

Implementation of UN Treaty Body Concluding Observations: The Role of National and Regional Mechanisms in Europe

**Summary and recommendations from the High Level Seminar
held on 19-20 September 2011
Bristol, United Kingdom**

On 19-20 September 2011 in Bristol, United Kingdom, a high level seminar was held to examine the implementation and follow-up of Concluding Observations from UN Treaty Bodies. The seminar focused firstly on the role of the treaty bodies themselves and the Office of High Commissioner on Human Rights in following up Concluding Observations, and secondly on the implementation methods and strategies adopted by state authorities and follow up mechanisms adopted by other national actors in the European region.

Organised by the Human Rights Implementation Centre (HRIC) of the University of Bristol and as part of a four year research project funded by the Arts and Humanities Research Council (AHRC), the seminar brought together the key stakeholders that are engaged in the process of implementation and follow-up: members of the UN treaty bodies and staff of the Office of the High Commissioner for Human Rights (OHCHR), representatives from European regional mechanisms, and national actors from various sectors including governments, parliaments, national human rights institutions (NHRIs) and civil society organisations. For a list of participants see Annex I and the agenda, Appendix II.

This report summarises the discussions that took place during this event and presents some practical suggestions and recommendations that arose. It is divided into a number of thematic areas, based on the focus of debates.

I. The status and content of Concluding Observations

A central, yet recurring theme in the conference was the extent to which Concluding Observations could be considered to be legally binding or not. Some discussions took place around whether Concluding Observations could be separated into a number of categories which could then determine their legally binding nature of otherwise. Some argued that some Concluding Observations were anchored in the treaty and therefore legally binding, whereas other Concluding Observations were an aid to interpretation and therefore not strictly derived from the text of the treaty itself. It was also noted that some treaty bodies have distinguished between two types of recommendations: outcome oriented (to get something done) and process oriented (how can something be done). The former allows for flexibility for States parties, but also may have the down-side of leaving States parties wondering how exactly the prescribed result can be achieved. The process-oriented recommendations on the other hand limit the flexibility by prescribing the required action, but these types of recommendations do not contain an indication as to when the treaty body would consider its recommendation to be implemented.

Discussion during the event also noted that some Concluding Observations contained recommendations relating to 'minimum standards'. These are standards that are proposed

equally to all states and represent a minimum in the view of the treaty body in question and are thus different from what can be called ‘development standards’ which are proposed to concrete states with the view of preventing a potential breach occurring in the future.

Furthermore, it was also noted that some Concluding Observations were specific and may require action within a specified period of time which meant they were more ‘implementable’ than others. It was also recognised that prioritising some Concluding Observations over others may be helpful. The issue was, then, who should do this prioritisation.

Beyond attempts to identify which Concluding Observations may be implementable and which may not, there was a consensus emerging from those participants at the event who were from the national level that Concluding Observations were not considered to be legally binding by the state. This has several consequences. Firstly, it may be useful to look at Concluding Observations, not from the perspective of their binding/non-binding nature, but from the perspective of identifying which could be implemented in the short term, and which were merely aspirational and may take longer to achieve.

Secondly, the fact that they were perceived as non-binding should not detract from the opportunities they present. They could be used as a tool to develop a relationship with national stakeholders, for example, the legislature. In this way, national actors can have some ‘buy-in’ over the implementation of international standards. Therefore, Concluding Observations were still very much seen as having merit and value at the national level.

Part of the conference was given to examining perceptions from the national level of Concluding Observations and how various national actors employ them in their work. A consistent criticism from the variety of different actors at the national level who participated at the conference, whether those were governments, parliamentarians, NHRIs or civil society, was that Concluding Observations were too many, too complex and insufficiently focused. It is not uncommon, for example, for a State Party to receive several hundred recommendations from a number of different treaty bodies, some of which may overlap or even contradict each other. This raises huge difficulties in their implementation and follow-up.

Finally, it was stressed that given the large number of Concluding Observations, some sifting process needs to take place to assist states and other stakeholders in identifying what action they should take, and which should have priority. Who should undertake this sifting exercise, however, was not clear although various suggestions were made and these will be examined below.

II. What should be the role of the UN treaty bodies and the OHCHR?

The first part of the seminar looked at what the role should be of the Treaty Body members themselves and that of the OHCHR staff. With respect to the former, four treaty bodies had formal procedures for follow-up of Concluding Observations (Committee against Torture (CAT), Human Rights Committee (HRC), Committee on Elimination of Racial Discrimination (CERD) and Committee on Elimination of Discrimination against Women (CEDAW)) and all these treaty bodies treat the follow-up process as additional to the reporting requirement. For the other treaty bodies, they also engaged in follow-up but had a less formal procedure to do so, for example, by requesting information on the implementation of earlier recommendations during the consideration of periodic reports by States parties. What was interesting in the discussion was the extent to which the follow-up procedures were seen as separate and distinct from other aspects of the treaty bodies’ mandate, and questions were raised about how integral follow-up should be to all parts of the treaty body’s remit. Furthermore, if treaty bodies were to engage in this type of follow-up, questions then arose about the extent to which they were qualified or had the expertise to do so.

Various other issues arose in the presentations and discussions. Firstly, what should the respective roles be of the treaty body members on the one hand, and the OHCHR on the other? No consensus was reached on this at the event. However, the following recommendations emerged:

Firstly, many from the national level noted the need to reduce the number of Concluding Observations being produced by the different treaty bodies. They called on treaty bodies at both the UN and regional levels to collaborate with each other in order to be aware of what each treaty body had said, and ensure consistency in their recommendations. This could be facilitated, for example, through the development of joint General Comments and cross-referencing when drafting their Concluding Observations. Secondly, the language used in Concluding Observations needed to be more precise and clear. Thirdly, in order to facilitate the follow up of Concluding Observations at the national level, it was suggested that treaty bodies, as well as opening up to NHRIs and receiving them before their sessions, should also open up to other actors, such as parliamentarians. The members of treaty bodies could be more active and seek meetings with national parliaments when conducting in-country visits and could invite parliamentarians, for example, to submit supplementary reports. Webcasts were considered a useful and cheap way of disseminating the work of treaty bodies and examples were raised of where this had been particularly effective. Similarly, where treaty body members had been able to visit states in a follow-up capacity, this had been found to be beneficial by state authorities and other national actors. However, caution was expressed that such events should not take place too soon or too late after the adoption of Concluding Observations. Holding sessions away from Geneva, and using UN country representatives were also suggested on a number of occasions.

It was also considered important to address the imbalance between efforts States parties and others put in during the preparatory process in the run-up to the presentation of their reports to the treaty bodies and the subsequent follow-up and implementation process after the event. The former is usually characterised by various consultations that take place between the different governmental agencies and often involves other stakeholders, such as civil society. In contrast, the period after the presentation of the report is usually characterised by a feeling of a 'job done' and it is essential that this perception that the reporting process finishes with presenting the report to the UN treaty body is challenged. One way of ensuring continuity, it was suggested, was for the delegation for the next reporting cycle to be formed just before the previous delegation is about to present the report to the UN treaty body. The new delegation then could accompany the previous delegation to the presentation of the report, lead the implementation process and produce the next report.

Participants also noted mechanisms such as the Universal Periodic Review (UPR) had been useful in refocusing attention on the implementation of treaty body recommendations and further use could be made of this process to assist in follow-up.

It was also considered crucial, particularly by those from the national level, that regional and UN treaty bodies speak with one voice and to this end coordination between the regional and UN treaty bodies was needed. In the case of ECRI, for example, all States parties that are covered by ECRI are also covered by CERD and thus when national roundtables are organised by ECRI, a representative of CERD is always invited to participate. This allows for consistency between the regional and UN treaty bodies. Similar synergies were noted between the work of the European Committee on Prevention of Torture and the UN SPT.

The UN treaty bodies should also examine ways of assessing the implementation steps that States parties have undertaken. Thus, for example, CEDAW employs a four-level system for evaluating follow up: implemented; partially implanted; not implemented; further information requested. This type of ranking was considered useful by some, not only for States parties, but

also for other national stakeholders who may then be able to concentrate their efforts on areas that require further action. Moreover, this type of initiative allows the treaty body to gather statistical data on implementation of their recommendations.

III. What role can national actors play to follow-up Concluding Observations?

The first point that needed underscoring was that it is the obligation of the state to implement, and for treaty bodies and others to follow-up. The first issue was that of coordination. A degree of coordination across government departments was recommended. But other actors could also play a role in this regard. The development of a forum to follow-up on Concluding Observations, organised, for example by the NHRI, was cited as an example of good practice. Members of the relevant treaty bodies, parliamentarians, judiciary, government representatives and civil society could be invited to roundtables to discuss implementation of Concluding Observations. It was stressed, however, that such events should be focused specifically on Concluding Observations, rather than human rights in general.

A second issue was that it was noted by many that one of the difficulties with Concluding Observations was that they were very little known at the national level, whether that be within government or outside. Various recommendations were made in this regard: treaty bodies could make it a standard recommendation in the Concluding Observations that states disseminate the Concluding Observations at the national level. Secondly, translation into local languages could assist, although this could be costly.

Thirdly, the nature of Concluding Observations meant that their non-legally binding character and greater flexibility meant that they could be used to ensure a level of buy-in at the national level, where various national actors could refer to Concluding Observations as a way of engaging with government authorities on certain matters. This could help to generate a sense of ownership over the recommendations and therefore a greater interest in their content. The creation of a national action plan could also take into account the content of Concluding Observations.

Various suggestions were also made about where Concluding Observations could be best employed and exploited. These included: trying to ensure that Concluding Observations were integrated into the discussion of Bills before the legislature, requesting reports from government authorities on the extent to which they have implemented the recommendations, and the Treaty Bodies themselves systematically asking states if the implementation of Concluding Observations has been placed on the agenda of their parliaments, or asking that they initiate Parliamentary debates on the Concluding Observations. A dedicated legal service at the national level which identified the range of Concluding Observations emanating from the various treaty bodies and advised governments and parliamentary committees about their content may also be useful. NHRIs and NGOs could assist the UN treaty bodies more by submitting their alternative reports which would include an assessment of the level of implementation of earlier recommendations.

The models provided for in OPCAT, through the establishment of a national preventive mechanism (NPM) and the CRPD, Article 33(2) frameworks were also considered as additional structures which could prove useful in following up treaty body recommendations. These provided for a formal role under the treaty and required the independent national body to monitor the state's implementation of its obligations under that treaty. By ensuring a direct link between the national body and the UN committee, this could be a further way in which follow up could be facilitated.

IV. Conclusion

The event overall reiterated the importance of Concluding Observations, despite their recommendatory nature. Who should take responsibility for follow-up and how that follow-up should be coordinated not only within the UN system, but also between the UN treaty bodies and OHCHR, their country presence, and at the national level, across the variety of different actors, were questions that were very much debated and not settled. However, the importance of some coordination at the national level, some greater in-country presence of treaty bodies, and the need to see Concluding Observations as presenting an opportunity for national and international actors to engage in a meaningful dialogue were stressed. Concluding Observations on their own are unlikely to achieve much, but taken as part of a broader strategy, and if used again and again, then can have an impact.

ANNEX I

High Level Seminar

**Implementation of UN Treaty Body Concluding Observations: The Role of
National and Regional Mechanisms in Europe**

LIST OF PARTICIPANTS

Maria Aas	International Commission of Jurists Norway
Nina Althoff	German Institute of Human Rights
Ama Annan	European Union
Clive Baldwin	Human Rights Watch
Tania Baldwin-Pask	Amnesty International
Jane Bevan	Equality and Human Rights Commission
Sarah Burton	Council of Europe
Sera Choi	German Institute of Human Rights
Jonas Christoffersen	Danish Institute for Human Rights
Anastasia Crickley	Committee on the Elimination of Racial Discrimination
Paulo David	OHCHR
Malcolm Evans	University of Bristol, Subcommittee on Prevention of Torture
Jens Faerkel	Danish Ministry of Foreign Affairs
Natacha Foucard	OHCHR
Felice Gaer	Committee Against Torture
Patrice Gillibert	OHCHR
Simon Harkin	UK Foreign and Commonwealth Office
Murray Hunt	UK Parliament Joint Committee on Human Rights
Renate Kicker	University of Graz, former ECPT
Philip Leach	London Metropolitan University
Debra Long	University of Bristol
Christina Meinecke	OHCHR
Elizabeth Mottershaw	University of Bristol
Mary Murphy	University of Bristol
Rachel Murray	University of Bristol
Joao Nataf	OHCHR
Irmina Pacho	Helsinki Foundation
Penny Parker	Advocates for Human Rights
Ariranga Pillay	Committee on Economic, Social and Cultural Rights
Roisin Pillay	International Commission of Jurists
Victoria Popescu	Committee on the Elimination of Discrimination Against Women
Ibrahim Salama	OHCHR
Joanna Sawyer	Interights
Liza Sekaggya	OHCHR
Rupert Skilbeck	Open Society Justice Initiative
Elina Steinerte	University of Bristol
John Wadham	Equality and Human Rights Commission
Duncan Wilson	Scottish Human Rights Commission

ANNEX II

High Level Seminar

Implementation of UN Treaty Body Concluding Observations: The Role of National and Regional Mechanisms in Europe

Human Rights Implementation Centre
University of Bristol, UK
19-20 September 2011

The aim of this event is to follow up from the event held in September 2009 by the Human Rights Implementation Centre which examined implementation of international human rights standards in a broader sense and to pick up on some issues to enable more focused discussion. Given other events that have been held or will be held by other organisations, we thought it might be particularly useful to focus on the role of the UN treaty body follow-up on Concluding Observations in particular. Noting the highly context-specific nature of the implementation mechanisms, the seminar will focus on the implementation methods and strategies adopted by various national mechanisms in the European region.

This event will bring together various stakeholders that are engaged in the process of implementation and follow-up: UN treaty bodies and OHCHR staff, representatives from European regional mechanisms, and national actors from various sectors (government, parliaments, judiciary, NHRIs and civil society).

There will be a dinner/reception on the evening of Day 1 so that the participants of the event have plenty of opportunities to mix, mingle and discuss ideas.

DAY 1: The Role of the UN Treaty Bodies

These sessions will examine what role the treaty bodies themselves have in following – up on Concluding Observations.

9:00- 9:30: Registration; tea and coffee

Opening: 9:30- 10:00

Rachel Murray, Director, Human Rights Implementation Centre, Bristol

Ibrahim Salama, Director, Human Rights Treaties Division, OHCHR

Session 1: 10:00- 11:30: Presentations from various UN treaty body members and their secretariats.

Chair: **Malcolm Evans**, Chair of the Subcommittee on Prevention of Torture

- How do treaty bodies ensure follow up of their recommendations? Is follow-up part of the mandate of treaty bodies or is this a task of national stakeholders or someone else?

- What could be improved?
- Are more resources needed for treaty bodies to carry out follow up work? Are these financial resources or other (e.g., more secretarial support; more time in sessions, possibility of visits, etc.)?
- Is there a need for coordinated approach to follow-up between the various treaty bodies? Can treaty bodies assist each other in follow-up (e.g. by requesting information on implementation of each other's COs when considering state reports?)
- What is the role of the OHCHR in follow-up to the CO? What mechanisms exist for this internally within the OHCHR?
- Reflections on where are these discussions going; are concluding observations the best way to ensure dialogue; what if the concluding observations do not work.

Speakers (10-15mins):

- **Ariranga Pillay**, Chair of the Committee on Economic, Social and Cultural Rights
- **Felice Gaer**, Vice Chairperson of the Committee Against Torture
- **Victoria Popescu**, Vice Chairperson of the Committee on the Elimination of Discrimination against Women.
- **Anastasia Crickley**, Member of the Committee on the Elimination of Racial Discrimination
- **Paulo David**, Chief, Capacity Building and Harmonization Section, OHCHR

COFFEE: 11.30-11.45

Session 2: 11.45 -13:00: Chair: **Penny Parker**, Advocates for Human Rights

Presentation from state or civil society and regional bodies on:

- How should Concluding Observations be drafted to assist in their implementation and follow up?
- How accessible are COs? (e.g., language, prompt publication on web site; accessibility on web sites)
- What are the expectations of the civil society and other national stakeholders from the UN treaty bodies in relation to follow-up? Is there anything that is missing in their approach; what can be changed and how?
- Perspective of the CoE treaty bodies towards the concluding observations of UN treaty bodies.

Speakers (10-15mins):

- **Liza Sekaggya** OHCHR; NI Unit
- **Tania Baldwin-Pask** Amnesty International
- **Clive Baldwin** Human Rights Watch
- **Sara Burton**, Council of Europe, ECRI Secretariat
- **Renate Kicker**, former Vice Chair of CPT

LUNCH: 13:00- 14:00

Session 3: 14:00- 15:30: Workshop (three groups) to discuss the above, with the following questions to be considered specifically:

- What best practices can be identified across the different treaty bodies?
- How can treaty bodies interact with each other with respect to follow up?
- Who should treaty bodies interact with at the national level with respect to follow-up? And how?

COFFEE: 15:30- 15:45

Session 4: 15:45- 17:00 Feedback from Workshops and Discussion

Workshop Chairs:

- **Philip Leach**, London Metropolitan University
- **Duncan Wilson**, Scottish Human Rights Commission
- **Elina Steinerte**, Human Rights Implementation Centre, Bristol

DINNER 19:00

DAY 2: The role of National Bodies

Introduction of concepts and Role of National Mechanisms in following-up and implementing Concluding Observations

Chair: **Róisín Pillay**, International Commission of Jurists, Senior Legal Advisor in charge of Europe

Session 1: 9.30- 11.00: The aim of this session will be to look in detail at various examples at the domestic level whereby states receive and implement Concluding Observations of UN treaty bodies. It will also look at the role of other national actors.

This will include:

- The role of parliamentary committees, such as the Joint Committee on Human Rights in the UK
- The remit of government agents
- The role of the judiciary

Speakers (10-15mins):

- **Jens Færkel**, Minister Counsellor, Danish Ministry of Foreign Affairs, Legal Service, Human Rights Unit
- **Simon Harkin**, Head of UN Human Rights Team, Human Rights and Democracy Department, Foreign & Commonwealth Office
- **Murray Hunt**, Joint Committee on Human Rights

The monitoring role of:

- The role of national human rights institutions
- Civil society, legal profession, media and others

Speakers:

- **Jonas Christoffersen**, Danish Institute for Human Rights
- **Rupert Skilbeck**, Open Society Justice Initiative
- **Sera Choi** German Institute of Human Rights

Speakers will be asked to outline the availability of these mechanisms in particular states and to comment on how they operate and what challenges they face. Examples of good practice will attempt to be given.

COFFEE: 11.00-11.15

Session 2: 11.15-12.30: Workshops

The aim of this workshop is to provide an opportunity for participants to discuss the issues already outlined. Participants will be divided into three groups and questions to be discussed will include the following:

- What mechanisms for implementation and follow-up to COs exist at the national level?
- What works well and why? What does not work and why?
- Does the legal status of the CO have any impact in terms of whether they are taken seriously by states? I.e. Do states consider CO to be recommendatory only? What strategies can various actors adopt to tackle such a perception? Any examples of good practice?
- What factors do you think determine the effectiveness of implementation?
- What challenges do these various mechanisms face in implementing and following up Concluding Observations?
- How much do these various mechanisms within one country (if they exist) interact with each other?

Session 3: 12.30-13.15: Feedback from workshops and Discussion

Workshop Chairs:

- **Irmina Pacho**, Helsinki Foundation
- **John Wadham**, Group Director Legal, Equality and Human Rights Commission
- **Maria Bergram Aas**, International Commission of Jurists, Norway

13:15- 13:45 Conclusion and way forward

Rachel Murray, Human Rights Implementation Centre, Bristol

LUNCH: 13:45- 14:45

Departure