the agenda (even if

in closed session) and providing an outline of what was discussed, e.g., admissibility decisions, consideration of merits, and crafting of remedies. Disclosure of this information must be accompanied by all necessary precautions to ensure confidentiality for the complainant where requested and to ensure their safety and freedom from reprisals or other threats as a result of their engagement with the procedures.

- c) Treaty bodies must consider and determine communications with competence, independence and impartiality (HRC, GC No. 32, paras 19-21).
- d) Treaty Bodies and OHCHR must ensure that communications are determined expeditiously and without unreasonable delay.
- e) Regular updates should be provided to complainants as to the status and progress of their communication.
- f) Where appropriate and relevant, Treaty Bodies should solicit and accept *amicus curiae* briefs submitted by NGOs regarding Individual Communications. Measures to inform the public of the submission of communications and to call for the submission of *amicus curiae* briefs should be implemented.
- g) Treaty Bodies should craft clearly reasoned decisions that contribute to the development of a progressive, coherent, and coordinated international human rights jurisprudence.
- h) To the extent possible, Treaty Bodies should give consideration to, and craft Views in a way that promotes, the accountability of perpetrators of human rights violations.
- i) Individual Communication procedures should be aligned where appropriate (without undermining each Committee's flexibility to adapt procedures and working methods to best promote and protect human rights, including the right to an effective remedy). Alignment should also include the standardization of terminology. The process of coordination and alignment should ensure that existing good practices are not undermined but rather are maintained and improved.
- j) A webpage on Individual Communications should be created which provides information on communications, including pending cases, case summaries and a searchable and accessible database of communications,. The page should also provide detailed guidance on preparing and lodging a communication. OHCHR should produce and regularly update a digest of admissibility jurisprudence and make this available and searchable on this webpage. This would assist future complainants, potentially reduce the number of inadmissible cases submitted to Treaty Bodies and facilitate the development of a synthesised Treaty Body jurisprudence. Furthermore, contact information of NGOs with experience in the work of the treaty bodies should be listed as points of reference for applicants who may need assistance in preparing their petition or throughout the communications procedure.
- k) The Treaty Body Petitions Unit and Committee Secretariats should be sensitised to the possibility of reprisals against those seeking to access the Individual Communications procedures. The issue should be raised by the Treaty Body Petitions Unit with those who submit petitions and complainants encouraged to report any incidents of reprisal to the Treaty Body in the first instance, but also to a relevant Special Procedure. Treaty Bodies should ensure that allegations of reprisals are raised with the State concerned in

a timely manner, and/or forwarded to a relevant Special Procedure, while ensuring appropriate verification of the consent of the person(s) concerned.

2. THE RIGHT TO AN EFFECTIVE REMEDY

All persons have the right to an accessible, effective and enforceable remedy for violations of human rights (see, e.g., ICCPR art 2(3) and General Assembly Resolution 60/147 (2005) on the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law). States have the primary obligation to fulfil this right.

In order to be effective, remedies must be provided without unreasonable delay and should be as specific and targeted as possible. Remedies should specify necessary measures to ensure full redress for the violation and full realisation of the right violated. Remedies should be both victim-oriented (providing adequate reparations for victims of human rights violations) and should also include measures to prevent recurrence (such as systemic changes in law or policy).

The above principles engage the responsibility of Treaty Bodies, OHCHR and States. To that end:

- a) States should be strongly encouraged to ratify or accede to treaty provisions and optional protocols which establish and give effect to Individual Communications procedures.
- b) States have the primary obligation to provide an effective remedy and to implement Views and recommendations and should have in place a wide range of domestic implementation mechanisms in this regard (discussed further at Part 3 below).
- c) Treaty Bodies should specify in the remedial aspects of their Views concrete steps to be taken by States, including compensation, rehabilitation, satisfaction, restitution and guarantees of non-repetition; stipulate other forms of satisfaction, including legislative and institutional reforms or other measures as appropriate; and, where relevant, clarify the obligation to investigate and prosecute. Remedial aspects of Treaty Bodies' Views should to the greatest extent possible be framed in a way that allows their implementation to be measured. Treaty Bodies should devote more attention to what is specifically requested by applicants by way of a remedy.
- d) Treaty Bodies should consider relevant national, regional and international jurisprudence in the development of Views in order to promote the development of consistent and progressive international human rights standards. Treaty Bodies should also be more creative when developing Views and crafting remedies; examining the experience of the Inter-American Court of Human Rights would prove useful in this regard.
- e) Treaty bodies should consider how they can assist with the friendly settlement of communications and ensure that any friendly settlements entered into between States and complainants are fair, consistent with the State's human rights obligations, and that there is follow-up on implementation with a view to possible reconsideration of a communication where such implementation is inadequate. The experiences of the European Court of Human Rights and the Inter-American Commission on Human Rights may be useful in this regard. Treaty Bodies must take due care to ensure the

ability of the victim to engage in such settlement procedures on an equal footing with the state and fully empowered to ensure that they receive adequate redress free from physical, social, financial, psychological or other pressures.

- f) Treaty Bodies should request States Parties to publish Treaty Body Views, translate them (if necessary) into relevant national and local language(s), and distribute them widely in accessible formats for all, particularly children and persons with disabilities. States should particularly ensure that Treaty Body Views are incorporated in legal and judicial education programs.
- g) OHCHR should produce and regularly update a digest of remedies jurisprudence and make this available and searchable on its website. This would contribute to ensuring consistency of remedies jurisprudence both within and amongst Treaty Bodies, as well as helping applicants to foresee what a likely remedy may constitute in their specific case, and assisting them to formulate the specific remedy or remedies they are seeking in their petition.

3. IMPLEMENTATION AND FOLLOW UP OF VIEWS

Treaty Bodies are the authoritative interpreters of treaties. The common State practice of rejecting or failing to give effect to Views is fundamentally incompatible with the essence of the Treaty Body system and undermines States' commitment to upholding their human rights obligations.

States have the primary obligation to implement Views and should have in place a wide range of domestic implementation mechanisms. Given that the obligation to respect, protect and fulfil human rights applies to all branches and levels of government (HRC, GC No. 31, para 4), the executive, legislature and judiciary should all be engaged in the implementation and follow up of Views. Pursuant to article 50 of the ICCPR and article 28 of ICESCR, human rights obligations apply across all parts of federal States and, according to article 27 of the Vienna Convention on the Law of Treaties, provisions of internal law may not be invoked to justify failure to fulfil a treaty obligation.

The obligation of a State to provide an effective remedy for a violation of human rights and to ensure non-recurrence is ongoing, as is the obligation of States to cooperate fully and in good faith with Individual Communication procedures. In this regard, it is within the mandate and competence of Treaty Bodies and their Secretariats to follow-up on the implementation of Views. Furthermore, all relevant stakeholders, including NGOs, NHRIs and academia, together with other UN agencies and institutions at the national and international levels, should strongly support the further development of Treaty Body follow-up mechanisms. This should include the designation of implementation Focal Points within the executive of the State Party and the development of national implementation plans by States Parties (discussed further below). Focal Points should be the central pillar to a national framework for the implementation of Treaty Body Views and Concluding Observations. Such a framework should provide for the full participation of NGOs, NHRIs, academia and wider civil society in terms of monitoring implementation and providing specialised information and training to other stakeholders where appropriate. The framework should provide particular measures to ensure full participation by local and grassroots NGOs, women and members of marginalised and/or disadvantaged groups.

In this context, we recommend as follows:

3.1. Strengthening and Coordinating Follow-Up with other Treaty Body Activities

- a) All Treaty Bodies should ensure that a paragraph on the status of implementation of Views is included in Lists of Issues or Lists of Issues Prior to Reporting whenever appropriate and, when relevant, reflected in Concluding Observations.
- b) Those Treaty Bodies which do not yet have a mechanism to deal with follow-up to Views should create one.
- c) Treaty Bodies could consider reducing the burden on the Special Rapporteurs on Follow-up (in particular with respect to the Human Rights Committee due to its larger caseload), such as by involving the Case Rapporteur in follow up, establishing working groups for follow-up, or appointing additional Co-Rapporteurs (for example on a regional, linguistic or case basis).
- d) Greater resources need to be committed to follow-up work. Follow-Up Rapporteurs should have adequate resources to monitor implementation of Treaty Body Views, including support for in-country follow up missions. In relevant situations, Committees should enquire whether UN Country Teams, including at the financial level, could support such visits.
- e) Treaty Bodies should carry out follow-up missions/country visits more frequently – especially in cases where a State persists in failing to implement decisions – and, where appropriate, schedule such visits with the relevant Special Rapporteurs on Follow-Up to Concluding Observations and Views.
- f) Committees could also engage in pre-sessional and inter-sessional follow-up meetings with States Parties. Such consultations could be undertaken either by the Rapporteur/s on Follow-up or other Committee members, including case rapporteurs.
- g) Treaty Bodies should formalise a process whereby NGOs, NHRIs and other specialised agencies are given an opportunity to submit their own information regarding the implementation of Views and contribute additional data to complement information provided by States. Web and videoconferencing facilities should be available for this purpose. Such submissions, along with States follow-up reports, should be made accessible on the OHCHR website. To this end, NGO and NHRI participation in the existing Treaty Body follow-up procedures and activities as well as country missions should be encouraged, systematised, and coordinated, with formal opportunities for NGO briefings and interventions. Opportunities for input should be widely publicised with adequate notice.

3.2. Coordination among other Treaty Bodies and Human Rights Enforcement Mechanisms

- a) Follow-up to Views should be aligned through common working methods across the Treaty Bodies. This would be assisted by the creation of a dedicated Treaty Body Follow-Up Coordination Unit, or senior coordinator responsible for follow-up within OHCHR.

- b) Mutual cross-referencing between Treaty Bodies in their Concluding Observations and Views would assist States and other stakeholders by creating a more holistic picture of human rights protection in a given country and highlighting areas of particular concern.
- c) Treaty Bodies should pursue combined follow-up on common violations highlighted through Concluding Observations and Views. This could include joint actions such as letters, meetings or country visits, especially in cases where the State is experiencing particular difficulties with the implementation of Views.
- d) Structural remedies, including reforms in national legislation, should be made systematically across Treaty Bodies so as to ensure as far as possible the non-repetition of similar violations in the same country.
- e) There should be consistent, systematic engagement and co-operation between the Treaty Bodies and Special Procedures of the Human Rights Council. Such co-operation could also include other relevant UN agencies, such as the UN Voluntary Fund for Victims of Torture. This should include joint media strategies as well as the sharing of thematic or country specific knowledge. This would ensure that the selected recommendations are given special attention in the context of a country visit or during a meeting with relevant government officials.
- f) Follow-up to Treaty Bodies' Views should be further integrated into OHCHR country strategies, including the work of OHCHR regional and country presences and its Headquarters based activities, as well as the programmes of UN Country Teams. Where relevant, this should include full cooperation and technical assistance from UN specialised agencies, such as UN Women, UNICEF and UNAIDS.
- g) There needs to be a more sustained approach to follow-up on Treaty Body Views throughout the UN protection system generally. UN programmes and specialised agencies should incorporate actions for monitoring the implementation of Views into their annual work plans. They should coordinate this work with the focal points from each regional office of the OHCHR.

3.3. Establishing National Human Rights Frameworks for the Implementation of Views

- a) Within the executive, a high-level Focal Point should be established to ensure implementation of Treaty Body Views and Concluding Observations. Inter-governmental committees, chaired by a minister, should be considered as a central coordinating point for implementation across government ministries. So far as possible consistent with judicial independence, senior members of the judiciary should be consulted and engaged in implementation.
- b) The Focal Point should be mandated with adequate powers to ensure that sufficient measures are taken by relevant government agencies to implement Views. The Focal Point should identify the authorities responsible for implementing the View, and should assist with formulating the steps and timeframe required for full implementation, monitoring progress and evaluating the impact of related policy commitments.
- c) The Focal Point should also be competent and empowered to ensure that a gender perspective and the principles of non-discrimination and substantive equality are fully

integrated across the activities of all agencies and institutions responsible for the implementation of Views.

- d) The Focal Point should be responsible for institutionalising systems and processes whereby the victim and civil society, particularly grassroots organisations, women and representatives of disadvantaged and marginalised groups, are assured full and effective participation in the implementation process.
- e) Consistent with the principles of judicial independence, national judiciaries should play a more prominent role in implementation processes, including through the development of case law. Periodic updates on the Views adopted by Treaty Bodies should be provided to States Parties' judiciaries to foster implementation.

3.4. Measuring the Progress of Implementation

- a) Treaty Bodies, together with the OHCHR, should work towards improving the visibility, accessibility and accuracy of information pertinent to state implementation.
- b) Follow-up information should be more precisely classified and clearer criteria developed for what constitutes satisfactory implementation. Greater nuance and accuracy is needed than the categories of full, partial, or non-implementation that are currently employed. The index developed by Philip Alston, former Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution, would be a useful model to follow.
- c) OHCHR should raise the non-implementation of Treaty Body decisions as often as possible, and provide data on implementation of Views as part of its compilation document to the UPR. (Presently, OHCHR includes information about Concluding Observations and Special Procedures recommendations in its compilation documents, but not Individual Communications).
- d) The UPR mechanism should be used to analyse the status of implementation of Views by States. OHCHR could provide this information to the UPR process as part of their compilation reports.

4. DISSEMINATION OF INFORMATION AND AWARENESS RAISING

The Views of Treaty Bodies should be widely disseminated across all organs of government and also to the wider public. Dissemination in local languages to all relevant stakeholders is essential in order to increase the visibility of the procedures and work of the Treaty Bodies, to encourage timely and appropriate implementation, and to engage stakeholders in activities towards that end. More easily obtainable and up-to-date information regarding Individual Communications would also assist NGOs and NHRIs in including reference to Views in their human rights education programmes and litigation strategies.

To that end, we recommend as follows:

Recommendations for Treaty Bodies

- a) Treaty Bodies should, at a minimum, include a table in their Annual Report listing the decisions in which they found violations, as well as the status/categorization of the follow-up response. Certain Treaty Bodies have already included this information but,

notably, this data was omitted (without explanation) from the Human Rights Committee's most recent Annual Report.

- b) Committees should include the provision of information on follow-up to Views as a standing item to be discussed during their press conferences.

Recommendations for OHCHR

- a) OHCHR must increase the visibility of Individual Communications on its website. The proposed webpage should include a permanent and regularly updated public accessible database— anonymous where requested and appropriate – with details as to the nature and status of pending cases as well as general information on all cases, violations found, remedy recommended, further action required and the status of implementation. The database should be searchable by State, Treaty Body, and right concerned.
- b) OHCHR should provide a brief summary of the Individual Communications adopted during relevant Treaty Body sessions and include it in the e-mail circular distributed after the close of each session. Press releases with case summaries should also be circulated after decisions on Individual Communications are made.
- c) The collective information produced by the Treaty Bodies and Special Procedures should be more accessible in order to better reflect the United Nations human rights system as a whole. Efforts to improve the information flow, including through a greater use of the Universal Human Rights Index, should be examined. Information posted on the OHCHR website should be made accessible, in particular by providing documents both in PDF and Word formats.
- d) The practice of holding judicial colloquia which contribute to the awareness of the Individual Communications procedure and increased reference to Treaty Body jurisprudence in national and international instances should be revived.

Recommendations for States

- a) States should play a greater role in disseminating information about Views and their progress in implementing them at the national level.
- b) States should, in coordination with NGOs and NHRIs, develop a public record of all recommendations made by the different mechanisms of the UN human rights system – Treaty Bodies, Special Procedures and the UPR – and details as to the status of implementation of each. This would strengthen transparency and accountability in implementation and should also be made available to Treaty Bodies so that each Committee has the benefit of seeing what other recommendations have been made and the State's response thereto.

In addition to endorsing the principles and recommendations outlined in this statement, the undersigned NGOs are committed to:

- raising awareness and disseminating information about the Individual Communications procedures;
- supporting their use by victims where appropriate;
- assisting the Treaty Bodies in monitoring implementation of Views by providing accurate and appropriate information;
- emphasizing the need to ensure greater transparency and accessibility of the procedures, while remaining sensitive to the safety and security of the author and/or victim of a communication;
- crafting requested remedies with precision and giving higher priority to follow-up advocacy at the domestic level;
- promoting cases that may build specific jurisprudence to be used at the domestic level; and
- encouraging States to ratify the relevant Optional Protocols and accepting the treaty provisions that provide for Individual Communications procedures.

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