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Inter-committee meeting of the human rights treaty bodies Working Group on Follow-up of the Human Rights Treaty Bodies

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Follow-up procedures of human rights treaty bodies on concluding observations, inquiries and visits

Note by the Secretariat

I. Introduction

1. Recognizing the need to further improve and harmonize the working methods of the human rights treaty bodies, the tenth inter-committee meeting reiterated its previous recommendation (A/64/276, para. 49 (j) and (m)) to establish a working group on follow-up, composed of both the rapporteurs on follow-up to concluding observations and the rapporteurs on follow-up to individual communications of each treaty body, if applicable, or the members responsible for follow-up activities. It also recommended that the working group be divided into two subgroups, one on follow-up to concluding observations and inquiries/visits, and one on follow-up to individual communications. This recommendation was endorsed by the Chairpersons of treaty bodies at their twenty-second meeting in July 2010. This note was prepared to serve as a basis for discussion in the subgroup on concluding observations and inquiries/visits.

2. While it should be stressed that the treaty bodies have also engaged in a variety of follow-up activities, including workshops at national and regional level and country visits, the note will focus essentially on the existing written follow-up procedures adopted by a number of committees in respect of concluding observations, inquiries and visits. It provides information regarding the convergence and divergence of these procedures, highlights their added value and the challenges they bring. The paper also provides suggestions on ways to strengthen and harmonize them, particularly in respect of concluding observations, and offers a few options for the future.

II. Follow-up procedures for concluding observations

3. In the light of the initiatives taken by the Human Rights Committee and the Committee against Torture, the inter-committee meeting recommended, at its second meeting in June 2003, that “all treaty bodies should examine the possibility of introducing procedures to follow up their recommendations” (A/58/350, annex I, para. 42) and reiterated this call at its subsequent meetings. Bearing in mind the need to ensure effective follow-up to concluding observations, this idea was refined over the years to include “the appointment of a rapporteur on follow-up or any other appropriate mechanism” (A/63/280, para. 42 (e)–(g)). In 2009, the tenth inter-committee meeting reaffirmed that follow-up procedures were an integral part of the reporting procedure and an important aspect of the work carried out by the treaty bodies in order to ensure effective follow-up to concluding observations. It re-emphasized the recommendation of previous meetings that each treaty body should consider adopting a procedure within a reasonable time period, suggesting that such a procedure could include a request to States parties to respond, within a designated period of time, to priority issues identified by the Committee (A/65/190, para. 40 (e)).

4. With a view to strengthening and harmonizing the follow-up procedures on concluding observations, the tenth inter-committee meeting recommended that the modalities of these procedures should be developed by each treaty body, further elaborated and acted upon within the working group on follow-up. In the view of the inter-committee meeting, the procedure should consist of one or more mandate holder(s) assessing the information provided by States parties and developing, as necessary, pertinent criteria for analysis of the information received. It also recommended that the working group on follow-up should serve as a tool for the harmonization of such procedures. Furthermore the inter-committee meeting has invited each treaty body to complete an assessment and analysis of its follow-up procedure, identifying difficulties, obstacles and results, by 2011, with a view to facilitating the task of the working group on follow-up (A/65/190, para. 40 (f)). In parallel, the inter-committee meeting has also called for the allocation of additional resources to follow-up activities, especially workshops, meetings and country visits on the invitation of States parties concerned, and encouraged treaty body members to be more involved in those activities (A/65/190, para. 40 (h)).

A. Convergence and divergence of the follow-up procedures

5. All treaty bodies request States parties to provide information on implementation of the recommendations contained in previous concluding observations 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 have adopted formal procedures to monitor more closely the implementation of specific concluding observations in between two reporting cycles — requesting States to provide a written report on these recommendations within one or two years from the adoption of the concluding observations. At the time of writing this note, the Committee on Economic, Social and Cultural is discussing the modalities of a new follow-up procedure.

1. Human Rights Committee

6. Pursuant to rule 71, paragraph 5, of its rules of procedure, the Human Rights Committee identifies a number of specific recommendations in its concluding observations (ranging between three to four) as requiring immediate attention and that can be implemented within a very short period of time, and requests the State party to provide

additional information on their implementation within a set period of one year. The concluding observations set the date of submission of the next periodic report. Since October 2006, the procedure has been applied in cases where the Committee examines implementation of the Covenant by a State party in the absence of a report. The Committee examines the rapporteur's follow-up progress report in a public meeting and includes a chapter on follow-up in its annual report to the General Assembly. At its ninety-fourth session in October 2008, the Committee decided that the follow-up progress report produced by the rapporteur at each session and submissions from non-governmental organizations on follow-up should be published on the Committee's web page, together with the follow-up replies from States parties. At its ninety-fifth session in March/April 2009, the Committee adopted a paper prepared by the rapporteur on follow-up to concluding observations aimed at strengthening its follow-up procedure, in particular through the establishment of criteria allowing for a qualitative assessment of the information on follow-up provided by States. This information is assessed according to the following categories:

(a) "Largely satisfactory" denotes 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" implies 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" denotes 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" denotes 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; and

(e) "No response".¹

While the Committee on the Elimination of Discrimination against Women has also adopted criteria for a qualitative assessment of follow-up information received from States parties, the Committee against Torture and the Committee on the Elimination of Racial Discrimination have not adopted such defined categories.

7. Once the follow-up information is received by the rapporteur, he undertakes an assessment by carefully analyzing 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 rapporteur's assessment. Currently, most follow-up information provided is classified as partially incomplete and, based on such finding, the rapporteur sends a letter to the State party requesting additional information, detailing the exact information needed by the Committee.

8. If the State party fails to submit information, the rapporteur sends a reminder or reminders and, in cases where a reply is long overdue, he requests and holds consultations

¹ Paper of the Special Rapporteur for follow-up on concluding observations: Strengthening of the follow-up procedure, CCPR/C/95/3, para. 32.

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.

9. The Special Rapporteur then presents a follow-up progress report at each session 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 implements the action accordingly.

2. Committee against Torture

10. At the end of each set of concluding observations, the Committee against Torture identifies a limited number of recommendations ranging from three to six that warrant a request for additional information following the consideration of a State party's periodic report and requests follow-up information within one year. Such "follow-up" recommendations are identified because they are serious, protective and considered possible to accomplish within one year (rules of procedure, rule 68, para. 1). These recommendations are most frequently requests for specific measures to prevent acts of torture and ill-treatment. Thereby, the Committee assists States parties in identifying effective legislative, judicial, administrative and other measures to bring their laws and practice into full compliance with the obligations set forth in the Convention. The Committee appoints a rapporteur to monitor the State party's compliance with these requests, who presents progress reports to the Committee on the results of the procedure.² At its forty-second session in May 2009, the Committee decided to assess and analyse its follow-up procedure, identifying difficulties, obstacles and results, by 2010.

11. From when the procedure was established at the thirtieth session in May 2003 up until the end of the forty-fourth session in May 2010, the Committee has reviewed 95 reports from States parties for which it has identified follow-up recommendations. It must be noted that four periodic reports have been examined twice by the Committee since the establishment of the follow-up procedure. Of the 81 States parties that were due to have submitted their follow-up reports to the Committee by 14 May 2010, 57 had completed this requirement. As of 14 May 2010, 24 States had not yet supplied follow-up information that had fallen due.

12. The Rapporteur sends reminders requesting outstanding information to each of the States for which follow-up information is due but not yet submitted. The status of the follow-up to concluding observations may be ascertained from the web pages of the Committee at each of the respective sessions. As of 2010, the Committee has established a separate web page for follow-up.

13. The Rapporteur has assessed the responses received to review whether all the items designated by the Committee for follow-up have been addressed, the information provided responds to the Committee's concern and further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with

² Chapter IV of the Committee's annual report for 2005-2006 (A/61/44) describes the framework that the Committee initially developed to provide for follow-up subsequent to the adoption of the concluding observations. It also presents information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2006. Chapter IV of the Committee's annual report for 2006-2007 (A/62/44) updates the Committee's experience with respect to the follow-up procedure to 18 May 2007, the end of its thirty-eighth session.

specific requests for further clarification. She requests the outstanding information from States that have not supplied any follow-up information.

14. At its thirty-eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties, which are therefore posted on the web page of the Committee. The Committee further decided to assign a United Nations document symbol to all States parties' replies to the follow-up and place them on its website.

15. The Rapporteur initiated a study of the Committee's follow-up procedure, beginning with an examination of the number and nature of topics identified by the Committee in its requests to States parties for follow-up information. She reported to the Committee on some preliminary findings in November 2009 and in May 2010 and, in particular, presented charts showing that the number of topics designated for follow-up has substantially increased since the thirty-fifth session. Of the 87 countries examined as of the forty-third session in November 2009, one to three paragraphs were designated for follow-up for 14 States parties, four or five such topics were designated for 38 States parties, and six or more paragraphs were designated for 35 States parties. The Rapporteur drew this trend to the attention of the members of the Committee and it was agreed in May 2010 that, whenever possible, efforts would henceforth be made to limit the number of follow-up items to a maximum of five paragraphs.

3. Committee on the Elimination of Racial Discrimination

16. In accordance with rule 65 of its rules of procedure, the Committee on the Elimination of Racial Discrimination may request further information or an additional report concerning, inter alia, any action taken by States parties to implement the Committee's recommendations. At the end of its concluding observations, the Committee requests States parties to provide information on three to four recommendations within one year. In 2004, the Committee decided to strengthen its follow-up procedure and appointed a coordinator and an alternate for a period of two years. In accordance with the terms of reference for the work of the coordinator,³ in fulfilling his/her tasks, he or she should cooperate with country rapporteurs and is responsible for monitoring respect by the State party for deadlines set by the Committee. The coordinator is responsible for sending reminders (within a month of expiry of the deadline) to a State party when it has not supplied the additional information on time. The coordinator analyses and assesses the information received from the State party pursuant to a request by the Committee for further information. This task is shared with the country rapporteur. If the coordinator finds that further information is needed, he or she then takes the matter up with the State party. The coordinator may make recommendations for appropriate action to the Committee when information under the follow-up procedure is received or fails to arrive. The coordinator 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. The coordinator submits a succinct progress report to the Committee at each session. The Committee sets aside time for discussion of the coordinator's findings and the adoption of formal recommendations, if any, including, where appropriate, reconsideration of the date on which the next periodic report of the State party is due. The meeting is held in private. The coordinator's findings are included in the chapter of the annual report to the General Assembly on follow-up activities. If no information is received

³ CERD/C/66/Misc.11/Rev.2, 10 March 2005.

in spite of reminders, this fact will be recorded in the Committee's subsequent report to the General Assembly. The Committee on the Elimination of Racial Discrimination has developed guidelines to follow up concluding observations and recommendations (CERD/C/68/Misc.5/Rev.1), which are transmitted to the State party together with the concluding observations. However, these do not provide guidance to the State party on page limits or any other aspect of the follow-up response requested. Of the 73 follow-up reports due since the beginning of the procedure, 30 had been received as of 30 September 2010 and 43 reports remain outstanding.

17. Letters sent by the Chairperson include specific comments on the replies provided by the State party on the relevant recommendations. On some occasions, while expressing its appreciation for the replies provided, the Committee has expressed its regret that they did not comment directly on the specific recommendations contained in the relevant concluding observations. Consequently, the State party was requested to comment further on some specific issues.

4. Committee on the Elimination of Discrimination against Women

18. At its forty-first session, in July 2008, the Committee on the Elimination of Discrimination against Women decided to introduce a follow-up procedure whereby it would include in its concluding observations a request for information on steps taken to implement specific recommendations adopted therein. The request would call upon States parties to provide such information to the Committee within two years (decision 41/III).

19. During its forty-fourth session, the Committee appointed a rapporteur on follow-up and an alternate for a period of one year. It decided that a maximum of two recommendations would be identified as follow-up items for each State party and that the response by the State party would be made public. The criteria for the choice of these recommendations would be that their lack of implementation constituted a major obstacle for the implementation of the Convention and implementation was feasible within two years. Where possible, the follow-up rapporteur will collaborate with the country rapporteur in the assessment of the follow-up report. The follow-up rapporteur should report to the Committee at each session in a private meeting at which his or her recommendations are adopted by the Committee. His or her report is subsequently incorporated in the report of the Committee to the General Assembly. At its forty-sixth session in July 2010, the Committee further decided that the mandate of the rapporteur on follow-up and his or her alternate should run for two years.

20. The first follow-up reports were received in 2009 and the Committee has decided to assess its experience in 2011. In January 2010, the Committee adopted procedural guidelines to assess follow-up reports. Similarly to the Human Rights Committee, the methodology of the Committee on the Elimination of Discrimination against Women provides for a qualitative assessment based on predefined categories as follows:

(a) "Implemented" denotes that the follow-up information indicates that the State party has been responsive to the specific recommendations considered and has substantially implemented the recommendations made by the Committee;

(b) "Partially implemented" denotes that the follow-up information received indicates that the recommendations of the Committee have been partly implemented by the State party, but also that the State party has failed to address some issues raised by the Committee in its recommendations and concerns. On the basis of the recommendations considered "partially implemented", the Rapporteur will select which action to take, which may include but not be limited to the following: "request further clarifications" and/or "recommend technical assistance";

(c) “Not implemented” denotes that the follow-up information provided indicates that the State party clearly states that it is not prepared to implement the recommendation(s). On the basis of the recommendations considered “not implemented”, the Rapporteur will select which action to take, which may include but not be limited to the following: “request further clarifications” and/or “recommend technical assistance” and/or consider “conducting country visits”

(d) “No response”. On the basis of a lack of response by the State party, the Rapporteur will issue a “reminder”.

21. At the time of writing this note, of the 13 follow-up reports due since the establishment of the procedure, six have been received. Reminders are sent two and four months after the deadline for submission of the reports has passed. If no reply is received after six months, the rapporteur on follow-up may hold consultations with State Party.

5. Committee on Economic, Social and Cultural Rights

22. The Committee on Economic, Social and Cultural Rights has included a reference to its procedures on follow-up in all its annual reports since 1993. The Committee may, in its concluding observations, make a specific request to a State party to provide more information or statistical data prior to the date on which the next periodic report is due. Information provided in accordance with this procedure will be considered at the next pre-session working group, which, based on that information, can recommend that the Committee take note of the information, adopt specific additional concluding observations in response to that information, recommend that the matter be pursued through a request for further information or authorize the Chairperson to inform the State party, in advance of the next session, that the Committee will take up the issue at that session, preferably in the presence of a representative of the State party. If the additional information requested in accordance with these procedures is not provided by the specified date or is considered to be unsatisfactory, the Chairperson, in consultation with the Bureau, may pursue the matter with the State party, but this procedure is rarely used. Where the Committee has been unable to obtain the information it requires, it may request that the State party accept a technical assistance mission consisting of one or two Committee members, an approach which it has applied in relation to two States parties. In cases where the State party is unwilling to accept the proposed mission, the Committee may make appropriate recommendations to the Economic and Social Council. The Committee entrusts its country rapporteurs with the task of following up on the countries for which they served as rapporteur in the inter-sessional period until the next time they appear before the Committee. The Committee is discussing the modalities of a new procedure at the time of this note being drafted.

Table of convergence and divergence of the written follow-up procedures

	<i>Human Rights Committee</i>	<i>Committee against Torture</i>	<i>Committee on the Elimination of Racial Discrimination</i>	<i>Committee on the Elimination of Discrimination against Women</i>
Number of recommendations identified in each set of concluding observations under follow-up procedure	3-4	4-6	3-4	2
Time limit	1 year	1 year	1 year	1 to 2 years

	<i>Human Rights Committee</i>	<i>Committee against Torture</i>	<i>Committee on the Elimination of Racial Discrimination</i>	<i>Committee on the Elimination of Discrimination against Women</i>
Follow-up Rapporteur/Coordinator	Yes	Yes	Yes (+alternate)	Yes (+alternate)
Report of the Follow-up Rapporteur/coordinator examined by the Committee	In a public meeting	In a public meeting	In a private meeting	In a private meeting
Report of the Follow-up Rapporteur/coordinator is included in the report to the General Assembly	Yes	Yes	Yes	Yes
Qualitative assessment of follow-up report on the basis of categories	Yes	No	No	Yes
Procedural guidelines for the follow-up procedure	Yes	No	No	Yes
Guidelines for States on follow-up report (format/length)	No	No	No (This Committee has adopted guidelines for States on follow-up to concluding observations, but they do not refer to the format or the length of the follow-up report)	No
Adoption of criteria for follow-up recommendations	No	Yes	No	Yes
Periodicity of reminders	Two and four months after deadline If no reply is received after six months, the rapporteur may hold consultations	Six months after deadline	One month after deadline	Two and four months after deadline If no reply is received after six months, the rapporteur may hold consultations

	<i>Human Rights Committee</i>	<i>Committee against Torture</i>	<i>Committee on the Elimination of Racial Discrimination</i>	<i>Committee on the Elimination of Discrimination against Women</i>
	with State Party			with State Party
Information publicized on the Committee's follow-up web page	1. Follow-up report 2. Information from other sources 3. Letter by the Rapporteur	1. Follow-up report 2. Information from other sources 3. Letter by the Rapporteur	1. Follow-up report 2. Letter by the Chair	1. Follow-up report 2. Information from other sources 3. Letter by the Rapporteur 4. Reminders to States parties

B. Added value of the written follow-up procedure

23. In light of the current backlog faced by most committees and the late submission of a large number of States parties reports, more than six years may elapse in some cases between the adoption of concluding observations and the next country review. This situation renders the effective monitoring of urgent recommendations by the respective committees an extremely challenging task. The follow-up procedure, as established by 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, allows these committees to potentially be informed by the States parties concerned and interested stakeholders on the progress achieved on a number of specific recommendations requiring urgent action. It further allows the relevant committees to review their level of implementation at national level over a relatively short period of time. The committees' comments, which are communicated in writing by the Rapporteur or the Chair to the concerned States parties, provide an opportunity for States to take corrective measures if needed to further strengthen the implementation of the Committee's recommendations before the next review.

24. Under its follow-up procedure, the Human Rights Committee identifies recommendations that require immediate attention and that, in the view of the Committee, can be implemented within a year. The Committee against Torture selects recommendations that are "serious, protective, and are considered possible to accomplish within one year". For the Committee on the Elimination of Discrimination against Women, the lack of implementation of the recommendations identified under this procedure would constitute a major obstacle for the implementation of the Convention as a whole and should be achievable within the set time frame of one or two years. In the light of the selection criteria mentioned above, the written follow-up procedure is a monitoring mechanism which offers an increased protection to rights holders. The assessment, which the committees having adopted such procedure will soon embark on, as reiterated by the eleventh inter-committee meeting, will further develop these preliminary remarks and bring to light new elements regarding their added value.

C. Challenges of the written follow-up procedures

25. A preliminary assessment of the written follow-up procedures allows for the identification of a number of challenges that will need to be addressed in the upcoming evaluation within the concerned committees.

1. Lack of procedural guidelines

26. While the Human Rights Committee and the Committee on the Elimination of Discrimination against Women have adopted procedural guidelines to process the information received from States parties under the follow-up procedure, the Committee against Torture and the Committee on the Elimination of Racial Discrimination have not done so. These procedural guidelines provide guidance to the committee and the secretariat on how the follow-up reports should be assessed, the frequency at which reminders should be sent, when the follow-up procedure should be considered completed and how the Committee should interact with stakeholders. The lack of a written methodology may put in question the sustainability of the procedure, as it poses a risk of loss of institutional memory in case the rapporteur/coordinator leaves the committee, also taking into account the important turnover of staff in the Secretariat.

2. Lack of set limit to the number of issues identified

27. The Committee on the Elimination of Discrimination against Women is the only committee that has formally set a limit to the number of recommendations identified under its follow-up procedure (not exceeding two),⁴ while the practice varies between three to six recommendations in the other committees. In some cases, the number of recommendations requiring written information within a year may be perceived as an extra burden by States parties and may contribute to the late submission of a number of follow-up reports.

3. Absence of follow-up reporting guidelines

28. None of the four committees concerned have adopted guidelines for States parties in respect of follow-up reports. The Secretariat has at times received queries regarding the format and the page limit to be followed. In the absence of such guidance, some reports may be too lengthy, which further limits the overstretched capacity of the United Nations Conference Services and creates additional delays in respect of the timely translation of the reports.

4. Increased workload

29. The written follow-up procedures have also considerably increased the workload of the concerned treaty bodies and their respective secretariats, particularly in light of the current shortage of human resources. The Committee on the Rights of the Child established a follow-up procedure in 1993. Under this procedure, the Committee requested a number of States parties to submit follow-up information (“progress reports”) on specific issues within a deadline explicitly referred to in the concluding observations. In 1998, the Committee decided to suspend the follow-up procedure as it was no longer considered an optimal approach for two main reasons, notably: (a) the Committee’s decision to use all its limited time for the consideration of periodic reports given the backlog of State party reports pending consideration; and (b) the significant role that the United Nations Children’s Fund (UNICEF) and other United Nations agencies were playing at country level in the follow-up process to the Committee’s concluding observations.

⁴ Decision 41/III.

5. Late submission and incomplete information

30. In some instances, follow-up reports are received long after the deadline has passed and examined by the rapporteur/coordinator in a period very close to the submission of the next periodic report. This delay in the reporting, and the validation of the information received (which also takes time) may in some cases defeat the purpose of the follow-up procedure, as the information is assessed at a very late stage of the process. In such situations the main goal of the procedure – namely the enhancement of the protection of rights holders at national level – is not achieved.

31. In addition, the information submitted may be insufficient to allow for a thorough assessment of the level of implementation of the recommendations identified by the respective committees. In such a situation, all four treaty bodies will subsequently ask the State party to provide complementary information, sometimes to be included in the next periodic report or before the next reporting cycle. Some treaty bodies will end the follow-up review once the next periodic report is submitted, while others will continue to seek additional information on outstanding issues, sometimes after the next periodic report is received.

6. Insufficient interactions with stakeholders

32. While most committees maintain a high level of interaction with stakeholders, including United Nations field presences, civil society and national human rights institutions in preparation for and during the examination of a State party report, their interaction with stakeholders in the follow-up phase to concluding observations is generally more limited. This lack of interaction with stakeholders during this crucial phase limits the capacity of treaty bodies to efficiently monitor progress achieved at national level.

D. Strengthening the existing follow-up procedures

33. In light of the preliminary assessment above and recalling the recommendation of the tenth inter-committee meeting to the effect that the working group on follow-up should serve as a tool for harmonization of such procedures, a number of suggestions to strengthen and streamline the existing follow-up procedures are made below.

1. Adoption of procedural guidelines

34. Treaty bodies that have not yet adopted a written methodology to assess the follow-up reports could consider doing so by developing categories for qualitative assessment of information possibly based on the approach of the Human Rights Committee and the Committee on the Elimination of Discrimination against Women (see paras. 6 and 20).

35. This methodology could include deadlines for sending reminders to States parties, possibly two and four months after the deadline has passed, similarly to the practice of these two committees. It could also clarify by when the follow-up review should be considered completed, for instance with the submission of the next periodic report (as information on outstanding issues can be sought in the lists of issues or the constructive dialogue if not provided in the periodic report). Furthermore, committees concerned could consider strictly limiting the number of issues identified under their respective follow-up procedures to three or four recommendations to keep the procedure focused and enhance its effectiveness. In addition, clear criteria for the selection of recommendations could also be formulated to facilitate their identification.

2. Developing guidelines for follow-up reports

36. All committees could consider developing guidelines for States parties to facilitate the preparation of follow-up reports. Such guidelines could include a page limit which could vary between 10 and 15 according to the number of issues identified, as each committee will have determined.

3. Interactions with stakeholders

37. Treaty bodies engage with stakeholders in various degrees depending on their networks, policies and practices; this interaction occurs in the context of follow-up to concluding observations but to a lesser extent. Efforts could be made to increase the visibility of the written follow-up procedure so as to ensure systematic input of United Nations country teams, United Nations entities, national human rights institutions and civil society actors at national level. The committees concerned, with the assistance of the Office of the United Nations High Commissioner for Human Rights, could also explore ways to engage with United Nations field presences to maximize the implementation of concluding observations including those identified under the follow-up procedure.

4. Integrated approach of the follow-up procedures

38. All treaty bodies could consider engaging more systematically with the mandate holders of the Human Rights Council special procedures in areas relating to the follow-up procedures, so as to ensure that the selected recommendations are given special attention in the context of a country visit or during a meeting with relevant Government officials. With respect to the linkages between the follow-up procedures and the universal periodic review, all treaty bodies' recommendations, including those identified under the follow-up procedures, should continue to be referred to in the compilations prepared by the Office of the High Commissioner for Human Rights.

5. Follow-up visits

39. Treaty bodies could envisage the conduct of follow-up visits which would enable them to assess more thoroughly the implementation of their recommendations at the national level. In a study submitted by the Committee on the Elimination of Racial Discrimination 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. Bearing in mind the support expressed by the working group, the development of the follow-up procedure of the Committee between 2004 and 2007 and 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. In order to enhance the dialogue between it and States parties and facilitate the practical implementation of the Convention, the Committee was of the view that country visits could be envisaged in cases where it, in consultation with the State party, considers that such visits would further enhance the objectives of the Convention and allow the Committee to obtain as detailed and comprehensive a picture as possible of the situation concerning racism and intolerance in States parties to the Convention (views of the Committee on the implementation of the Convention and its effectiveness, E/CN.4/2004/WG.21/10, para. 25).

40. The Committee's Coordinator on follow-up was invited by one State party to conduct a follow-up visit from 21 to 23 June 2006 in order to discuss and assess the measures taken by the State party to follow up 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 State officials of the various departments involved in the implementation of the Committee's recommendations. He also met with the national human rights institution 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 Strategy against Racism established 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.

41. At the invitation of one State party, a follow-up visit of the Committee on the Elimination of Discrimination against Women was conducted from 1 to 3 October 2008 by the Chairperson of the Committee and two members who had acted as rapporteurs for the report of the State party concerned, accompanied by two members of the Secretariat. The visit was organized and coordinated by the Ministry for Equal Opportunities, who accompanied the delegation throughout. The delegation met with the Ministry of Education, the Minister of Labour and Employment. It also met with the Interministerial Committee on Equality, the Committee on Women's Labour, the Committee on Foreigners and several NGOs. It engaged in a one and a half hour discussion with the Members of Parliament. It held a two and a half-hour discussion with the judiciary and the bar.

42. Members of the Committee on the Rights of the Child regularly take part in follow-up visits either at the invitation of States parties authorities or more informally in their respective regions and have participated in seven regional follow-up workshops between 2003 and 2007.

E. Alternative follow-up mechanisms

43. While enhancing the monitoring role of the committees concerned, the written follow-up procedure faces a number of constraints already referred to, notably an increased workload for treaty bodies, their secretariats and Conference Services, taking into account the shortage of human and financial resources available. In light of these limitations, committee members could consider alternative ways to monitor the implementation of their recommendations.

44. Treaty bodies could envisage undertaking country visits to monitor progress of these recommendations. Such visits could take place either at the invitation of States parties concerned or, more informally, through a greater involvement of individual treaty body members in their respective regions, as is already the case in some committees, notably the Committee on the Rights of the Child. This mode of interaction could include bilateral meetings of experts with State officials, representatives of national human rights institutions and civil society actors. Committee members could then provide a progress report to their respective committees on the level of implementation of their recommendations.

45. Committees that have adopted lists of issues prior to reporting could consider using them as an additional tool for follow-up, which should allow for the provision of more specific information regarding follow-up to previous recommendations. A better-streamlined and more focused report under the lists of issues prior to reporting should allow for more precise concluding observations, which in turn will help better target issues for follow-up. In the subsequent reporting round for States parties wishing to use the new optional reporting procedure, the new lists of issues prior to reporting could raise questions requesting States parties to provide information on the follow-up given to these recommendations.

46. In their concluding observations, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child invite States parties to transmit their recommendations to their parliament, which should take the necessary steps with regard to implementation of the recommendations. Other treaty bodies could consider including a similar request in their concluding observations, recalling that while the Government has the primary responsibility and is particularly accountable for the full implementation of the obligations of a State party, the international human rights treaties ratified are binding on all branches of Government.

III. Follow-up procedures for inquiries/visits

A. Inquiries

47. Three of the treaty bodies — the Committee against Torture, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of Persons with Disabilities — may, at their own initiative, initiate inquiries if they have received reliable information containing well-founded indications of serious, grave or systematic violations of the conventions in a State party. Only the two former have undertaken inquiries to date. Article 11 of the Optional Protocol to the Covenant on Economic, Social and Cultural Rights also creates an inquiry procedure, setting out that if the Committee receives reliable information indicating grave or systematic violations of the Covenant, the Committee shall invite that State Party to cooperate in the examination of the information and, to this end, to submit observations with regard to the information concerned. The inquiry may include a visit to the territory of the State Party concerned. At the time of writing this note, the Optional Protocol has not yet entered into force.

48. Inquiries may only be undertaken with respect to States parties who have recognized the competence of the relevant committee in this regard. States parties to the Committee against Torture may opt out, at the time of ratification or accession, by making a declaration under article 28; States parties to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women may similarly exclude the competence of the Committee by making a declaration under article 10 of the Optional Protocol. States parties to the Optional Protocol to the Convention on the Rights of Persons with Disabilities may also exclude the competence of the Committee by making a declaration under article 8 of the Optional Protocol at the time of signature, ratification or accession to the Protocol. Any State which opts out of the procedure may decide to accept it at a later stage.

49. Article 20 of the Convention against Torture, articles 8 to 10 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and article 6 and 7 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities set out the following basic procedure for the relevant Committee to undertake urgent inquiries.

50. The procedure may be initiated if the Committee receives reliable information indicating that the rights contained in the Convention are being systematically violated by the State party. In the case of the Committee against Torture, the information should contain well-founded indications that torture is being systematically practiced in the territory of the State party; in the case of the Committee on the Elimination of Discrimination of Women and the Committee on the Rights of Persons with Disabilities, the information should indicate grave or systematic violations of the rights set forth in the Convention by a State party. The first step in the procedure requires the Committee to

invite the State party to cooperate in the examination of the information by submitting observations.

51. The Committee may, on the basis of the State party's observations and other relevant information available to it, decide to designate one or more of its members to make a confidential inquiry and report to the Committee urgently. For the Committee against Torture, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of Persons with Disabilities, the inquiry may include a visit in situ with the consent of the State party. The findings of the member(s) are then examined by the Committee and transmitted to the State party together with any appropriate comments or suggestions/recommendations;

52. The Committee on the Elimination of Discrimination against Women and the Committee on the Rights of Persons with Disabilities procedures set a six-month deadline for the State party to respond with its own observations on the Committee's findings, comments and recommendations and, where invited by the Committee, to inform it of the measures taken in response to the inquiry. The Committees may decide, in consultation with the State party, to include a summary account of the results of the proceedings in their respective annual reports. This procedure is confidential and the cooperation of the State party must be sought throughout the proceedings.

53. Paragraph 1 of Rule 90 of the Committee on the Elimination of Discrimination against Women provides that "the Committee may, through the Secretary-General, invite a State party that has been the subject of an inquiry to include, in its report under article 18 of the Convention, details of any measures taken in response to the Committee's findings, comments and recommendations". According to paragraph 2 of Rule 90, "the Committee may, after the end of the period of six months referred to in paragraph 2 of rule 89 ..., invite the State party concerned, through the Secretary-General, to inform it of any measures taken in response to an inquiry".

54. After its first inquiry in Mexico in 2003, the Committee — having considered the Government's observations — decided, in accordance with article 9, paragraph 2, of the Optional Protocol, to invite the State party to submit by 1 December 2004 a detailed report on steps taken, measures implemented and results achieved in relation to all the recommendations of the Committee contained in the Committee's findings transmitted to the State party on 23 January 2004. Such response was received in 2004 and both reports were made public in 2005 with the agreement of the State party.

55. In 2006, when examining the sixth periodic report of Mexico, the Committee expressed its concern "that crimes against and disappearances of women continue, and that ... efforts are insufficient to successfully complete investigations of cases and prosecute and punish the perpetrators as well as to provide access to justice, protection and compensation to victims and their families" (CEDAW/C/MEX/CO/6, para. 16). The Committee reiterated its recommendations made to the State party in relation to its inquiry (CEDAW/C/2005/OP.8/MEXICO) and requested the State party to "establish concrete monitoring mechanisms to systematically assess progress in the implementation of those recommendations and, in particular, progress in efforts aimed at the prevention of such crimes" (para. 17). The Committee on the Elimination of Discrimination against Women has not developed a written methodology in respect of its follow-up procedure, particularly regarding the assessment of the information received from the State party.

56. The Committee against Torture has not established a formal follow-up procedure. Upon the completion of the inquiry, the members responsible for the investigation submit their findings to the Committee, which considers those findings and transmits them to the State party with any additional comments or suggestions. The State party is then simply invited to inform the Committee of any action it plans to take in response to the findings.

Similarly, no reference to a follow-up procedure is contained in its Rules of Procedure. As regards confidential inquiries, rule 83, paragraph 2, of the Rules of Procedure provides only that “the State party concerned shall be invited to inform the Committee within a reasonable delay of the action it takes with regard to the Committee’s findings and in response to the Committee’s comments or suggestions”.

57. To date the Committee has carried out seven inquiries in the following countries: Brazil, Egypt, Mexico, Peru, Serbia and Montenegro, Sri Lanka and Turkey. Further to those inquiries, follow-up measures were requested by the Committee only in a few instances in its concluding observations or, more recently, in its list of issues prior to reporting.

58. The absence of a follow-up procedure to inquiries implies that, in most cases, the inquiry procedure will end when the Committee transmits its findings to the State concerned, without ensuring that concrete measures are taken by the State party to meet its obligations.

B. Visits of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

59. Pursuant to articles 11, paragraph 1 (a), and 16, paragraphs 1 and 2 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, following a visit to a State party, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment shall communicate its recommendations and observations to the State Party and, if relevant, to the national preventive mechanism. Also pursuant to article 16, paragraph 2, the Subcommittee shall publish its report, together with any comments of the State party concerned, whenever requested to do so by that State party. If the State party makes part of the report public, the Subcommittee may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.

60. In conformity with the above provisions, and following its first visit in October 2007, the Subcommittee has established the following follow-up procedure. In its letter of transmittal of its confidential visit report, the Subcommittee requests the State authorities to provide within six months a response giving a full account of actions taken to implement the recommendations and requests for information contained in the visit report. The Subcommittee makes due reference to article 12, subparagraph (d), of the Optional Protocol, which provides that in order to enable the Subcommittee to comply with its mandate as laid down in article 11, the States Parties undertake to examine its recommendations and enter into dialogue with it on possible implementation measures.

61. Once the follow-up information is received, the head of the Subcommittee’s delegation for the visit to the country undertakes an assessment by carefully analysing whether all the recommendations and requests for information have been addressed by the State party. Pursuant to article 16 of the Optional Protocol, the Subcommittee solicits information and the views of the national preventive mechanism(s), if relevant, with a view to taking them into consideration in its assessment. A detailed, analytical reply is then sent to the State party with a request for additional information if needed.

62. Pursuant to article 13, paragraph 4, of the Optional Protocol, if the Subcommittee considers it appropriate, it may propose a short follow-up visit after a regular visit. In that context, the Subcommittee has undertaken its first follow-up visit to Paraguay in September 2010. Following such a visit, a confidential follow-up visit report is addressed to the State authorities. The criteria for the selection of countries for a follow-up visit have not yet been formalized. One should note that during the preparation of follow-up visits, the Secretariat

takes into account information available from the State, treaty bodies, special procedures, United Nations field presences and civil society.

63. If the State party fails to submit follow-up information, the Chairperson of the Subcommittee sends a reminder or reminders and, where a reply is long overdue, he or she may request and hold consultations with the delegates from the State party to: obtain the information sought; explain the reason for which such information is sought; clarify what information is being sought; and/or arrange for a date by which the information will be sent by the State party.

64. Pursuant to article 16, paragraph 4, of the Optional Protocol, if the State party refuses to cooperate with the Subcommittee according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee, the Committee against Torture may, at the request of the Subcommittee decide, by a majority of its members, after the State party has had an opportunity to make its views known, to make a public statement on the matter or to publish the Subcommittee's report.

65. Information on Subcommittee visits and follow-up (including whether a follow-up reply is pending, has been received, is confidential or public at the request of the State party) is available on the relevant web page and in the Subcommittee's annual reports. The heads of Subcommittee delegations for visits report at each session on the status of the follow-up with the State party and, if relevant, with national preventive mechanisms. They propose to the Subcommittee the action to be taken, depending on the information received, if any, and its degree of completeness.

66. The Subcommittee is in the process of formalizing its methodology for follow-up to its visits. The follow-up procedure increases protection of rights holders, since it monitors the implementation of recommendations to the States parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment. It enables a continuous dialogue with the State authorities. Nevertheless, the follow-up procedure for Subcommittee visits requires an in-depth qualitative assessment of follow-up replies and represents an increased workload for the Subcommittee and the Secretariat.

IV. Conclusion

67. While highlighting that the written follow-up procedures to concluding observations, inquiries and visits are an additional tool to potentially increase protection of rights holders, this note identifies the lack of human and financial resources available and meeting time as the main challenge to their efficiency. Some of the potential weaknesses of the existing procedures to follow-up on concluding observations are also listed, such as the lack of procedural guidelines, the lack of a set limit of recommendations identified under these procedure for the majority of treaty bodies, the absence of reporting guidelines for States parties, and the late submission of follow-up reports which may at times defeat the purpose of the exercise. Suggestions on possible ways to strengthen these procedures are made building on some of the current practices of treaty bodies. For instance, the adoption of procedural guidelines, the enhanced involvement of stakeholders (including United Nations field presences, national human rights institutions and civil society actors) and an integrated approach to follow-up are some of the elements which the working group could discuss.

68. On the basis of the information contained herein, the working group may wish to draw on some of the best practices identified to strengthen and harmonize the various follow-up procedures to concluding observations, so as to make them more effective and enhance the protection of rights holders at national level. If deemed advisable, the working group may also seek alternative ways to monitor implementation by States parties of treaty

bodies' recommendations, a few of which are outlined in this note. In addition, the working group will need to take into account at a future meeting the assessment and analysis of the follow-up procedure, identifying difficulties, obstacles and results, which each treaty body will undertake in 2011 at the invitation of the inter-committee meeting.

69. With respect to inquiries, the information provided brings to light the limited and uneven experience which the concerned Committees have developed in respect of follow-up. The working group may also seek ways to strengthen this aspect of treaty bodies' work.
