

**'Follow-Up and Implementation of Decisions by Human Rights Treaty Bodies'**

**Summary of issues and recommendations  
of an expert seminar held on  
10 September 2009.  
Human Rights Implementation Centre, Bristol University.**

**Introduction**

The School of Law at the University of Bristol is host to a four year Arts and Humanities Research Council (AHRC) grant, which is examining the role of non-binding 'soft-law' documents in the development of international human rights law. As part of the activities of the "Implementation of Human Rights Standards" project (IHRS project), an expert seminar was organised on 10 September 2009 at Bristol University to examine the procedures in place for follow-up and implementation of treaty body decisions on individual communications. This seminar also marked the launch of the Human Rights Implementation Centre (HRIC), at Bristol University. The HRIC aims to provide an international focus for developing expertise, advice and scholarship on the role of national, regional and international institutions in the implementation of human rights.

The expert seminar brought together key individuals from the UN Human Rights Committee; the African Commission for Human and People's Rights; the Council of Europe; the European Committee for the Prevention of Torture (CPT), the Organisation of American States (OAS); the International Criminal Court (ICC), the Office for the United Nations High Commissioner for Human Rights (OHCHR), national and international civil society organisations and academics. (For a list of participants see Annex I.) The event was funded by the Arts and Humanities Research Council (UK).

The expert seminar was arranged into plenary sessions in the morning, followed by two working groups in the afternoon to look more closely at factors that assist or hinder follow-up and implementation procedures. (See Annex II for a copy of the Agenda.)

This report summarises the discussions that took place during the expert seminar. It sets out the current follow-up procedures that the international and regional human rights treaty bodies have put in place and outlines the important role played by national human rights institutions and civil society organisations in these processes. The report also highlights areas of common concern where improvements could be made in the follow-up and implementation of decisions. Lastly, the report also presents some practical suggestions and recommendations made by the Bristol

University IHRS project team, which are based on the issues identified during the expert discussions.

### **1. The difference between “follow-up” and “implementation”.**

The terms “follow-up” and “implementation” must be understood as encompassing separate, albeit interlinked, activities. Yet, the distinction between them is frequently blurred or misunderstood by victims of human rights violations, civil society organisations, the media and other commentators, as well as sometimes by the human rights treaty bodies themselves.

Follow-up on decisions of human rights treaty bodies can be regarded as a process by which a treaty body monitors and seeks information on what steps have been taken at the national level following the delivery of a ‘decision’. The term ‘decision’ in this context must be understood in its broadest sense to include concluding observations, recommendations and judgments.

As well as being a distinct aim in itself, follow-up can also be a tool to promote and facilitate implementation at the national level and perhaps this is where the distinction between these forms of activity can sometimes be misunderstood.

Implementation of decisions on the other hand is the process by which States take measures at the national level to address issues of concern raised by the human rights treaty bodies in their decisions. States therefore, assume the primary responsibility for implementation. It was noted that the process of monitoring implementation is an on-going one because it is context dependent. In other words, while implementation of a particular human rights obligation may be achieved at one point in time, this needs to be actively and constantly monitored because the level of compliance might change over time as circumstances change.

### **2. Current follow-up procedures of the UN Human Rights Committee.**

Sir Nigel Rodley and Professor Ruth Wedgwood, both serving members of the UN Human Rights Committee (HRC), outlined the current practice of the HRC with respect to follow-up on its concluding observations and views on communications, and identified some issues for further discussion.

The HRC has two follow-up procedures, one for concluding observations made following the State Party reporting system, and another for its views on individual communications submitted to the HRC under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).

The first follow-up procedure to be established by the HRC was a ‘Special Rapporteur for Follow-up on Views’ (Special Rapporteur on Views) under the Optional Protocol to the ICCPR. This was established in July 1990 after the Committee recognized that it was seldom informed of what States Parties had or had not done to implement its views on individual communications. The mandate of the Rapporteur is for a renewable two-year term and Professor Ruth Wedgwood is the current Special Rapporteur on Follow-up on Views for the Committee.

While the Optional Protocol to the ICCPR is silent on the issue of follow-up and implementation of the views of the HRC, the Committee considered that it had an

implied power to monitor the implementation of its views under the Optional Protocol because States that ratify this treaty do so in good faith, with the intention of respecting the Committee's findings and its views. The Committee therefore considered that follow-up on its views should be an integral part of its overall activities when considering individual communications.

In the intervening years since its inception, the position of Special Rapporteur on Views has been entrenched within the Committee and procedures for follow-up have been codified in the rules of the HRC. Rule 95 of the Committee's rules of procedure enables the HRC to designate working groups and rapporteurs to assist in the handling of communications and Rule 97 sets out the modalities for the Committee's consideration of individual communications.<sup>1</sup>

In accordance with its procedures, if, after considering an individual communication, the Committee has decided that there has been a violation of the ICPPR, the Committee gives the State Party concerned 90 days to provide information on measures taken to comply with the Committee's views on the communication. (However, in practice this deadline is not strictly enforced.) If no follow-up information is forthcoming within a reasonable time after expiry of the deadline, a reminder is sent to the State Party concerned. If following this reminder no information is received, the Special Rapporteur on Views may decide to organise follow-up consultations with State Party representatives to discuss ways in which follow-up on the views of the Committee may be facilitated.

If information is received from a State Party following this process, this is shared with the victim and/or his/her representative. A summary is also included in the follow-up chapter of the Committee's Annual Report to the UN General Assembly. The Committee used to name non-compliant States Parties in its annual report but this practice has recently been abandoned. In addition, the Special Rapporteur on Views regularly presents "follow-up progress reports" to the Committee in its plenary sessions. While there are no exact figures on the rate of compliance by states on the views of the Committee, it was estimated that this was in the region of 30%.

Turning now to consider the procedure for follow-up on observations made following the State Party reporting system, Sir Nigel Rodley, former Special Rapporteur on Concluding Observations of the HRC, noted that the Committee has taken a "carrot and stick" approach to follow-up. The position of Special Rapporteur for Follow-up on Concluding Observations (Special Rapporteur on COBs) was established in July 2002 in order to assist the follow-up process. In accordance with its procedures, the HRC holds closed sessions to identify certain priority issues for follow-up within its concluding observations. It was noted that within this approach the identification of issues was a matter of intuition; priorities have to be identified, which will mean that some observations will not be included in the follow-up procedure. Accordingly, in an attempt to try systematise and strengthen the follow-up procedure, the HRC has adopted a new approach, which has been inspired by the UN Special Rapporteur on Extrajudicial and Summary Executions. In accordance with this approach, the HRC has developed a system to categorise substantive issues for follow-up.

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<sup>1</sup> UN Doc. CCPR/C/3/Rev.8.

Once the issues for follow-up have been identified, these are then submitted to the State Party concerned for feedback. In accordance with its procedures, the State Party concerned is expected to provide follow-up information within one year, and not in the next periodic report. If no follow-up information is received from a State Party within this one year deadline, a reminder is sent. If no response is received, then as for the follow-up procedure on views, the Special Rapporteur on COBs may consider direct consultations with State Party representatives. In practice, the follow-up procedure is not continued beyond the date the next State report is due.

The HRC has been progressive in its approach to follow-up within the UN treaty body system and was the first treaty body to establish Special Rapporteurs on follow-up. Subsequently, other treaty bodies have adopted or are considering adopting similar procedures, for example in 2002 the UN Committee against Torture established a comparable follow-up procedure on its concluding observations.

Notwithstanding the obvious benefits of these follow-up procedures, the process is far from perfect. The whole process is dependent upon the quality and level of response received from the relevant State Party, and it was noted that there is a very mixed response from countries. Some governments respond in full, whereas others do not respond at all. If no response is received then the HRC, along with other treaty bodies, does not have the means to force a State Party to respond to its queries on follow-up. It was noted that the HRC does not have a sense of how effective the follow-up procedure is and that the Committee, along with the other treaty bodies, may need to be more creative in its approach to follow-up. This was identified as an area that would benefit from further examination and review. It was also noted that traditionally the HRC has not written “readable opinions”. In other words the views and the concluding observations do not necessarily explain what actions need to be taken at the national level to provide an effective remedy. This is by no means unique to the HRC, and was identified as a common factor among the UN and regional treaty bodies.

In addition, the follow-up procedures that have been put in place by the HRC also underscore the distinction between “follow-up” and “implementation”. It was noted that the HRC have established a system to *follow-up* on its views and concluding observations, they do not have the means to *enforce* their decisions and recommendations nor were they intended to have such a power. The UN treaty body system is built on the principle that states have the primary duty to implement their human rights obligations. The treaty bodies are there to monitor State Party compliance with their obligations and to make recommendations to assist States to implement their obligations fully. Under the individual communications system, States Parties are expected to respect the findings of the treaty bodies and take the measures necessary to remedy a violation. The findings are authoritative but not binding. However, victims of human rights violations and civil society organisations sometimes level a criticism at the UN treaty bodies that they should be more actively engaged in trying to implement their decisions and recommendations. This raises the fundamental question as to whether treaty bodies are the right mechanisms to follow-up on and/or implement decisions. (This issue is discussed further in section 6 below.)

### **3. Procedures of the regional human rights bodies.**

#### **i. African Commission on Human Rights**

Dr Robert Eno, Chief legal officer of the African Commission on Human and Peoples' Rights (ACHPR), outlined the procedure for follow-up to activities and recommendations of the ACHPR. This was supplemented by a presentation by Sheila Keetharuth, Executive Director of the Institute for Human Rights and Development in Africa (IHRDA).<sup>2</sup>

The ACHPR is Africa's key regional human rights institution. The ACHPR's mandate is to promote and protect human rights guaranteed under the African Charter on Human and Peoples' Rights. In carrying out this mandate it conducts, through various mechanisms and procedures, a number of activities where it may issue recommendations to a state. This will include fact-finding missions to countries; the consideration of periodic state reports; the adoption of resolutions; urgent appeals; and the consideration of individual and State communications. Among these activities, it was the latter activity, the consideration of individual communications, which was identified as the principal feature of the ACHPR's protection mandate.

This communications procedure is governed by Articles 47 to 59 of the African Charter and enables an individual, NGO or group of individuals to submit a complaint to the ACHPR about alleged violations. A State can also make a communication to the Commission if it considers that another State is violating any of the provisions of the African Charter.<sup>3</sup>

In accordance with these provisions, once a communication has been submitted to and declared admissible by the ACHPR, it then proceeds to examine the complaint. The State Party concerned is provided with an opportunity to respond to the communication. The ACHPR will then give its decision on the merits of the case. Any recommendations are sent to the State concerned and the Assembly of Heads of State. This report of the ACHPR remains confidential until it has been considered by the Assembly of Heads of State and its publication authorised.<sup>4</sup> It is only then that the complainant is made aware of the ACHPR's decision. Thus, it was noted that victims of human rights violations who submit communications to the ACHPR are largely kept in the dark about the progress of their complaint.

Notwithstanding the lack of standing of victims of human rights violations before the ACHPR's individual communications procedure, the procedure has proved popular. Since its inauguration in 1987 it was noted that the ACHPR has considered over 300 communications from individuals and NGOs. Through these communications, the ACHPR has been able to interpret and expand upon the provisions of the African Charter, enabling it to remain a "living instrument". However, it was noted that

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<sup>2</sup> For further details see presentation prepared by Sheila Keetharuth, *Implementing Decisions of the African Commission on Human and Peoples' Rights*, available at the Bristol University Implementation of Human Rights Standard Project website: <http://www.bristol.ac.uk/law/research/centres-themes/ihrsp/events.html>

<sup>3</sup> To date, the inter-state communication system has been used only once in the case of a communication submitted against the republics of Burundi, Rwanda and Uganda by the Democratic Republic of Congo in 1999.

<sup>4</sup> See Article 53 of the African Charter.

unfortunately, the frequency of the recommendations being handed down by the ACHPR has not been matched by implementation. Similarly to the UN treaty body system and the Inter-American Commission, the ACHPR's recommendations and conclusions, while authoritative, are not judicial in nature, yet in accordance with the principle of good faith, States are expected to respect the ACHPR decisions.

On a more positive note, the ACHPR has in recent years provided more detailed decisions on communications, elaborating the remedies that it recommends. This has been regarded as a welcome development and one to be encouraged.

Unlike the UN HRC, the ACHPR has not developed a systematic procedure for follow-up to its recommendations on communications. Notwithstanding the establishment of Special Rapporteurs on thematic and country issues; Commissioners responsible for various countries; and Rapporteurs assigned to communications, it was noted that these mechanisms have "remained passive on implementation of decisions, until victims or authors of communications have approached and lobbied them to take up their cause".<sup>5</sup> Follow-up on the recommendations is, therefore, left largely to the complaint themselves to carry out and monitor. While, there are no exact figures for implementation, it was noted that the Centre for Human Rights in Pretoria had estimated that in 2004-2005 approximately 34-35% of the ACHPR's recommendations had been implemented. It was noted that this lack of implementation of the majority of decisions of the ACHPR has been and still is a "huge challenge to the efficiency, efficacy, and for some critics, the very existence of the Commission".<sup>6</sup>

A shortage of funding was also identified as one reason for the lacklustre approach to follow-up by the ACHPR. The ACHPR, like many human rights bodies, suffers from chronic under-funding. It was considered that this lack of funding has prevented the ACHPR from developing effective follow-up, and other, procedures. The Special Rapporteurs, Working Groups, and Commissioners of the ACHPR do not have adequate staffing resources or the funding to, for example, travel to a state that has been the subject of a communication in order to follow up directly on the implementation of the ACHPR's recommendations. It is notable that where there have been successes, the funding has largely been obtained from external sources such as NGOs.<sup>7</sup>

A further obstacle to effective follow-up on communications was considered to be the broad scope, and in some cases lack of focus, of the mandates of the Special Rapporteurs and Working Groups of the ACHPR. The Special Rapporteurs and members of the Working Groups are serving on a part-time and voluntary basis. This can lead to competing priorities within their workload and in some instances follow-up on communications may not be regarded as an integral part of his or her work

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<sup>5</sup> See, *Implementing Decisions of the African Commission on Human and Peoples' Rights*, Sheila Keetharuth, Op.cit. p.2.

<sup>6</sup> Ibid, p1.

<sup>7</sup> See, *Implementing Decisions of the African Commission on Human and Peoples' Rights*, Sheila Keetharuth, Op.Cit.p.2.

even when the subject matter of the communication falls within the scope of his or her mandate.<sup>8</sup>

Recently efforts have been made to consider ways in which to try and improve the implementation of the recommendations of the ACHPR. These discussions have taken place in the context of efforts to harmonise the relationship between the ACHPR and the African Court on Human and Peoples' Rights (African Court). Within these discussions, attention has been given to the implementation of the recommendations of the ACHPR following consideration of a communication. Draft interim rules of the ACHPR have been developed and within these rules, the ACHPR would be able to refer a communication to the African Court if it considers that the state concerned has not complied with or is unwilling to comply with its recommendations.<sup>9</sup> The African Court would then have the power to "adopt appropriate measures to implement the decision".<sup>10</sup> These draft rules also enable the ACHPR to refer a matter to the African Court where a State has failed to comply with any provisional measures that the ACHPR have taken against the state concerned,<sup>11</sup> and to refer cases of "serious and massive" human rights violations.<sup>12</sup>

While the efficacy of referring matters to the African Court was called into question, this development is instructive as it demonstrates the desire of the ACHPR to seek ways in which the African human rights institutional machinery can improve its follow-up processes.

## ii. Inter-American Commission and Court of Human Rights

Victor Madrigal-Borloz, from the Organisation of American States (OAS), gave an overview of issues relating to compliance with decisions of the Inter-American Commission and Court of Human Rights. This was complemented by a presentation by Viviana Krsticevic, Executive Director of CEJIL (Centre for Justice and International Law).

Similarly to the African system, and in contrast with the European system, the Inter-American human rights system continues to be a two-tier system comprised of two main organs, the Inter-American Commission on Human Rights, a quasi-judicial body that considers individual cases and also carries out country missions, reporting, training, and other promotional activities, and the Inter-American Court, solely a judicial body. In accordance with the procedures of the Inter-American system, cases can only be submitted to the Court once they have been considered by the Commission. In practice, the Commission submits very few cases to the Court. For example, in 2006, the Commission received 1,325 new cases, and submitted just 14 cases to the Court.<sup>13</sup>

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<sup>8</sup> See *Implementing Decisions of the African Commission on Human and Peoples' Rights*, Sheila Keetharuth, Op.Cit. p.3.

<sup>9</sup> Draft rule 119. A copy of the interim rules can be found at the following web address: <http://www.achpr.org/english/other/Interim%20Rules/Interim%20Rules%20of%20Procedure.pdf>

<sup>10</sup> Draft rule 119(2).

<sup>11</sup> Draft rule 119(3). This is only available where a State has accepted the jurisdiction of the Court.

<sup>12</sup> Draft rule 199(4)

<sup>13</sup> See *Making International Law Stick: Reflections on Compliance with Judgments in the Inter-American Human Rights System*, Michael J. Camilleri and Viviana Krsticevic, *Derechos Humanos, Relaciones Internacionales Y Globalizacion*, p. 237, available at: <http://www.bristol.ac.uk/law/research/centres-themes/ihrsp/events.html>

In accordance with the rules and procedure of the Commission, once a petition has been filed and declared admissible, the Commission will try to obtain a friendly settlement. If no settlement can be agreed, then submissions are made by both parties and after considering the merits the Commission files a preliminary report. This report contains the conclusions of the Commission and, where necessary, recommendations to the State concerned. This report is sent confidentially to the State. The complainant does not get a full copy of the report.

The State concerned is then given three months to resolve the matter, or, where applicable, to refer the case to the Court (see below). After the expiration of this deadline, if the State has not informed the Commission of measures it has taken to comply fully with the report, the Commission has two possible options. The first measure the Commission may take is to prepare a final report, which contains its opinion, final conclusions and recommendations.<sup>14</sup> In this case, the State is given a further period of time to resolve the situation and present information on compliance with the recommendations to the Commission. At the end of this second deadline, the Commission evaluates the extent of compliance with its recommendations, based on the information available, and can decide by a majority vote to publish the final report.<sup>15</sup> In practice, the Commission usually does vote to publish its report. Occasionally, the Commission may decide to hold a public hearing on compliance with its decisions, in order to receive information from the parties and, where necessary, apply pressure on the State to implement its recommendations.

Alternatively, the Commission may decide to refer the issue to the Court for further consideration. This option is available where a State has recognised the competence of the Court. (In this circumstance, a petitioner may also file a request for the issue to be submitted to the Court for review after the initial two months period following the issuance of a report to the State concerned.) To date 25 States out of 33 have recognised the jurisdiction of the Inter-American Court.<sup>16</sup> (States may also accept the jurisdiction of the Court on a temporary basis to hear an individual case.)

When a case is submitted to the Court, it will consider the merits of the case and hand down its judgment. The judgments of the Court are delivered in a public session, which both parties can attend. (The judgment is also transmitted to all States Parties to the American Convention on Human Rights.) The judgments are final and can not be appealed. If the Court considers that there has been a violation of the American Convention, it will rule that this must be remedied by the State concerned and that fair compensation be paid to the victim. Where the matter is extremely grave or urgent, the Court may set out provisional measures that must be taken prior to its final judgment.<sup>17</sup>

The Court monitors compliance with its judgment by requiring the State concerned to submit reports on any measures taken to remedy the violation, where appropriate.

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<sup>14</sup> See Article 45 of the Rules of Procedure of the Inter-American Commission on Human Rights.

<sup>15</sup> See Articles 45(2) and (3) of the Rules of Procedure of the Inter-American Commission on Human Rights.

<sup>16</sup> See the following website for details of the States that have recognised the jurisdiction of the Court: <http://www.cidh.org/Basicos/English/Basic4.Amer.Conv.Ratif.htm>

<sup>17</sup> See Article 63(2) of the American Convention on Human Rights.

Victims and their legal representatives can also submit information to the Court.<sup>18</sup> The Court can also obtain information from the Commission and other sources such as expert opinions and *amicus curiae* briefs. In 2007, the Court established the procedure of “hearings on monitoring compliance”. At these hearings, the State concerned and the victims and/or their representatives are invited to attend in order to inform the Court of any measures or failures to comply with the judgment. If the Court considers that a State has not yet fully complied with the judgment then it will make any orders it deems necessary to comply with its judgment.<sup>19</sup>

The Court has also recently developed a practice of holding extraordinary sessions in locations other than its headquarters in Costa Rica as a way to try and raise the profile of the Court, increase awareness and, where appropriate, exert pressure indirectly on a host State to comply with its judgments, although the Court will not hold hearings on cases relating to the host country during these sessions.<sup>20</sup>

In accordance with Article 65 of the American Convention, the Court has a duty to inform the General Assembly of the Organisation of American States on the extent of compliance with its judgments. This is an interesting provision and has enabled some useful quantitative data to be collected on the rate of compliance with the Court’s judgments. This public reporting could also be seen as a way to exert indirect pressure on non-compliant States. A further positive aspect of this reporting duty has been to increase the visibility of the judgments and the monitoring activity of the Court by improving access to information on the rate of compliance by States. This may not only assist victims and their legal representatives in gaining information but also those organisations and experts working to improve implementation of the decisions of the Commission and the Court at the national level.

It was noted that this two-tier system of the Inter-American human rights structure has important implications for follow-up and implementation of decisions. While both the Commission and the Court have similar follow-up procedures, it was noted that there did seem to be a slight difference between the extent of compliance with the decisions of the Commission and those of the Court. For example, between 2001 and 2006, the Commission reported full compliance with its decisions in only 5.3% of cases. In 2008, the Court reported full compliance in 11.57% of judgments.<sup>21</sup>

It was considered that a fundamental reason for this discrepancy is the fact that, unlike the recommendations of the Commission, the Court’s decisions are legally binding upon the State concerned. In accordance with Article 68 of the American Convention, those States that accept the jurisdiction of the Court must “undertake to comply with the judgment of the Court in any case to which they are parties”. It is interesting to note that the domestic courts in Colombia have established that the

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<sup>18</sup> See Article 69 of the Rules of Procedure of the Inter-American Court.

<sup>19</sup> See Article 69 of the Rules of Procedure of the Inter-American Court.

<sup>20</sup> In 2007, the Court held two extraordinary sessions, one in Guatemala and one in Colombia. See annual report.

<sup>21</sup> See *Making International Law Stick: Reflections on Compliance with Judgments in the Inter-American Human Rights System*, Michael J. Camilleri and Viviana Krsticevic, Op.Cit. p.238.

Commission's recommendations are binding. However, the courts of other states such as Argentina, Venezuela and Mexico, have taken the opposite view.<sup>22</sup>

However, some States have not yet recognised the jurisdiction of the Court. Within this category of States, for whom the recommendations of the Commission are the "last say" on the matter, there is evidence to show that they are generally disinclined to comply fully with the recommendations of the Commission.<sup>23</sup>

Thus, although these factors suggest that the issue of whether the decisions are considered to be "hard law" or "soft law" does seem to be relevant to the implementation of decisions of the Commission and Court in the Americas, the statistics on full compliance indicate that the majority of decisions of both organs are not fully complied with promptly and therefore implementation is a problem regardless as to the legal status of the decision.

### iii. European Court of Human Rights

Professor Steven Greer, Bristol University, presented a critique of the process for the execution of judgments by the European Court of Human Rights. Unlike the UN treaty bodies and the regional human rights commissions, States Parties to the European Convention on Human Rights and Fundamental Freedoms (ECHR) have an express obligation under Article 46 § 1 of the Convention "to abide by the final judgment of the Court in any case to which they are parties". It was noted that the European human rights system is in "crisis" and faces similar difficulties with follow-up and implementation that the UN treaty bodies and the Inter-American and African mechanisms.

The European Court has had a formal process for monitoring the execution of its judgments since its inception, however this process has been revised over the years in order to try and strengthen the procedures and respond to an ever increasing number of judgments. A judgment of the European Court is "essentially declaratory".<sup>24</sup> In practice this means that a judgment of the European Court cannot itself annul or repeal national law on the finding of a violation. Traditionally, the approach of the European Court has been to limit itself to declaring whether there has or has not been a violation of the Convention. In accordance with Article 41 of the ECHR, the Court can, on the finding of a violation, award a victim "just compensation", which has been interpreted as including the payment of monetary awards and legal costs. The Court has been reluctant to indicate in its judgments any specific measures that the State concerned should take in order to rectify the violation. However, in recent years the European Court has modified its approach slightly and in a few cases has indicated any specific measures that must be taken by States to remedy the violation. While, this approach is still the exception there is growing pressure on the Court to continue with and expand upon this practice.

Once the Court has handed down a final judgment this is transmitted to the "Committee of Ministers". The Committee of Ministers is the executive organ of the

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<sup>22</sup> See *Making International Law Stick: Reflections on Compliance with Judgments in the Inter-American Human Rights System*, Michael J. Camilleri and Viviana Krsticevic, Op.cit. p.23.

<sup>23</sup> See *Making International Law Stick: Reflections on Compliance with Judgments in the Inter-American Human Rights System*, Michael J. Camilleri and Viviana Krsticevic, Op.Cit. p.23.

<sup>24</sup> *Marckx v Belgium* A31 (1979); 2 EHRR 330 para. 58.

Council of Europe and is composed of the Ministers of Foreign Affairs of all member states of the Council of Europe. The role of the Committee of Ministers with respect to the judicial process has changed over the years but it has always been responsible for the supervision of the execution of the judgments of the European Court of Human Rights.<sup>25</sup>

Once the Committee of Ministers has received a judgment from the Court it invites the respondent State to inform it of the steps taken to pay any just satisfaction as well as any individual or general measures which may be necessary in order to comply with the State's obligation to abide by the judgment. Until the State concerned has adopted satisfactory measures, the Committee of Ministers does not adopt a final resolution striking the judgment off its list of cases, and the State continues to be required to provide explanations or to take the necessary action. The Committee of Ministers meets four times a year and in general, the decisions it takes in respect of the execution of judgments of the Court are made public.

As noted earlier, traditionally the Court has not stipulated what remedial actions are required and therefore States have considerable flexibility when deciding on the steps to take at the national level to remedy a violation. The role of the Committee of Ministers is to monitor any measures that a State implements to ensure that they are an adequate remedy. The award of just satisfaction in the form of financial compensation may not always be sufficient to remedy the consequences of a violation for a victim, and therefore other forms of reparation may be required. These may include individual measures in respect of the victim, for example the cessation of deportation proceedings or a review of trial proceedings, or in other circumstances, general measures may also be required to prevent new or similar violations or to rectify systemic problems, for example amendments to national legislation.

Notwithstanding the existence of a long-standing, formal and well-documented procedure for monitoring the implementation of judgments of the European Court, it was noted that the system is regarded as facing a "deep crisis". A number of fundamental reasons have been identified by commentators over the years for this crisis.

Firstly, since the 1980s there has been a significant increase in the caseload of the European Court and the system has been struggling to deal with its casework in a timely and efficient manner. It is estimated that there is an increase of around 12-15% of new cases each year and among the cases submitted around 90% are subsequently deemed to be inadmissible. With such a large caseload it can take many years before a judgment is handed down and it may take many more years for a satisfactory remedy to be implemented.

Secondly, and related to the issue of a large caseload, while the overall record of compliance with the judgments has, on the whole, been good, all too frequently, the Court has to provide judgments on points of law which are the subject of well-established case law. There has been a marked increase in these so called

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<sup>25</sup> See Article 46(2) of the ECHR.

“repetitive cases”. These are cases concerning the same issue, which indicate some form of systemic problem within a member state that needs to be addressed.

Third, there is no obligation within the ECHR to make the judgments of the Court “executable within the domestic legal system”.<sup>26</sup> Thus, national courts are not directly bound by the decisions of the European Court.

The Court has tried to respond to these pressures and criticisms in part by modifying its approach to judgments. The Court has recently started to identify within its judgments any underlying problems that have led to a violation and to provide more specific directions to the remedial measures to be taken by a respondent State. This focus on trying to address the root causes of violations has largely been in response to a growing number of repetitive cases. These repetitive cases have been ‘clogging up’ an already overburdened system and have contributed to growing criticism concerning the overall efficiency of the European Court in recent years. Thus, in 2004 the Committee of Ministers issued a Resolution inviting the Court to identify, as far as possible, in its judgments any underlying systemic problems and the source of these problems, particularly when they may give rise to numerous applications to the Court.<sup>27</sup> Where there are indications within a judgment of a systemic problem, the Committee of Ministers also invited the Court to specially notify not only the state concerned and the Committee of Ministers, but also the Parliamentary Assembly, the Secretary General of the Council of Europe and the Council of Europe Commissioner for Human Rights, and to highlight the judgment in its case database.<sup>28</sup>

The Court has also introduced the idea of ‘pilot judgments’ for cases involving a violation that may give rise to many claims. This scheme was first introduced in 2005 and the rationale behind it is to identify general measures that a State should take in order to rectify a systemic problem and avoid multiple claims arising out of the same violation, which the Court would otherwise have to consider separately.<sup>29</sup>

While these efforts to improve the functioning of the Court have been welcomed by some, it was noted that more needed to be done and that the Court needed to review its role and procedures on the execution of judgments as a matter of priority.

#### **4. The role of national and international actors in follow-up and implementation of treaty body decisions.**

##### **i. National Human Rights Institutions**

National Human Rights Institutions (NHRIs) can play a pivotal role in both the process of follow-up to decisions of treaty bodies and in their implementation. During the seminar presentations were given by Liza Sekaggya, from the National

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<sup>26</sup> G.Ress, *The Effect of Decisions and Judgments of the European Court of Human Rights in the Domestic Legal Order*, Texas International Law Journal 40 (2005), pp.359-382 at p.374.

<sup>27</sup> Resolution (2004)3 of the Committee of Ministers on judgments revealing an underlying systemic problem, adopted by the Committee of Ministers on 12 May 2004, at its 114th Session, para I.

<sup>28</sup> Resolution (2004)3 of the Committee of Ministers, *Ibid*, para II.

<sup>29</sup> See press release on the settlement reached in *Broniowski v Poland*: [http://www.echr.coe.int/Eng/Press/2005/Sept/GrandChamberJudgmentBroniowskiPoland\(friendlysettlement\)280905.htm](http://www.echr.coe.int/Eng/Press/2005/Sept/GrandChamberJudgmentBroniowskiPoland(friendlysettlement)280905.htm).

Institutions and Regional Mechanism Section of the Office of High Commissioner for Human Rights (OHCHR); Katharina Rose, from the International Co-ordinating Committee of NHRIs; and Dr. Gauthier de Beco, University of Louvain.

NHRIs exist in many countries throughout the world, typically either in the form of national human rights commissions or ombudsman's offices, and have played an increasingly important role in the protection and promotion of human rights at the domestic level. The key attributes of NHRIs are that they can form part of a broader national framework of human rights protection and can bridge a gap between civil society and the government, although this position can at times bring them into conflict with both of these stakeholders.

The role and functions of NHRIs are elaborated in a set of principles commonly known as "the Paris Principles".<sup>30</sup> These stipulate the criteria required for the effective functioning of NHRIs and provide guidance on a range of issues such as the establishment, competence, responsibilities, composition and guarantees for independence, pluralism, methods of operation, and quasi-judicial activities of NHRIs.<sup>31</sup>

NHRIs typically have a broad mandate to protect human rights and it was noted that NHRIs are well placed to play a central role in the follow-up activities of the treaty bodies and to facilitate the process of implementation of decisions at the national level. In particular, under the Paris Principles, NHRIs are mandated to contribute to the reports which States are required to submit to UN and regional treaty bodies.<sup>32</sup> While for many years this function was over-looked or frustrated, in recent years, the visibility of NHRIs within the UN and regional human rights mechanisms has grown and the opportunity for them to engage directly with treaty bodies has increased. There are now formal procedures in place to enable NHRIs to contribute to the reporting process within the UN and regional human rights systems and treaty bodies are welcoming the input received from NHRIs in their work. For example, in January 2008, the UN Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) adopted, a statement on its relationship with NHRIs during its 40th session, in which it welcomed the participation of NHRI representatives at its working groups and further encouraged NHRIs to publicize and disseminate the Convention and its Optional Protocol, its concluding observations, general recommendations and decisions and views on individual communications and inquiries conducted under the Optional Protocol, as well as to monitor State parties' implementation of the Convention and its Optional Protocol.<sup>33</sup>

Notwithstanding these welcome developments, it was noted that NHRIs still have a limited engagement with the follow-up procedures of treaty bodies because they frequently lack the required knowledge and understanding of the treaty body

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<sup>30</sup> The Paris Principles were adopted in 1991 and endorsed by a resolution of the General Assembly, UN.Doc. A/RES.48/134, of 20 December 1993.

<sup>31</sup> See presentation prepared by Lisa Sekaggya, *The Role of National Human Rights Institutions (NHRIs)*, p.1, available at: <http://www.bristol.ac.uk/law/research/centres-themes/ihrsp/events>.

<sup>32</sup> Principle 3(d) of the Paris Principles, Op.Cit.

<sup>33</sup> See *The Role of National Human Rights Institutions (NHRIs)*, Lisa Sekaggya, Op.Cit. p.3.

procedures. Accordingly several initiatives have been launched at the UN level to try and address this problem.

In 2007, NHRIs participating in the International Co-ordinating Committee meeting, adopted a document entitled “*The Harmonised approach /conclusions of NHRIs and Treaty Body interaction*”. This is a guide for NHRIs wishing to interact with the treaty body system and elaborates the role of NHRIs at different stages of the treaty body reporting process, including individual complaints mechanisms. With regard to individual complaints, the harmonised approach publication calls on NHRIs to consider facilitating or assisting individual communications to treaty bodies; lobby States to allow individual communications to be received by the treaty bodies; and to follow up on treaty body decisions and any interim orders.<sup>34</sup>

In January 2009, the OHCHR conducted a survey of NHRIs engagement with the UN treaty body system. From the results of this survey, out of 60 NHRIs that responded, 45% indicated that they participate in monitoring the implementation of treaty body recommendations.<sup>35</sup>

It was noted that some treaty bodies would welcome more active involvement of NHRIs in their follow-up procedures and the question was posed as to whether NHRIs should in fact take the lead in this respect? A number of factors were identified as matters of concern in placing too much reliance on NHRIs as a solution to the issue of effective follow-up on decisions.

Firstly, the independence of NHRIs can be an issue in some countries. NHRIs are established by governments; nevertheless one of the primary requirements for NHRIs is that they function independently from government agencies. The Paris Principles expressly require the independent functioning of NHRIs. According to the Paris Principles independence is to be achieved through a variety of means such as an impartial and transparent appointment procedure that promotes pluralism, and adequate funding that ensures their ability to appoint their own staff and have their own premises. Yet, many NHRIs are not fully compliant with the Paris Principles. The International Co-ordinating Committee of NHRIs is empowered to review the compliance of NHRIs with the Paris Principles through their accreditation procedure. This procedure is a form of peer review and enables accredited NHRIs to participate in UN meetings. Under this procedure, if an NHRI is granted “status A” then it is considered by the ICC to be compliant with the Paris Principles. In June 2009, 66 NHRIs had been granted ‘A’ status.

Secondly, the amount of resources that are made available to NHRIs is a recurring problem. NHRIs have a broad mandate to protect human rights and they conduct a variety of activities in order to carry out their mandate such as responding to complaints; visiting places of detention; raising awareness; and contributing to policy development and legislative reform. These activities are resource heavy but often NHRIs face limited funding and/or staff. In accordance with the Paris Principles, States should ensure that the NHRIs they establish have adequate resources to carry out their functions. Access to adequate resources is also necessary to ensure

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<sup>34</sup>See *The Role of National Human Rights Institutions (NHRIs)*, Lisa Sekaggya, Op.Cit. p.3.

<sup>35</sup> Ibid.

the independence of NHRIs from government agencies. It was noted that the recent interest in the role of NHRIs in the UN and regional human rights mechanisms has placed a further burden on NHRIs' limited time and resources. Consequently, while NHRIs should play an integral part in follow-up procedures it was proposed that this responsibility can not and should not be delegated to NHRIs entirely.

Yet, several areas were identified where NHRIs' involvement with follow-up and implementation procedures could be improved.

First, there is a lack of awareness of the treaty bodies' complaints procedures within civil society, which hinders the use of these procedures. It was proposed that NHRIs should organize educational activities in order to raise awareness on the individual complaints procedures within their own countries. Information on the procedures could also be made available on their websites, and could also be distributed to the public and the media.<sup>36</sup>

Second, complainants should be able to approach NHRIs in order to get assistance with submitting a complaint to a treaty body or trying to secure the implementation of a decision. It was suggested that this could also help to reduce the number of cases submitted to the treaty bodies that are inadmissible, for example because of non-exhaustion of domestic remedies. Within the European system for example, over 90% of the cases submitted are considered to be inadmissible. However, while the involvement of NHRIs in submitting complaints to treaty bodies can assist in reducing the number of clearly inadmissible cases being received by the treaty bodies, it was warned that this should not take the place of any formal, official filtering system within the various treaty body systems.

Third, communication between NHRIs and treaty bodies should be improved. NHRIs can play an important role in monitoring the implementation of decisions and/or any interim measures that may be imposed by the treaty bodies. Therefore, ensuring that there is contact between NHRIs and the treaty bodies is essential.

Lastly, NHRIs can play a crucial role in applying pressure on a government to respond to requests for information on measures taken to address issues raised in a decision or to comply with a judgment. To assist this process, NHRIs could include questions on what steps have been taken to follow-up on and/or implement a decision in their dialogue with government representatives and feed this back to the treaty bodies. NHRIs can also help to raise awareness of decisions within their country by translating the decisions into the local languages; publishing them on their websites or encouraging relevant ministries to publish them on their websites; and using the media to raise the profile of the decisions.

## **ii. Non-Governmental Organisations**

NGOs are extremely important national actors within follow-up and implementation procedures. During the expert seminar presentations were given by Sheila Keetharuth, Executive Director of IHRDA in Africa and Viviana Krsticevic, Executive

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<sup>36</sup> See *The Role of National Human Rights Institutions (NHRIs)*, Lisa Sekaggya, Op.Cit. p.4.

Director of CEJIL in the Americas. These formal presentations were supplemented by interventions from representatives of NGOs present at the seminar.

NGOs can carry out a number of activities that facilitate follow-up and implementation of treaty body decisions. They are also often instrumental in the submission of complaints to these bodies and are, therefore, vital stakeholders in these procedures. It was noted that different strategies are required for different forms of decisions. For example some NGOs may provide litigation support for victims and/or their families, whereas others may be complainants themselves. NGOs are also, of course, a very good source of information for treaty bodies seeking information on measures that have been taken to comply with their decisions.

It was noted that NGOs have pushed for the “nationalisation” of decisions and for standards to be “embedded” at the national level. In other words, NGOs are key actors who are trying to apply pressure on States to implement treaty body decisions. NGOs often employ a range of activities and strategies to apply pressure on States to implement decisions such as raising issues through the media, dissemination of information to the general public, and the translation of decisions into local languages.

NGOs are working on a daily basis to promote respect for human rights and to force violating States to provide adequate reparations for victims of human rights violations, including measures to prevent the reoccurrence of violations. Accordingly they are a very useful resource and a natural partner for treaty bodies within their follow-up procedures. However, in order for NGOs to participate fully in the follow-up process they need to be aware of the existence of these procedures and how to participate in them. Unfortunately, the follow-up procedures of treaty bodies are not always transparent or easy for NGOs to navigate. It was noted that there needs to be better lines of communication between treaty bodies and NGOs in order to promote and assist follow-up procedures.

Yet, in some instances, treaty body representatives have collaborated directly with NGOs in order to follow-up on a decision. The case study of Mauritania was given as a positive example of effective collaboration between NGOs and treaty bodies.<sup>37</sup> In April 1989 an estimated 100,000 Negro Mauritians were forcibly expelled to Senegal and Mali by the then Mauritanian Government, after being stripped of proof of their citizenship.<sup>38</sup> In 1991, the ACHPR received a number of communications brought on behalf of the victims of this expulsion. The IHRDA assisted the authors in pursuing these communications and played a key role in providing litigation support. In 2000, the ACHPR found that the refugees had been arbitrarily expelled and wrongfully deprived of their nationality. The ACHPR therefore recommended that the Government of Mauritania “take diligent measures to replace the national identity documents of those Mauritanian citizens, which were taken from them at the time of their expulsion and ensure their return without delay to Mauritania as well as the

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<sup>37</sup> This case study is taken from the paper prepared by Sheila Keetharuth for the seminar available at: <http://www.bristol.ac.uk/law/research/centres-themes/ihrsp/events.html>

<sup>38</sup> Institute for Human Rights and Development in Africa and Open Society Justice Initiative (2007), *Statelessness and the Democratic Transition in Mauritania: The Situation of Mauritanian Expellees in Context*, p 2.

restitution of the belongings looted from them at the time of the said expulsion; and to take the necessary steps for the reparation for the deprivations of the victims...”<sup>39</sup> Further the Commission recommended that the Government should reinstate the rights due to those “unduly dismissed and/or forcibly retired workers, with all the legal consequences appertaining thereto.”<sup>40</sup>

Unfortunately, the regime that authorized these unlawful expulsions refused to implement the decision of the ACHPR arguing that the decision lack validity. In August 2005, a military coup took place and a new military regime was installed until civil elections could take place. From 29th August to 3rd September 2005, the African Commission’s Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa undertook a fact-finding mission to Senegal to document the situation of Mauritanian refugees living in that country. This Special Rapporteur made some preliminary recommendations to the Senegalese Government, the AU and the United Nations High Commission for Refugees (UNHCR). Among the recommendations were that further missions to Mali and Mauritania would be necessary and that statistics on the refugees and their lost properties were imperative for the start of negotiations for the return of the refugees.<sup>41</sup>

In March 2007, a new government was elected and the new President signaled his intention to facilitate the return of all Mauritians who had been expelled between 1989 and 1991 and expressed his commitment to national reconciliation. He also established the Inter-Ministerial Committee for the Return of Refugees and organised national consultation days on the challenge of return and national reconciliation through the settlement of historical injustices. Mauritania also negotiated and signed a tripartite agreement with Senegal and the UNHCR for the repatriation of the refugees.<sup>42</sup>

Encouraged by these positive statements and actions of the new Government, in August 2007, the IHRDA and the Open Society Justice Initiative (OSJI) supported two follow-up missions by the ACHPR’s Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants to Mali and Mauritania, which took place between 17-23 August and 23-26 August 2007 respectively. On 28 January 2008, the UNHCR organised the first repatriation operation with the return of 99 refugees. Unfortunately, since these positive steps were taken the process was hindered in 2008 by a coup d’état and uncertainty remains as to whether and/or when the ACHPR’s decision in this case will be fully implemented.

This case study demonstrates the central role that NGOs can play in assisting treaty bodies to actively follow-up on their decisions and to apply pressure on a violating State to comply with the decisions. It is also a good example of the tenacity shown by many individuals working both for NGOs and treaty bodies because follow-up to a decision can be an extremely long and drawn-out process and full implementation of decisions can take a long time to achieve, if at all. This case study is also instructive as it reveals that the effectiveness of follow-up processes and the implementation of

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<sup>39</sup> IHRDA *Compilation 94-01:161* p.190.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.* p 10.

<sup>42</sup> *Ibid.*, n12, pp. 4 – 5.

decisions are fragile activities whose eventual success or failure is often dictated by the political will and stability of the State concerned.

#### **5. To what extent is the issue of hard law or soft law a factor in the implementation of decisions?**

It is striking that the problem of implementation of decisions does not seem to be limited to whether the decision is regarded as so called “soft law” or “hard law”. While there was some evidence to suggest that the rate of compliance was better when the decision took the form of a binding decision such as a judgment from the European Court or the Inter-American Court, the increase in the rate of compliance was not significantly higher than those for non-judicial decisions. For example, in the Americas, as noted earlier, while figures estimated that during 2000 to 2007 only 5.3% decisions of the Inter-American Commission had been complied with fully, compared with 11.57% of judgments from the Inter-American Court by 2008,<sup>43</sup> the figures for both rates of compliance are noticeably low. Therefore, there must be other factors that assist or hinder the implementation of binding and non-binding decisions (see section 7 below for further details on the factors that assist follow-up and implementation).

It was also noted that the term “soft law” is unhelpful as this implies that decisions that fall within this category have the same status and quality, however this does not reflect reality. In practice there are a huge range of treaty body decisions in the form of recommendations, conclusions and observations that are not judicial in nature and therefore not “legally binding” and would therefore fall within the category of “soft law”, however this is not a homogeneous group. The quality of these non-binding decisions and the subsequent “weight” that they carry varies according to the process from which they have emerged. A well written, precise, clear non-binding decision that has emerged from a systematic, thorough process that has considered a range of facts can carry a lot of political and/or moral force. Therefore, it was suggested that the issue of the quality of the decisions was important to take into account rather than their categorisation as “soft law”.

An example was given of the European Social Charter. The European Committee of Social Rights (ESCR) considers periodic reports from States and can consider complaints from certain organisations. Under the latter system, known as the collective complaints system, once a complaint is declared admissible the ESCR then makes a decision on the merits of the case. This decision is forwarded to the parties concerned and the Committee of Ministers in a report, which is made public within four months of its transmission. In cases where it is considered that there has been a violation of the Social Charter, the Committee of Ministers will adopt a resolution addressed to the State concerned and will engage in a process with the State concerned in order to seek compliance with the resolution. While the decisions of the ESCR and the resolutions of the Committee of Ministers are not a “judgment”, it was proposed that these are legal opinions on matters of fact, which can not be altered and therefore carry considerable legal, political and moral force. Furthermore, the final resolution from the Committee of Ministers carries a certain degree of

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<sup>43</sup> See *Making International Law Stick: Reflections on Compliance with Judgments in the Inter-American Human Rights System*, Michael J. Camilleri and Viviana Krsticevic, Op.Cit. p.238.

“political weight” because the Committee of Ministers is a political body, within which all member states of the Council of Europe are represented.

Thus, it was proposed that rather than categorising decisions into hard law or soft law the question to be asked is what does it take to change state practice? In other words, what is the best way to promote compliance and do we have the right tools to secure implementation? It was noted that a range of factors impact on this question (see Section 7 below.)

## **6. Are treaty bodies the right mechanisms to follow-up and/or implement decisions?**

One of the key questions to consider when looking at the issue of follow-up and implementation of treaty body decisions is whose duty is it to carry out these activities? As noted earlier, there is a fundamental difference between “follow-up” and “implementation” activities and accordingly, the burden to carry out these processes will fall on different actors. However, these different processes and aims can be misunderstood, which can lead to expectations from victims of human rights violations, NGOs, NHRIs and other stakeholders that the treaty bodies themselves should have mechanisms to implement their decisions. A frequent criticism of treaty bodies is that they do not have the ability to enforce their decisions and secure their implementation directly. Yet, States have the primary duty to consider ways to implement treaty body decisions. Notwithstanding this responsibility, all too frequently the emphasis is placed on the treaty bodies themselves to take steps against a non-compliant State. For example, it was noted that currently the Inter-American Commission is compelled to present a report to the Inter-American Court when a decision is not complied with. However it was suggested that the burden should really fall on States to apply to the Court if they do not accept the decision of the Commission. If they do not challenge the decision through the Court then they must accept it as final and take any measures necessary to remedy the violation.

It was proposed that requiring treaty bodies to be responsible for implementing their decisions was “too much to ask” of these mechanisms and came from a confusion between the functions and powers of national judicial processes on the one hand and human rights treaty bodies on the other. National courts consider individual responsibility for wrong-doing and have a range of powers at their disposal to execute their judgments such as injunctions; freezing assets; seizure of property; and even remand in custody. Treaty bodies on the other hand, when considering individual complaints, are looking at the extent to which a State has failed to comply with its human rights obligations. Treaty bodies, even those of a judicial nature such as the European Court of Human Rights, the Inter-American Court, and the African Court of Human and Peoples’ Rights, do not have the same means as national courts to secure the execution of their judgments.

Yet, the fact that human rights treaty bodies do not have the same enforcement powers and procedures as national courts does not mean that they are divorced from the implementation process. Treaty bodies can facilitate the implementation of their decisions through their follow-up procedures, as outlined above. Through the “carrot and stick” approach of some of their follow-up procedures constructive

dialogue with relevant national actors on measures taken to comply with decisions can be opened up and pressure applied on the State concerned.

In relation to the issue of follow-up, this is an aspect of their complaints procedures that the treaty bodies have tried to improve in recent years, however it is considered to be a time consuming and resource heavy activity. Nevertheless, on the whole it was considered to be a fundamental activity of the treaty bodies' complaints procedures and an aspect that needed to be improved across the board. Yet, it was considered that follow-up on decisions should not be left entirely to treaty bodies and that other actors needed to be better engaged in follow-up procedures. For example, NHRIs and NGOs can assist in disseminating the decisions and translating them into local languages, and applying direct pressure on the authorities concerned to provide information to treaty bodies on any measures taken to comply with a decision. Effective follow-up therefore requires a multi-tiered approach, and should involve as many stakeholders as possible. In order to facilitate the engagement of other actors in the process of follow-up it was suggested that treaty bodies needed to be more creative and write more "readable" opinions in order to talk more directly to their audience i.e. government agencies; the victims of human rights violations; and civil society. It was also suggested that treaty bodies could make better use of various technological opportunities to promote their decisions more widely, for example through live broadcasts; podcasts; and "viral campaigns"<sup>44</sup>.

## **7. Conclusion and recommendations.**

A striking feature of the various treaty body follow-up procedures is their similarity. The UN and regional treaty bodies have developed common methods for following-up on their decisions and accordingly they are faced with common obstacles and criticism.

It was noticeable that the issue as to whether or not the treaty body decisions took the form of "soft law" or "hard law" seemed not to be decisive in the overall rate of compliance by States. While, those treaty bodies whose decisions took the form of binding judgments did have a better rate of compliance than those whose decisions are perceived as non-binding, the extent of compliance with treaty body decisions *per se* is remarkably low in some regions.

Among the two-tiered systems such as the Inter-American and African human right systems, the Commissions within these regional bodies have sought to use their respective Courts in order to improve compliance with their decisions. In Africa, the African Court of Human and People's Rights has not yet considered a decision of the African Commission, however this has been a subject of much debate in recent years and plans are afoot to enable the Commission to forward decisions to the Court where compliance is an issue. In contrast, the Inter-American system has had a long established procedure for the Commission to submit decisions to the Inter-American Court when a state is failing to comply. While the record of compliance with a judgment of the Inter-American Court was estimated at double the rate of compliance with a decision of the Inter-American Commission, there was a note of caution against drawing the conclusion that this procedure was a positive one. Many

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<sup>44</sup> A "viral campaign" is the name given to a marketing technique that uses pre-existing social networks such as the internet, video clips or text messages to spread information quickly by "word of mouth" in order to reach a wide audience.

commentators felt that an unhelpful hierarchy has been created between the two bodies by this procedure and may have lowered the perception of the legal, political and moral weight of the decisions of the Inter-Commission in the eyes of States and national actors.

While the issue of political will of the State concerned will always play a decisive factor in the extent to which a decision is complied with, it was suggested that it was not a “magic wand”. In other words, it was not the only reason for a poor rate of compliance with treaty body decisions. A number of factors were acknowledged as playing a fundamental part in the overall effectiveness of follow-up procedures and the eventual implementation of decisions at the national level.

The recommendations being suggested below are made by the Bristol University “Implementation of Human Rights Standards” team and are based on those factors that were identified as having an influence on follow-up and implementation of treaty body decisions during the expert discussions.

**i. Greater clarity and precision of treaty body decisions.**

It was suggested that one of the most important factors that had an impact upon the quality and level of follow-up and compliance with a treaty body decision was the wording of the decision itself. Many national actors are convinced that follow-up is easier when the treaty body decisions identify more precisely the measures required to remedy a human rights violation.

Thus, it was proposed that the treaty bodies should not only determine whether a human right has been violated or not but, when a finding of a violation is made, should also specify in what way a right has been violated. It was considered that identifying within a decision the specific shortcomings at the national level would assist not only the state agencies responsible for rectifying the deficiency but also other stakeholders involved with monitoring measures taken to remedy the violation. In other words, knowing where there is a problem at the national level would help to identify the measures required to bring practices into line with human rights law. This was regarded as particularly important where a treaty body decision indicates a systemic problem within a State. In these instances, it was acknowledged that treaty bodies frequently have to address problems that relate to the right to a remedy. Thus, it was noted that it would be useful if the treaty bodies could specify what measures need to be implemented in order to address shortcomings at the national level with an individual’s right to an effective remedy.

This is not to imply that treaty bodies should always specify exactly what piece of legislation or what specific procedure would need to be modified, created or abolished in order to implement their decision. It was noted that state agencies will be in a better position than treaty bodies to know the national framework and the change required. Nevertheless, it was considered to be advantageous for treaty bodies to produce more precise information on why they consider a particular piece of legislation, practice, policy etc. to violate a treaty obligation. In fact, there does seem to be some evidence to suggest that many treaty bodies have recently been trying to provide more detailed and precise decisions in response to this call from stakeholders.

**ii. Improve access to and dissemination of decisions.**

Overall, it was acknowledged that treaty bodies needed to do more to “sell” their decisions at the national level. While some treaty bodies such as the UN Human Rights Committee have created positions specifically for the process of follow-up, it was noted that many national actors are unaware that they exist and/or how to engage with them. It was striking that a common feature of the treaty bodies was the lack of opportunity for victims of human rights violations to obtain information on the progress of their case and follow-up on a decision. All too frequently, national actors complain that they are unaware that a treaty body is going to issue or has issued a decision on a particular case. Thus treaty bodies should adopt more transparent working practices around their follow-up activities and be more creative in raising the profile of their decisions.

It was noticeable that a common obstacle to treaty body decisions being taken up at the national level was the language in which the decisions are drafted. The treaty bodies have their official working languages into which the decisions are translated, however wider dissemination of their decisions may require them to be translated into local languages. While it is not practical for the treaty bodies to undertake this translation, it was proposed that national actors such as NHRIs and NGOs could assist with the translation of decisions into appropriate local languages and in publicising the decision at the national level. Furthermore, States should also play a greater role in disseminating information about decisions at the national level.

**iii. Improve collaboration with NHRIs.**

NHRIs were seen as playing an increasingly important role in follow-up processes. NHRIs, with their broad mandate to protect and promote human rights at the national level can be seen as a natural partner for treaty bodies seeking to follow-up on their decisions. Accordingly, it was proposed that NHRIs should take more of a central role in follow-up procedures. However, NHRIs should not be regarded as the solution to the problem of limited follow-up and/or compliance with treaty body decisions. The quality and independence of the work of NHRIs varies from country to country. Some NHRIs are vulnerable to interference by State agencies and many already struggle to carry out their existing broad mandate with limited resources.

**iv. Effective engagement with NGOs.**

Experience has demonstrated that an effective follow-up procedure requires good cooperation and lines of communication not only between the treaty bodies and the state agencies but also the treaty bodies and civil society organisations. Therefore, the active involvement of civil society organisations in the follow-up process can assist the treaty bodies to monitor compliance with their decisions more effectively. Moreover, civil society organisations can also apply pressure directly upon the state agencies to comply with decisions in a way that treaty bodies are unable to lobby.

**v. Holding in-country treaty body sessions.**

As described in section 2(ii) above, the Inter-American Court has piloted a scheme whereby it holds extraordinary sessions away from its headquarters in Costa Rica as a way to try and raise the profile of the Court and apply indirect pressure on relevant States to comply with its judgments. Similarly, the African Commission on Human

Rights tries, wherever possible, to hold some of its sessions away from its headquarters in The Gambia. This type of outreach may not be possible for all treaty bodies but it is an interesting development as it may allow more national actors to be made aware of the work of the particular treaty body and to engage with the mechanism directly.

**vi. Increasing the profile of the status of compliance with treaty body decisions.**

Obtaining exact information on the status of compliance with treaty body decisions was regarded as a problem across the board. The treaty bodies could therefore consider publishing the information they have received back as part of their follow-up procedures in a more systematic and transparent way. One of the reasons for a lack of information on the rate of compliance on decisions is the fact that the current follow-up procedures of the treaty bodies are reliant upon information they receive from States. The quality and level of detail of the information they receive back from States on measures taken to comply with a decision varies considerably, and some States do not respond at all. This naturally makes systematic collection of data on compliance difficult. For this reason it is important for treaty bodies to seek collaborative relationships with NHRIs, NGOs and other national actors who can assist in the collection and publication of information on any remedial measures that may have been taken on a particular decision.

It was also noted that the Universal Periodic Review (UPR) mechanism within the UN Human Rights Council should also be used to raise the profile of treaty body decisions and the level of compliance by States. Under this mechanism, the human rights situation of all UN Member States is reviewed every 4 years. Currently, within the UPR process there is no section dedicated to individual communications and compliance with treaty body decisions. This is an aspect that national actors could consider including in their reports and/or statements made during the UPR process and States should be urged to include information on any remedial measures taken to comply with a treaty body decision.

**vii. Need for training and education.**

It was acknowledged that more needed to be done to increase awareness of the functions and powers of the treaty bodies. Thus specialised training targeted at government officials, lawyers, judges, NHRIs and NGOs was seen as a factor that could improve the quality of follow-up and may facilitate implementation of treaty body decisions. Training could be provided not only by the treaty body mechanisms themselves but also appropriately qualified NHRIs and civil society organisations.

In addition, because, as noted above, treaty body decisions often find a human rights violation that indicates a problem with the right to an effective remedy at the domestic level, training of the judiciary on international human rights law was seen as a particularly important activity.

**viii. Creation of focal points within states.**

It was noted that national parliamentarians have a central role to play in follow-up processes and eventual implementation of decisions and should not be overlooked. Within the European system, a recent recommendation from the Committee of Ministers provides that States should designate a coordinator for the execution of

judgments at the national level.<sup>45</sup> In accordance with this recommendation, this coordinator (which could be an individual or a body) should be able to liaise with those actors responsible for taking the measures necessary to comply with a judgment, and even have the power to take such measures itself where necessary.

A positive example of this type of focal point was identified as the Joint Committee on Human Rights in the UK. This Committee is made up of 12 members from both the ruling and opposition parties and both Houses of Parliament. As part of its mandate, this Committee looks at Government action to deal with judgments of the UK courts and the European Court of Human Rights where breaches of human rights have been found. As part of this work, the Committee looks at Remedial Orders, the legislative mechanism that allows legislation to be amended in response to these judgments.

Similarly, it was noted that in the Americas, the Government in Argentina had been discussing the creation of a federal mechanism with direct responsibility for considering the implementation of decisions of the Inter-American Court.

While these were noted as very welcome developments and similar mechanisms should be encouraged in other countries, it was noted that implementation of treaty body decisions requires a fully integrated process involving a range of actors rather than a single focal point at the parliamentary level.

University of Bristol IHRS Team:  
Professor Malcolm Evans  
Professor Rachel Murray  
Ms. Debra Long

February 2010

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<sup>45</sup>See Recommendation 2008 (2) to member States on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights.

## Annex I

### LIST OF PARTICIPANTS

1. Michelle Akip, Council of Europe.
2. Gauthier de Beco, University of Louvain.
3. Gaston Chillier, Executive Director, CELS, Argentina.
4. Helen Duffy, Co-litigation Director, INTERIGHTS, UK.
5. Robert Eno, Chief Legal Officer, ACHPR.
6. Malcolm Evans, Professor of Law, Bristol University.
7. Jens Faerkel, Danish Ministry of Foreign Affairs.
8. Steven Greer, Professor of Law, Bristol University.
9. Claudine Haenni Dale, Human Rights Consultant.
10. Francoise Hampson, Professor of Law, University of Essex.
11. Sheila Keetharuth, Executive Director, IHRDA, the Gambia.
12. Tobias Kelly, Senior Lecturer, University of Edinburgh.
13. Renate Kicker, member of the European Committee for the Prevention of Torture and Professor of Law, University of Graz.
14. Ben Kioko, Legal Counsel of the AU Commission.
15. Viviana Krsticevic, Executive Director, CEJIL.
16. Debra Long, Research Associate, Bristol University.
17. Victor Madrigal-Borloz, Senior Adviser, Inter-American Commission on Human Rights.
18. Sanji Monageng, Judge of the International Criminal Court.
19. Sebastien Ramu, Legal Adviser, APT.
20. Nigel Rodley, member of the UN Human Rights Committee and Professor of Law, University of Essex.
21. Katharina Rose, ICC of NHRIs.
22. Emma Rowstone, Bristol University.
23. Liza Sekaggya, National Institutions Unit of the OHCHR.
24. Eric Sottas, Secretary General, OMCT.
25. Elina Steinerte, Research Associate, Bristol University.

26. Ruth Wedgwood, member of the UN Human Rights Committee and Professor of International Law and Diplomacy, John Hopkins University.

**Annex II**  
**“Implementation of human rights treaty body decisions”**

Expert seminar organised by the Law School of the University of Bristol  
10 September 2009

**Agenda**

9.00-9.30	Registration, tea and coffee
9.30-9.45	Welcome by Professor Malcolm Evans and Debra Long, University of Bristol
9.45-10.45	<b>Plenary 1: Outline of treaty body follow-up procedures</b> Chair: Debra Long Speakers: Sir Nigel Rodley, UN Human Rights Committee Prof. Ruth Wedgwood, UN Human Rights Committee Dr. Robert Eno, African Union Victor H. Madrigal-Borloz, Organisation of American States Professor Steven Greer, University of Bristol
10.45-11.00	Coffee break
11.00-12.00	<b>Plenary 2: The role of other entities in the follow-up procedure</b> Chair: Malcolm Evans Speakers: Sheila Keetharuth, Institute for Human Rights & Development in Africa Viviana Krsticevic , Centre for Justice and International Law Katharina Rose, ICC of NHRIs Lisa Sekaggya, National Human Rights Institutions Unit of the OHCHR Dr. Gauthier de Beco, University of Louvain
12.00-13.00	<b>Plenary 3: Are the decisions hard law or soft law? Does this matter?</b> Chair: Malcolm Evans Open discussion
13.00-14.00	Lunch
14.00-16.00	<b>Breakout sessions: Best practice and factors that assist implementation.</b> Rapporteurs: Renate Kicker, CPT Ben Kioko, African Union
16.00-16.30	Coffee break
16.30-17.30	<b>Report back from Working Groups</b> Chair: Debra Long Rapporteurs: Renate Kicker, CPT Ben Kioko, African Union
17.30	<b>Close</b>
17.30-18.30	<b>Drinks reception: Launch of Human Rights Implementation Centre</b>

