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PAPER OF THE SPECIAL RAPPORTEUR FOR FOLLOW-UP ON CONCLUDING OBSERVATIONS

Strengthening of the follow-up procedure

A. INTRODUCTION

1. At its ninety-fourth session, held in October 2008, the Special Rapporteur for follow-up on concluding observations, Sir Nigel Rodley, suggested to the plenary of the Human Rights Committee that it reflect on ways to ensure a qualitative assessment of the follow-up information submitted by States. The Special Rapporteur agreed to present proposals in this regard at the ninety-fifth session of the Committee.
2. The paper below was presented by the Special Rapporteur and discussed by the Committee at its ninety-fifth session.
3. At the end of the discussion, the Committee decided to publish the paper of the Special Rapporteur and to include in section C of the paper the proposals for strengthening the follow-up procedure as discussed and adopted by the Committee.

B. BACKGROUND INFORMATION

1. Procedure of the Human Rights Committee

4. Pursuant to rule 71, paragraph 5, of the rules of procedure of the Human Rights Committee, States parties are requested to provide additional information on the implementation of certain recommendations, usually three to four paragraphs, in the concluding observations within a set period of one year.
5. Once the follow-up information has been received by the Special Rapporteur, he undertakes an assessment, with the assistance of the Secretariat, by carefully analysing whether all the recommendations of the Committee which were selected for follow-up have been addressed by the State party. Based on this assessment, the reply is classified as incomplete, partially incomplete or complete. Where information from non-governmental organizations is available, it is also taken into consideration in the Special Rapporteur's assessment. Currently, most follow-up information provided is classified as partially incomplete and, based on such finding, the Special Rapporteur sends a letter to the State party requesting additional information, detailing the exact information needed by the Committee. A draft letter is provided by the Secretariat.
6. If the State party fails to submit information, the Special Rapporteur sends reminder(s) and, in cases where a reply is long overdue, he requests and holds consultations with delegates from the State party to obtain the information sought, explain the reason for which information is sought, clarify what information is sought, and/or arrange for a date by which the information will be sent by the State party's delegation.
7. The Special Rapporteur then presents a follow-up progress report at each session, updated by the Secretariat, in which he informs the Committee, in a public meeting, about the information received and action taken following the decisions of the Committee at the preceding session. The Special Rapporteur proposes to the Committee the action to be taken with regard to the individual States parties, depending on the information received, if any, and its degree of completeness. The Committee adopts the updated progress report at each session, and the Special Rapporteur, with the assistance of the Secretariat, implements the action accordingly.

2. Assessment carried out by other treaty bodies in the context of their follow-up procedures

8. All treaty bodies request States parties to provide information on the implementation of the recommendations contained in previous concluding observations/comments in their subsequent reports or during the constructive dialogue. The Human Rights Committee, the Committee against Torture, the Committee on the Elimination of Racial Discrimination, and the Committee on the Elimination of Discrimination against Women, are, however, the only treaty bodies that also have formal procedures to monitor more closely implementation of specific concluding observations.¹

¹ The Committee on the Rights of the Child had a follow-up procedure between 1993 and 1999. However, due to its heavy workload, it decided to abandon this procedure (CRC/C/27/Rev.11).

(a) Follow-up procedure of the Committee against Torture

9. The Committee against Torture identifies a limited number of recommendations that warrant a request for additional information following the review and discussion with the State party concerning its periodic report, and requests follow-up reports within one year. Such “follow-up” recommendations are identified because they are serious, protective, and are considered capable of being accomplished within one year (rule 68, para. 1, of the rules of procedure of the Human Rights Committee). The Committee appoints a rapporteur to monitor the State party’s compliance with these requests and present progress reports to the Committee on the results of the procedure.
10. Through this procedure, the Committee seeks to advance the Convention’s requirement that “each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture ...” (art. 2, para. 1), and the undertaking “to prevent ... other acts of cruel, inhuman or degrading treatment or punishment ...” (art. 16, para.1).
11. The rapporteur assesses the responses received to determine whether all the items designated by the Committee for follow-up (normally between three and six recommendations) have been addressed by the State party concerned, whether the information provided responds to the Committee’s concern, and whether further information is required. The rapporteur then sends a letter to the State party. At its thirty-eighth session in April/May 2007, the Committee decided to make public the rapporteur’s letters to the States parties by placing them on its web page. The Committee further decided to assign a United Nations document symbol to all States parties’ replies to the follow-up and also place them on its website (<http://www2.ohchr.org/english/bodies/cat/sessions.htm>).
12. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been required, the rapporteur has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow-up information at all, the rapporteur requests the outstanding information.
13. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow-up responses from the States parties and letters from the rapporteur requesting further clarification address a wide array of topics. Among those topics have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee’s ongoing work in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.
14. In the correspondence with States parties, the rapporteur has noted recurring concerns which are not fully addressed in the follow-up replies. The following list of items is illustrative, not comprehensive:

- (a) The need for greater precision on the means by which police and other personnel instruct on and guarantee detainees their right to obtain prompt access to an independent doctor, lawyer and family member;
- (b) The importance of specific case examples regarding such access, and implementation of other follow-up recommendations;
- (c) The need for separate, independent and impartial bodies to examine complaints of abuses of the Convention, because the Committee has repeatedly noted that victims of torture and ill-treatment are unlikely to turn to the very authorities of the system allegedly responsible for such acts; and the importance of the protection of persons employed in such bodies;
- (d) The value of providing precise information such as lists of prisoners which are good examples of transparency, but which often reveal a need for more rigorous fact-finding and monitoring of the treatment of persons facing possible infringement of the Convention;
- (e) Numerous ongoing challenges in gathering, aggregating, and analysing police and administration of justice statistics in ways that ensure adequate information with regard to personnel, agencies, or specific facilities responsible for alleged abuses;
- (f) The protective value of prompt and impartial investigations into allegations of abuse and, in particular, information about effective parliamentary or national human rights commissions or ombudspersons as investigators, especially for instances of unannounced inspections; the utility of permitting non-governmental organizations to conduct prison visits; and the utility of precautionary measures to protect investigators and official visitors from harassment or violence impeding their work;
- (g) The need for information about specific professional police training programmes, with clear-cut instructions as to the prohibition of torture and practice in identifying the sequelae of torture; and for information about the conduct of medical examinations, including autopsies, by trained medical staff, especially whether they are informed of the need to document signs of torture, including sexual violence, and ensure the preservation of evidence of torture;
- (h) The need for evaluations and continuing assessments of whether a risk of torture or other ill-treatment results from official counter-terrorism measures;
- (i) The lacunae in statistics and other information regarding offences, charges and convictions, including any specific disciplinary sanctions against officers and other relevant personnel, particularly on newly examined issues under the Convention, such as the intersection of race and/or ethnicity with ill-treatment and torture, the use of “diplomatic assurances” for persons being returned to another country to face criminal charges, incidents of sexual violence, complaints about abuses within the military, etc.

(b) Follow-up procedure of the Committee on the Elimination of Racial Discrimination

15. The Committee on the Elimination of Racial Discrimination has a long-standing procedure, set out in rule 65 of its rules of procedure, whereby the Committee may request further information or an additional report concerning, inter alia, action taken by States parties to implement the Committee's recommendations. This rule was amended in 2004 and now provides for the appointment of a coordinator on follow-up. The coordinator, the first of whom was appointed at the sixty-fifth session in August 2004, is appointed for a period of two years and works in cooperation with the country rapporteurs. A working paper clarifying the terms of reference of the coordinator was adopted by the Committee at its sixty-sixth session in February/March 2005 (CERD/C/66/Misc.11/Rev.2).
16. The coordinator is mandated to monitor the follow-up by States parties on the observations and recommendations of the Committee, cooperating with the respective country rapporteur. Since 2005, the Committee has identified, in its concluding observations, a limited number of recommendations that warrant a request for additional information following the review and discussion with the State party concerning its initial or periodic report, and requests follow-up reports within one year.
17. The coordinator is responsible for monitoring that States parties respect the deadlines set by the Committee and for sending reminders (within a month of expiry of the deadline) to States parties when they have not supplied the additional information on time.
18. The coordinator analyses and assesses the follow-up information received from States parties. This task is shared with the country rapporteur. The coordinator presents a report to the Committee at each session. He makes recommendations for appropriate action to the Committee when information is received and in the case of non-receipt of such information. He may, inter alia, recommend that the Committee take note of the information, request further information in the next periodic report or remind the State Party of recommendations included in the last concluding observations of the Committee and their obligations as parties to the International Convention on the Elimination of All Forms of Racial Discrimination. A letter, which is made public on the website of the Office of the High Commissioner for Human Rights, is then sent by the Chairperson of the Committee, reflecting the recommendations of the rapporteur as approved by the Committee in a private meeting. A succinct report on follow-up activities is also included in the annual report of the Committee to the General Assembly.
19. Letters sent by the Chairperson have, inter alia, welcomed the submission of information and expressed appreciation for the opportunity thus provided to continue its dialogue with the State party. The Committee frequently draws the State party's attention to particular issues and requests that comments and responses on action taken on those issues be included in the next periodic report to be submitted by the State party. Letters also include specific comments on the replies provided by the State party on the recommendations regarding which the State is requested to send follow-up information. On some occasions, while expressing its appreciation for the information provided, the Committee has regretted that the replies provided did not comment directly on the specific recommendations contained in the relevant concluding observations. Consequently, the State party was requested to comment further on specific issues.

20. The coordinator on follow-up was invited by one State party to conduct a follow-up visit to Ireland from 21 to 23 June 2006 in order to discuss and assess the measures taken by the State party in order to follow-up on the Committee's conclusions and recommendations. The report of the coordinator on follow-up was then forwarded to the State party concerned. During the visit, which was arranged by the Department of Justice, Equality and Law Reform of the State party, the coordinator on follow-up met with government officials of the various departments involved in the implementation of the Committee's recommendations. He also met with the Irish Human Rights Commission and a specialized institution established by the State party, as well as with a wide range of civil society representatives and the Chair of the Strategic Monitoring Group of the National Action Plan against Racism adopted by the State party. The coordinator on follow-up was also given the opportunity to visit, as he had requested, an accommodation centre for asylum-seekers. This visit has been the only one arranged by a State party for the coordinator on follow-up. The coordinator found the visit extremely useful and informative.
21. Suggestions for strengthening the Committee's follow-up procedure were made by the Committee in 2007. As extensively outlined in a study submitted by the Committee to the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action in 2007 (A/HRC/4/WG.3/7), the Committee proposed the elaboration of an optional protocol to the Convention which would include, inter alia, the conduct of follow-up visits by the coordinator on follow-up. Taking into account the support expressed by the Intergovernmental Working Group, the development of the follow-up procedure of the Committee between 2004 and 2007, as well as the positive assessment of the follow-up visit undertaken by the coordinator on follow-up in June 2006 to one State party, the Committee has suggested that the practice of follow-up visits be further developed and that the framework for such visits be further elaborated upon, including through an optional protocol to the Convention.

(c) Follow-up procedure of the Committee on the Elimination of Discrimination against Women

22. At its forty-first session in June/July 2008, the Committee on the Elimination of Discrimination against Women decided to introduce a follow-up procedure whereby it would include a request to individual States parties in the concluding observations for information on steps taken to implement specific recommendations contained in those concluding observations. Such "follow-up" recommendations would be identified because they are urgent, protective and achievable. The request would call upon States parties to provide such information to the Committee within a period of one or two years. The Committee decided to assess the experience of its follow-up procedure in 2011.
23. A follow-up visit of the Committee to Luxembourg was conducted from 1 to 3 October 2008 by the Chairperson of the Committee and two Committee members who had acted as rapporteurs for the report of Luxembourg, accompanied by two members of the Secretariat at the invitation of the Government. The purpose of the visit was to follow-up the concluding observations adopted by the Committee on Luxembourg at its fortieth

session in January/February 2008. The visit was organized and coordinated by the Ministry for Equal Opportunities, who accompanied the delegation throughout. The Minister, Marie-José Jacobs, was particularly engaged in the visit, meeting with the delegation on the first day, accompanied by a representative of the Minister for Foreign Affairs, Olivier Baldauff, and the desk officer for the United Nations, and a number of times thereafter. The delegation met with the Minister of Education, the Minister of Labour and Employment and the Minister of Health, but was unable to meet with the Minister of Justice and for the Treasury and Budget as he was obliged to cancel the meeting. The delegation also met with the Inter-ministerial Committee on Gender Equality, the Committee on Women's Labour, the Committee on Foreigners, as well as several non-governmental organizations (Family Planning and the *Centre d'Information et de Documentation des Femmes* (CID-Femmes)) and the Luxembourg National Women's Council. It engaged in a one-and-a-half-hour discussion with Members of Parliament (the Juridical Committee and the Committee on Family, Equality and Youth). It held a two-and-a-half-hour discussion with the judiciary and the bar. Some members of the delegation also met with the Grand Duke and Grand Duchess.

24. At all times, the focus of discussions was implementation of the Convention and the concluding observations. Several issues were considered to be problematic. It was acknowledged, however, that much progress had been made. Throughout the visit, the importance of dissemination of the Convention, its Optional Protocol and the concluding comments was underlined as the visibility of these tools were essential to the promotion and protection of women's rights. The delegation also emphasized the importance of States parties' delegations to present reports, including representatives from all sectors with responsibility for implementation of the Convention. Significant emphasis was also put on the relevance of the Convention for a country like Luxembourg, which was governed by European human rights standards and directives, particularly in light of the greater breadth of the Convention.
25. The visit, which was the first of its kind undertaken by the Committee, showed the importance of follow-up on the reporting process. It also indicated how important it is for States parties to interact with members of treaty bodies at the national level. It was clear that, although the concluding observations had been disseminated, they had not been focused on, and the Convention, the Optional Protocol and the Committee were not widely known. There had been no input from non-governmental organizations on the most recent reporting process; this had unfortunately led to the Committee overlooking serious issues relating to reproductive health which should have been brought up with the delegation. The visit also highlighted the importance of follow-up in developed countries, particularly in Europe, where it is often thought that the United Nations mechanisms are less relevant. In terms of action by the Office of the High Commissioner for Human Rights, much more should be done to disseminate the output of treaty bodies, particularly to Parliaments, the judiciary and the legal profession. Much more should also be done to encourage the media to consider the treaty-body system as newsworthy.

3. Additional examples: Special Procedures of the Human Rights Council

26. The Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, classifies the replies to communications sent to Governments according to five categories:
- (a) “Largely satisfactory response” denotes a reply that is responsive to the allegations and that substantially clarifies the facts. It does not, however, imply that the action taken necessarily complies with international human rights law;
 - (b) “Cooperative but incomplete response” denotes a reply that provides some clarification of the allegations but that contains limited factual substantiation or that fails to address some issues;
 - (c) “Allegations rejected but without adequate substantiation” denotes a reply denying the allegations but which is not supported by documentation or analysis that can be considered satisfactory under the circumstances;
 - (d) “Receipt acknowledged” denotes a reply acknowledging that the communication was received but without providing any substantive information;
 - (e) “No response”.

C. Suggestions for strengthening the follow-up procedure of the Human Rights Committee

27. Extension of the request to States parties to send follow-up information within one year regarding all recommendations, including in concluding observations: this option would have the advantage of ensuring a thorough and nearly continuous monitoring by the Committee of the implementation of its recommendations by States parties. It is nevertheless not recommended by the Rapporteur for follow-up because some recommendations are not implementable within one year and most States would be unable to sustain the additional reporting burden.
28. The Special Rapporteur will consider ways to engage with field presences of the Office of the High Commissioner for Human Rights on issues regarding follow-up on the concluding observations of the Committee.
29. The Special Rapporteur will consider the linkages between the follow-up procedure of the Committee and the Universal Periodic Review.
30. If the State party fails to submit follow-up information, the Special Rapporteur should send a reminder to the State party concerned two months after the deadline for sending the information has elapsed. If no reply is received, another reminder should be sent after two months. In cases where a reply is overdue by more than six months, the Special Rapporteur will request and hold consultations with delegates from the State party to obtain the information sought or to arrange for a date by which the information will be sent by the State party delegation.

31. The task of the Special Rapporteur for follow-up ends as soon as the next periodic report is due, including in cases where the State party concerned has not yet sent any information on follow-up. A note verbale should be sent to the States parties concerned reminding them that their periodic report is due.
32. In order to facilitate and enhance the assessment of the follow-up reports received, information provided by States parties on each recommendation mentioned in the concluding observations and regarding which the State has been requested to provide follow-up information within one year could be classified according to the following categories:
 - (a) “Largely satisfactory” would denote follow-up information indicating that the State party has been responsive to the specific recommendations considered and that it has substantially implemented the recommendations made by the Committee.
 - (b) “Cooperative but incomplete” would denote follow-up information that provides some indication that the recommendations of the Committee have been partly implemented by the State party but also reveals that the State party has failed to address some issues raised by the Committee in its recommendations and expressions of concern.
 - (c) “Recommendation(s) not implemented” would denote the provision of follow-up information in which the State party has clearly stated that it is not prepared to implement the recommendation(s);
 - (d) “Receipt acknowledged” would denote that a follow-up report was sent by the State party but that it did not provide any substantive information on the status of implementation of the relevant recommendations.
 - (e) “No response”.
33. Progress made by States parties in the implementation of the recommendations included in the previous concluding observations of the Committee as well as the level of cooperation with the Committee under its follow-up procedure should be noted in the next concluding observations adopted by the Committee.

1. Publication of letters and reminders to States parties on the website of the Office of the High Commissioner for Human Rights

34. Reminders and letters sent to States parties regarding the follow-up procedure should be published on the website of the Office of the High Commissioner for Human Rights.

2. Follow-up visits

35. The Human Rights Committee encourages the further development of the practice of follow-up visits which would enable it to assess more thoroughly the implementation of its recommendations at the national level.
