

In November 2010, the Open Society Justice Initiative (OSJI) published *From Judgment to Justice: Implementing International and Regional Human Rights Decisions*. The first publication of its kind, the report comprehensively examines the challenges of implementing the decisions of international and regional human rights bodies, with separate chapters focusing in detail on the decisions of the European, Inter-American and African systems, as well as the individual communications procedure of the UN treaty bodies. In conjunction with the report's publication, OSJI also co-sponsored a two-day conference in Geneva on improving national-level implementation of the findings and recommendations of three of the United Nations' human rights mechanisms—treaty bodies, Special Procedures, and the Universal Periodic Review.

This document summarizes the key findings of OSJI's report with respect to implementation and follow-up of treaty body 'Views.' It also details the report's principle recommendations, as well as those of the conference as they relate to the state reporting and individual communications procedures of the treaty body system.

### Key Findings

- Although five treaty bodies are presently able to consider individual communications, the Human Rights Committee (HRC) has adjudicated by far the greatest number of communications to date and was the first to establish a rapporteurship for the follow-up of Views in 1990.
- According to the HRC's annual report for 2009, of the 546 cases in which a violation was found, only 67 cases—approximately twelve percent—have received a “satisfactory” response. Presently, the Committee considers dialogue with states parties to be “ongoing” in just over half of its cases, with some dating back to the mid-1980s. In another 35 percent of cases, the state of follow-up is unclear.
- A review of the HRC's recent annual reports reveals that several states have failed to respond at all to the Committee's decisions. Still other states have responded to the Committee only belatedly, and have merely used the opportunity to contest anew the basis for the communication, or raise objections they did not make when the case was first under the Committee's consideration.
- Some of the more particularized treaty bodies, such as CAT and CEDAW, have been more successful with the implementation of Views. According to its annual report, CAT has almost a 50 percent compliance rate, while CEDAW, although registering far fewer complaints, has had some successes. CEDAW's more rigorous follow-up methods, and more prescriptive approach to remedies, are notable in this regard.
- Though there is no clear pattern as to which cases are more frequently implemented, there have been cases where states will either compensate claimants (often on an *ex gratia* basis) or issue some form of individual remedy; however, larger, policy-based changes are rare.

- Generally, successful implementation has occurred in cases with high political visibility and cases brought against states with a sophisticated rule of law tradition. It is also frequently due to a strong civil society capable of complementing a committee's follow-up efforts and applying other domestic pressures.
- There are also instances in which successful dialogue between a committee and the state party has served an important persuasive function that can build momentum for larger reforms.
- Follow-up remains grossly under resourced throughout the treaty body system. While the special rapporteur can play an important role in pressuring states, the time and resources needed for effective follow-up are lacking.

## **Principle Recommendations**

### Treaty Bodies

- Appoint additional follow-up rapporteurs to monitor implementation of treaty body Concluding Observations and Views. In this regard, consider the appointment of several follow-up rapporteurs who could each handle a smaller portfolio of cases, perhaps on a country or theme-specific basis.
- Continue efforts to harmonize working methods and develop common methods for follow-up across treaty bodies.
- Allocate more meeting time to consider state reports and communications.
- Develop a digest of remedies jurisprudence, in order to improve the specificity and practicability of implementing treaty body Views. Similarly, prioritize treaty body Concluding Observations and stipulate fixed time periods within which states must report back regarding implementation of key recommendations.
- Provide more thorough and comprehensive reasoning in committee decisions; this would help provide a stronger intellectual foundation for any follow-up measures.
- Systematically engage national and legislative human rights institutions (NHRIs, ombudspersons, and/or parliamentary committees) to ensure better understanding of local context, monitor follow-up, and facilitate implementation.

### OHCHR

- Allocate greater resources to support follow-up rapporteurs. These resources should include support for in country follow-up missions.
- Improve the visibility, accessibility and accuracy of information pertinent to state implementation. State replies need to be more precisely classified and clearer criteria should be developed for what constitutes satisfactory implementation; the index adopted by Philip Alston, former Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution should be particularly examined in this regard. The inclusion of data on compliance with interim measures would also be useful.
- Provide information on the non-implementation of treaty body Views as part of the UPR process. Presently, this information is not provided to the UPR.
- The High Commissioner for Human Rights should continue to raise the non-implementation of treaty body views in her meetings with state representatives.
- Consider the creation of a dedicated Treaty Body Follow-Up Coordination Unit, or senior coordinator responsible for follow-up, within OHCHR.

### Other UN Mechanisms

- With additional support from OHCHR, formalize cooperation between the treaty bodies and Special Procedures so that they may address, where appropriate, lack of or partial implementation of their respective decisions and recommendations.
- Greater consideration should be given to collaboration between UN treaty bodies and the Human Rights Council, without infringing on treaty body independence. The Council is a political body capable of exerting pressure on other states and, in certain cases, may be a useful tool to press for implementation.
- Treaty bodies should invoke and follow up on UPR recommendations in their reporting and recommendations. Similarly, the UPR should continue to refer to treaty body recommendations as part of the review process, while distinguishing them clearly from the recommendations issued by peers.
- Treaty body members, with support from OHCHR, should inform and seek information from relevant UN agencies to improve information sharing, best practices, and targeting of technical assistance.
- Improve cooperation between UN Country Teams and human rights mechanisms to ensure information sharing, effective monitoring, and technical assistance to support implementation.

### States

- Reply promptly to follow-up inquiries of treaty bodies and develop a national action plan for implementing Concluding Observations.
- Appoint a properly resourced national focal point person and/or legislative body responsible for monitoring implementation.
- Establish formalized channels of communication between government agencies and among executive, legislative, and judicial branches to facilitate inter-agency cooperation and clarify implementation responsibilities.

### NHRIs

- NHRIs should follow up on the implementation of Views and Concluding Observations; in so doing, they should remain engaged with treaty body members.
- Common criteria need to be elaborated for how NHRIs can best engage in monitoring implementation. Guiding principles should likewise be developed for legislative and/or parliamentary human rights monitoring.
- International and local NGOs and NHRIs should work with current members of treaty bodies to host follow-up missions.

### Civil Society

- Advocates should be more strategic and thoughtful in considering which treaty body is the best forum for litigation and where other UN mechanisms, such as the Special Procedures, might be more effective.
- Craft with care requested remedies for the treaty bodies to consider asking of states.
- Prioritize follow-up at the domestic level, including advocacy before government officials, parliamentary bodies, and by citing to treaty body decisions in domestic courts.