

Examination of state reporting by human rights treaty bodies: an example of follow-up at the national level by national human rights institutions

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Examination of State Reporting
by Human Rights Treaty Bodies:
An Example of Follow-Up at the
National Level by National Human
Rights Institutions

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German Institute
for Human Rights



Imprint

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Introduction

In 2004, the German Institute for Human Rights undertook a series of expert meetings on the concluding observations of treaty bodies of core human rights treaties of the United Nations. By holding meetings on the concerns and recommendations of the four committees, the institute wished to offer a platform to the ministries concerned, the NGO community, members of parliament, and representatives of academia for discussing some of the observations in depth and for developing recommendations for their implementation in Germany.

The German Institute for Human Rights, founded as recently as 2001, is fully accredited as a national human rights institution by the International Coordination Committee for such institutions in accordance with the Paris Principles¹. As a national institution, its key tasks are the promotion and monitoring of the implementation of all human rights treaties at the national level. The institute seized the opportunity offered by four oral hearings on German periodic reports held by different UN treaty bodies in early 2004 to develop this model for following up the concluding observations by UN treaty bodies

with expert meetings. This kind of follow-up to state reporting was a pilot project for human rights politics in Germany. With this paper, the institute wants to present this tool of treaty implementation to a international human rights community.

A short overview of the functioning of the reporting system and the purpose of concluding observations is followed by deliberations on the role that a national human rights institution has, or could potentially develop, in relation to treaty bodies. In the second part of the paper, the follow-up meetings of the institute are described. The main focus of the presentation is the evaluation of the various approaches that have been tried out while working on different treaties. The third part of the paper shows how the institute continued its activities after the meetings by addressing members of parliament, several federal ministries and the treaty bodies themselves. The paper ends with a set of recommendations to other national human rights institutions, concerned NGOs, governments and the larger human rights community on the follow-up to concluding observations at the national level.

¹ Principles relating to the Status of National Human Rights Institutions (The Paris Principles), GA Res. 48/134 (1993), annex.

1

Treaty body reporting

1.1 Procedure of treaty body reporting

All seven core human rights treaties of the United Nations² provide for state reporting on the implementation of the treaty at the national level. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in its article 18, the International Convention on the Elimination of All Forms of Discrimination (ICERD) in article 9 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) in article 73 ask for state reporting explicitly relating to "legislative, judicial, administrative or other measures" adopted to implement the treaties, while the other conventions just provide for reporting on "measures" adopted to achieve observance of the rights enshrined in the respective treaty without specifying them. Some treaties encourage states also

to report on "factors and difficulties" affecting the implementation of the treaty (e.g. International Covenant on Civil and Political Rights (ICCPR) art. 40.2 or CEDAW art. 18.2). Finally, a state report should relate to any "progress" achieved in relation to the observance of the rights enshrined in the treaty.

All but one of the core treaties contain a provision for the establishment of a committee of independent experts to oversee the implementation of the treaty by states parties. The International Covenant on Economic, Social and Cultural Rights provides for the submission of the report to the Secretary General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration³. The Economic and Social Council established a working group to assist in the consideration of reports. In 1987 this group was reconstituted in accordance with the model of treaty bodies⁴. Each

2 This paper relates to the reporting mechanisms provided by the International Covenant on Political and Civil Rights 1966 (ICCPR), the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women 1980 (CEDAW), the International Convention on the Elimination of All Forms of Discrimination 1965 (ICERD), the Convention on the Rights of the Child 1989 (CRC), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (CAT) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 (ICRMW).

3 International Covenant on Economic, Social and Cultural Rights, art. 2a.

4 ECOSOC resolution 1985/17

committee is composed of ten to twenty-three members⁵.

Reporting obligations

Governments are supposed to present one initial report to the respective committees or treaty bodies, usually within one year after ratification. Later (periodic) reports are to be submitted at intervals determined by the treaty itself or by the treaty body. Most committees decided on an interval period of four or five years. The Human Rights Committee (HRC), responsible for the examination of state reports under the ICCPR, sets the date by which the next periodical report is due in the last paragraph of its concluding observations to a state report.

All committees provide general guidelines on the requirements for a state report. The initial report has to contain a "core document" including demographic, geographic, legal, political and other basic information on the country. This part is submitted to all treaty bodies the state has become a member of, and it has to be updated whenever major changes in the country take place. In a second part, the initial report has to cover all substantive articles of the treaty, including information on the state's constitutional and legal framework that is not provided in the core document, as well as the legal and practical measures

taken in order to implement the treaty. The Committee on the Elimination of Discrimination against Women recommends that, in addition, countries should refer not only to "mere lists of legal instruments adopted in the country concerned in recent years" but that they should also report on "the practical realization" of the "principle of the equality of men and women"⁶. CEDAW reporting guidelines demand the explanation of "factors and difficulties affecting the degree of fulfilment of obligations under the Convention" and of "the nature and extent of, and reasons for every such factor and difficulty,..., and should give details of the steps being taken to overcome them."⁷ Even more details on the practical realization of rights are expected by the Committee on Economic, Social and Cultural Rights, which asks for, among other things, "information on the situation, level and trends of employment, unemployment and underemployment"⁸.

Information should be complete and true. The truth of the information provided is, as a matter of course, not always easy to verify. Many treaty bodies rely on additional information from other sources. The media play an important role here, but even more important is the information provided by Non-Governmental Organizations (NGOs). Today NGO reports form an integrated part of the report-

5 Background document prepared by the Office of the High Commissioner for Human Rights, UN-Index A/AC.265/2005/CRP.2, para. 9

6 Convention on the Elimination of All Forms of Discrimination against Women, adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979, art. 2.

7 Compilation of guidelines on the form and the content of reports to be submitted by states parties to the international human rights treaties, HRI/GEN/2/Rev.1/Add.2, 5 May 2003, para. C 3.

8 Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights: 17/06/91. E/C.12/1991/1, para. B, 2a.

ing system for most committees. Many of them submit alternative reports to government reports, quite a few even present their findings in oral proceedings before the committees.

Examination of state reports

Examination of state reports serves numerous purposes: there is the external monitoring function, but also the preventive aspect, and the purpose of common, targeted goal setting by the treaty body and the state party⁹. One very important function actually is the self-evaluation by the state concerning the progressive realization of the rights contained in the treaty.

The examination of the reports proceeds in several steps. Once reports are delivered and distributed among committee members, most committees develop a "list of issues"¹⁰ presented to the government in advance of the public examination of the report. This is an interesting document that sheds some light on major concerns of the committees. It contains a series of specific requests on the state report, but also on issues still left unanswered from the last examination. The document is approved by a working group of the committee or by the entire committee. Governments then prepare the meeting with the committee on the basis of this list, either

by providing answers in writing or by preparing an oral presentation for the meeting. The meetings themselves are called "constructive dialogue" and last three hours on average. Governments have the opportunity to present the report according to their priorities before they answer the questions raised by the committee.

It was not until the early nineties that the committees started to develop common statements on their evaluation of state reports and to have them published. This development was ultimately a consequence of the end of the cold war¹¹ because comments by bodies of the United Nations were no longer labeled as interference in domestic affairs. Today, all committees end their examination with "concluding observations" or "concluding comments" (the latter expression is used by the Committee on the Elimination of Discrimination against Women). These are drawn up by the committee in closed session, and presented to the respective government in writing. Typically, they all follow the same structure: After an introduction the committee emphasizes positive aspects of the report and related developments in the country. This is followed by a part on areas of concern, and concluded by recommendations.

9 The Committee on the International Covenant on Economic, Social and Cultural Rights (ICESCR) identified seven purposes of the examination of state reports. See ESCR Committee, General Comment 1, in: ESCRC, 3rd Session, E/1989/22 (1989), annex III, para. 2-9.

10 At their third inter-committee meeting, human rights treaty bodies reached an agreement that all committees would adopt lists of issues as a framework for discussion with the state party during a session. Report of the third inter-committee meeting of human rights treaty bodies, Geneva, 21 and 22 June 2004, in: UN General Assembly, 59th session, Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights, UN-Index A/59/254 annex.

11 For background information on this development see Christian Tomuschat, (2003) *Human Rights, Between Idealism and Realism*, Oxford, Oxford University Press, p. 147 - 150

The “constructive dialogue” does not always come to an end immediately after the session, some committees develop their own mechanisms of further dialogue and some ask for specific information within a given time frame, e.g. a year after the session¹².

1.2 Treaty Body Reform

Substantial progress in the recognition of human rights obligations in the past decades is indicated by the number of ratifications of human rights treaties. As a result of this development, the agenda has shifted towards monitoring: The implementation of the treaties is scrutinized much more thoroughly, and treaty body members themselves, as much as the larger human rights community, are concerned about the impact of their work. In theory, the system of reporting to treaty bodies could be a substantial contribution to implementation at the national level.

For several reasons though, the effectiveness of the reporting system has been called into question¹³. It is largely being discussed under the heading of “treaty body reform”. Among

the shortcomings cited most often is an enormous delay in reporting by governments. What is more, the committees have a considerable backlog of reports waiting to be examined¹⁴. Meeting-time and secretariat resources for servicing the committees are scarce, and discussions focus on streamlining the reporting system in order to free committees as well as governments from a workload they are obviously unable to handle, and in the case of governments often unwilling, too. The central reform proposal is a new, streamlined system of reporting, with an expanded core document that is valid for all seven treaties and focused periodic reports that concentrate on specific issues, in particular those raised by a committee in the last examination¹⁵. Other solutions are about to be developed: In the case of the Committee on The Rights of the Child, for example, the General Assembly passed a resolution allowing the CRC to meet in two parallel chambers for its 2006 sessions¹⁶. This increases the capacity of the committee substantially.

Over and above these difficulties of workload and delay, there are other concerns that relate to weaknesses in following up treaty

12 As an example, the Human Rights Committee requested Germany to report on the implementation of its recommendation in para. 11 to “clarify its position and to provide training on relevant rights contained in the Covenant specifically designed for members of its security forces deployed internationally” in: Concluding observations of the Human Rights Committee: Germany, 04/05/2004, UN-Index CCPR/CO/80/DEU, para. 23.

13 A detailed and very critical analysis of treaty body work and a series of recommendations for reform can be found in Anne F. Bayefsky, (2001) *The UN Human Rights Treaty System, Universality at the Crossroads*, The Hague/London/New York, Kluwer Law International.

14 A recent background paper by the Office of the High Commissioner for Human Rights (see note 5) notes that “the increasing number of States which have become party to the various treaties adds inexorably to the workload” (para. 29), a development that runs counter to all intentions of the conventions.

15 The report of a meeting on treaty body reform, held in Liechtenstein in 2003, displays some of the concerns and arguments in the controversial debate about streamlined reporting: Letter dated 13 June 2003 from the Permanent Representative of Liechtenstein to the United Nations addressed to the Secretary General, United Nations, General Assembly, A/58/123.

16 Promotion and Protection of the Rights of Children, Report of the Third Committee, UN-Index A/59/499, para. 9.

body recommendations at international and national levels.

Treaty bodies themselves have limited means for observing the implementation of their own recommendations. At present, all committees consider introducing procedures for following up their recommendations. They all request states to explicitly refer, in the next periodical report, to issues not addressed, or concerns raised, during the state report examination. The proposals for improving follow-up include the establishment of a Special Rapporteur for Follow-Up to Concluding Observations, a stronger role for monitoring by domestic NGOs, and the inclusion of the concluding observations in UN-wide country assessments¹⁷. Treaty bodies encourage national action plans in their related fields as well.

At its best, the process of reporting, the dialogue between governments and treaty bodies, and the follow-up to their concluding observations would be a long-term process, where some important questions might be answered five years after they had been posed originally. However, there is a real chance that they would be answered and that concerns might be addressed after a certain period of time. In his 2002 report on UN reform, the Secretary-General underlines the crucial importance of the national level for the effective protection and advancement of human

rights, and he declares the enhancement of the national protection system to be a principal objective of the United Nations¹⁸. This is where national human rights institutions find their role.

1.3 Treaty Bodies and National Human Rights Institutions

Assuming that compliance with human rights treaties is, above all, a national issue, there is one actor who is in a particularly appropriate position to act as a national partner for treaty bodies: the national human rights institution¹⁹. National human rights institutions are established by governments – many of them by law – as independent institutions for the promotion and protection of human rights at the national level. They are organized as, for example, commissions, institutes or (groups of) ombudsmen. While some of them have quasi-judicial functions, including investigatory powers, and are entitled to work on individual complaints, others confine themselves to advising governments and legislatures, providing human rights education and, in some cases, research on human rights theory and practice.

The United Nations have developed a set of recommendations – called the Paris Principles²⁰

17 Markus Schmidt, (2001) *Follow-Up Procedures to Individual Complaints*, in G. Alfredsson et al., *International Human Rights Monitoring Mechanisms*, The Hague/ Boston/London, Martinus Nijhoff Publishers, p. 212-214

18 *Strengthening of the United Nations: an agenda for further change*. Report of the Secretary-General. UN-Index A/57/387, 9 September 2002

19 For a detailed proposal on co-operation between national human rights institutions and treaty bodies see Anne Gallagher, (2000) *Making Human Rights Treaty Obligations a Reality: Working with New Actors and Partners*, in: Philip Alston (ed.) *The Future of UN Human Rights Treaty Monitoring*, Cambridge, Cambridge University Press.

20 See note 1.

– that list a series of potential tasks for such institutions, as well as some basic requirements. National institutions are accredited by the International Coordinating Committee of national human rights institutions, an informal body elected by the four regional sub-groups of national human rights institutions. Full accreditation requires full compliance with the Paris Principles. The criteria for full accreditation are, among others, independence, fulfilment of reporting obligations, implementation of some of the key tasks of national human rights institutions, and financial independence, i.e. a minimum level of core funding that guarantees the institution's independence. In order to fulfill another key function stipulated by the Paris Principles national human rights institutions should try to "promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party and their effective implementation"²¹.

While national human rights institutions have a key monitoring function, actual relations between them and treaty bodies are still rather limited, even though they are gradually getting stronger. Treaty bodies have started to refer to human rights institutions in their concluding observations. Sometimes they simply congratulate the respective government on the establishment of such an institution, and sometimes they recommend additional tasks for the institution, or ask for its independence to be strengthened. Governments themselves report the establishment of

such institutions. However, very few national human rights institutions have submitted alternative reports to treaty bodies, and even fewer of them have attended sessions of the "constructive dialogue" between their national governments and treaty bodies. Many national institutions consider alternative reporting a task of NGOs. By contrast, they see their genuine role in providing other forms of monitoring the implementation of human rights treaties in their respective countries. One way to fulfil the monitoring role is the organization of a national follow-up to state reporting, focussing on the concluding observations of human rights treaty bodies, as suggested in this paper. The follow-up described here consists of an expert meeting and the targeted distribution of its results to influential actors concerned with the implementation of human rights legislation and human rights practice. This is not an established model – neither for national human rights institutions nor for NGOs or NGO associations. Of course, follow-up meetings, organized by NGOs, NGO associations or even by governments, do take place. Descriptions and evaluations of such meetings are difficult to find, though. This paper, therefore, attempts to outline a new, and possibly innovative, procedure as part of the ongoing process of ensuring the full implementation of human rights treaties as national law (both as statutory and court-made law) as well as their absorption into the everyday reality of a country's social fabric.

21 See note 1, The Paris Principles, article 3b.

2 National meetings on concluding observations

2.1 National meetings as part of the implementation process

Right from the beginning, it was one of the priorities of the German Institute for Human Rights to strengthen existing human rights instruments and mechanisms. The initial projects of the institute included the promotion of German ratification of the Optional Protocol to CAT, contributions to the development of an optional protocol to the ICESCR, and a handbook on how to file an individual complaint with the Human Rights Committee²². As the deadline was approaching for the next periodical report to one of the UN treaty bodies, the Committee on Elimination of Discrimination against Women, the institute held a meeting in order to introduce the optional protocol of CEDAW to a German audience and to discuss the challenges and opportunities of alternative reporting. The meeting inspired some NGOs to participate more lively in drawing up the alternative report issued in response to the 5th report of the German government to the Committee on the Elimination of Discrimination against Women.

Prompted by this development, the institute decided to abstain from issuing an alternative report of its own. Instead, it chose to contribute to a follow-up to the concluding observations of the Committee on the Elimination of Discrimination against Women.

When another three state reports by the German government to three other committees were examined in 2004 – on the implementation of the ICCPR, the CAT and the Convention on the Rights of the Child (CRC) – the institute decided to organize a series of meetings in order to follow up the concluding observations of all four bodies in 2004²³. The decision to hold these meetings was based on the institute's view that the implementation of human rights treaties is a continuous and long-term process that could, at its best, be an ongoing dialogue between governments and treaty bodies at the international level, and the human rights community at the national level. The idea was to start this continuous process by gathering ministries,

22 Bernhard Schäfer, (2004) Die Individualbeschwerde nach dem Fakultativprotokoll zum Zivilpakt, Berlin, German Institute for Human Rights.

23 A similar meeting was organized on the third report of the European Commission against Racism and Intolerance, report published on 8 June 2004.

NGOs, academic experts and members of parliament around a table and then, after discussing some of the concerns of the treaty bodies in depth, to develop recommendations for ministries, parliament and other actors relevant to human rights implementation in Germany. As a second step, it was planned to present the results in targeted meetings to ministries, parliament and civil society. At the heart of the projects were the expert conferences organized by the institute.

2.2 Follow-up meetings: Issues and priorities

All meetings were introduced by speeches that outlined the role of the treaty bodies, provided an overview of the concluding observations of the respective committees, and explained some details of reporting procedures. These were followed by several thematic sessions.

The first important decision that had to be made in preparation of the conferences concerned was the selection of issues to be addressed during the various sessions. While some treaty bodies had come up with around ten recommendations, the Committee on the Rights of the Child made nearly thirty substantial recommendations. It was therefore crucial to select those topical issues that promised to be most suitable for debate at the conferences. Criteria for the choice of topics included political relevance, public interest

in the issue, or indeed the lack thereof, the gravity of the violations referred to in a recommendation, or the frequent mentioning of the issue by several committees. The fact that certain issues had already been taken up in former concluding observations to state reports – either on the same or on different treaties, provided another criterion for choosing an issue. In some cases, expert organizations were asked for advice.

The Committee against Torture had issued only seven recommendations that could be easily integrated into an agenda of three key topics. In other cases, choices had to be made, and overarching themes were chosen to combine several recommendations under one heading. To give an example, poverty reduction was one of the priorities chosen for the conference on the rights of the child. This heading covered several problems relating to families with a background of migration, unemployment and parents with low levels of educational attainment. On the other hand, in the case of CEDAW, the very short recommendation 29 that "...the State party [should] study and carefully monitor the impact of its economic and social reforms on women at all stages of planning, implementation and evaluation, so as to introduce changes where necessary to counteract possible negative effects."²⁴, ultimately served as the basis for three – out of five – items on the agenda concerning health-care reform, labour market reform and pension reform. The reason for this decision was a political judgement by the institute: It took the view that current

24 CEDAW: Concluding Comments: Germany, 30 January 2004, UN-Index CEDAW/C/2004/I/CRP.3/Add. 6/Rev.1

social reforms indeed have an enormous impact on the situation of women, and that the meeting should encourage the careful monitoring of the reform process.

Some concerns were taken up by several committees: The Human Rights Committee and the Committee on Torture, while appreciating a reduction in the number of cases, had both expressed concern about ill-treatment by law enforcement agencies and asked for speedy investigations and statistics on police misconduct. These issues were addressed by both the conference on CAT and the one on the ICCPR, albeit from different angles, if for no other reason than the importance of preventive measures against ill-treatment.

Gender issues were not confined to discussions at the CEDAW-conference: The Human Rights Committee had expressed concern about the equality of men and women. The institute invited an expert on gender mainstreaming to present her views on the gender implications of the Human Rights Committee recommendations at the ICCPR conference.

Committees always have good reasons for their recommendations, so the choice of conference topics was not always easy. For the sake of a successful conference though, it was necessary to limit the discussions to a maximum of ten recommendations, drawn together under an umbrella of four or five themes. This approach proved to be quite feasible.

While the entire conferences lasted between four and eight hours, thematic sessions continued for one to two hours.

2.3 Follow-up meetings: Participants and their roles

The number of participants ranged from thirty to fifty people. The real challenge was their composition and – successful – invitation. The institute started from the idea that the meetings should provide a platform for discussions between representatives from relevant ministries, civil society, academia, as well as members of parliament and the institute as the national human rights institution. Hardly any participant would be interested in all items on the agenda, so the objective was to have at least four or five people sitting around the table with sufficient expertise on one of the topics. They should, according to the institute's concept, represent institutional actors and thus be adequate partners in a profound and multifaceted discussion.

While in Germany there is always one ministry in charge for reporting on a particular treaty, several ministries are involved in its implementation. Therefore, several ministries and usually several departments within one ministry were invited. For the invitation, it was important to clarify the roles that the representatives from the various ministries would play during the conference.

The actual course of events that the thematic discussions were to follow at the meetings was determined by the institute on the basis of three different models: Thematic sessions based on the first model were opened by representatives of the ministries concerned. At sessions based on the second model,

introductions to the topics were given by representatives from academia. Of those sessions that were based on the third model, one was opened by an NGO representative, a second one by a researcher from an academic institution, and a third one by a ministry official. Introductions were followed by responses and comments by a second speaker representing another actor. The discussions were finally concluded by a rapporteur.

The order of speakers had considerable impact on the atmosphere of the meeting. Ministry representatives played a much bigger role when they could explain their view on the recommendation at the beginning. Introductions given by representatives from NGOs or academia tended to challenge government performance. This, quite naturally, tended to foster a certain defensiveness on the part of government officials.

While some ministries were eager to contribute to the success of the meetings, others initially were reluctant to participate at all. It proved helpful to fix dates with key people from the ministries at a very early stage of the preparation process – in some cases dates were used as an excuse to decline participation.

It was less difficult to invite NGOs. The institute reserved the sole right to issue invitations. Even so, the German NGO association of human rights organisations *Forum Menschenrechte* – counting 45 members – was regularly consulted and invited to recommend candidates for participation. As NGOs turned out to be particularly interested, they often accounted for half the participants.

Another important stakeholder in the implementation of human rights treaties is the German national parliament, the *Bundestag*. The institute regrets that, for lack of time, it was quite difficult for members of the Bundestag to attend the conferences. However, the institute had, in advance, arranged with the parliamentary human rights committee for a way to report on the meetings (see section 3.2).

The comparatively large number of participants per meeting allowed for a flexible selection policy. As for the representatives from academia, the choice was often obvious because, in general, their area of expertise is well known or easy to ascertain. Often, the final list of participants was the result of consulting with experts in a particular field. And in most cases it proved quite appropriate.

A special role was played by treaty body members who were present at three of the four meetings. In their introductory speeches, they explained the examination process and they provided background information on the considerations of the treaty bodies or an overview of the essential conclusions of the respective committee. Of course, the role of German committee members was different from that of the representatives of other countries, as committee members are supposed to abstain from commenting on the recommendations for their own country. One of the participating committee members was the rapporteur for Germany. Even though he took part in a private capacity – not being an official delegate of the committee – he was in a very good position to comment on the substance of the recommendations.

2.4 The meetings

All the meetings took place at central, easily accessible locations in Berlin, most of them close to government and parliament buildings, and they lasted from four to eight hours.

While deciding on the most appropriate composition of participants was a challenging but interesting task, it was not always possible to actually get everybody to gather around the same table. The presence of some actors was crucial for the success of the dialogue: for the institute, these were the ministries in charge of implementing human rights treaties in the country as well as treaty body members. Both ministry representatives and treaty body members were the most difficult to get. Although the contributions of the latter were very helpful, the presence of representatives from federal ministries was absolutely imperative. In spite of intense efforts on the part of the institute, some thematic sessions regrettably had to be held without representation from the ministry in charge. Representatives of civil society asked the institute to proceed by actively following up the meetings, and to convey the findings of the dialogues as well as the resulting recommendations to the ministries in charge.

Even so, after an introduction to the process of treaty body reporting and the recommendations in hand, most of the meetings unfolded as intense and high-quality dialogues between civil society, thematic experts and ministry representatives. The round table atmosphere was appreciated by all participants.

Many of them met for the first time and welcomed the opportunity to raise questions and present their views. Existing tensions were due to the fact that the ministries – some less and some more so – felt like being subjected to cross-examination, but generally they accepted their role and civil society actors seized the opportunity for targeted and high-quality presentations and questions. As mentioned above, when ministries were able to start a session by presenting their view on a treaty body recommendation, the atmosphere was much more relaxed. By chairing the meeting, the institute was able to convey its view that all actors present had a role in the implementation of human rights obligations.

Rapporteurs played their role in many different ways – some by suggesting a new point of view, some by offering a summary of the discussions, and some by outlining clear recommendations. Nevertheless, this function proved very helpful, and in most cases it guaranteed a very knowledgeable summary that was very helpful in shaping the recommendations that emerged from the meetings.

Another welcome effect of all meetings actually was an educational one. Quite a high number of the actors invited heard about treaty body reporting the first time. They came to appreciate the crucial support that these international actors offer to the various efforts at the national level. The motivation for, and the interest in, alternative reporting increased considerably. Representatives of civil society gained a deeper understanding of human rights treaties as an important

reference for national human rights politics. In fact, most treaty bodies call upon states to disseminate their conclusions, and CEDAW, in all its recent concluding observations, encourages the promotion of knowledge about the Convention as well.

Meetings ended with conclusions and recommendations – mostly presented by the chair. The institute offered the distribution of detailed minutes to all the participants. The results of the meetings were published in a press release.

The media were not invited to take part in the conference. More PR on treaty body recommendations is highly desirable. The institute would therefore have preferred to use the opportunity for spreading the word about human rights obligations, the treaty system, and the substance of the recommendations²⁵ to a larger audience. However, an equally frank exchange with the ministries in charge would have been impossible if anyone from the media had been present in the same room.

2.5 Reporting

Minutes were taken at all conferences. As a first step, minute takers drafted a detailed report for internal use only. As a second step,

external versions were produced, comprising a synoptic presentation of all speeches and presentations. The external versions only mentioned the names of official speakers at the conference, presented discussions, albeit in a synoptic way so that the authors of any statements made in the debates could not be identified. The minutes serve several purposes: First, they are a source of information and a working tool for all participants, most of whom work on themes and topics covered by the conference and are therefore in a position to use and promote the recommendations of the meetings in their own work. Second, they are targeted at the heads of ministries as influential actors with regard to treaty implementation. And finally, they serve as source of information for parliamentary committees, in particular the committee on human rights and humanitarian aid.

The institute offers a detailed overview of German treaty body reporting on its website, providing full texts of treaties, information on reporting competency, reservations and reporting dates. Recent reports, alternative reports, and concluding observations can all be found there. The minutes of the conferences have also been added to this website.

A conference publication was produced for two of the meetings. Basically, the institute

25 "It is unusual for states parties to make it widely known that their reports are considered. Despite the fact ... that treaty bodies usually request ... extensive distribution of their concluding observations at the national level, available evidence suggests that the results of the process are rarely transmitted by states beyond government ministries." Jane Connors, *An Analysis and Evaluation of the System of State Reporting*, in: Anne F. Bayefsky (ed.) (2000), *The UN Human Rights Treaty System in the 21st Century*, The Hague/London/New York, Kluwer Law International, p. 3-21, p. 10

considered minutes a sufficiently detailed means of reporting. Publications were produced of those sessions that had been introduced by representatives from academia. For this purpose speakers had been asked to edit their oral presentations for a conference reader. These contributions were particular-

ly interesting because they related subjects, such as the debates on social-policy reforms in the case of CEDAW, which are discussed in the media virtually every day, to an international human rights instrument. Thus, they presented contentious subjects in a new and potentially helpful framework.

3

Following up the meetings

3.1 Addressing key actors at the national level

While only two ministries were in charge of state reporting to the four treaty bodies many more were affected, and some of them by more than one treaty report. Consequently, recommendations related to quite a few ministries – all in all to eight of them. As meetings were held in a short period of time it did not seem appropriate to present recommendations separately after each conference. Rather, in addition to the edited minutes, recommendations of all four meetings were edited and sent in eight formal letters to the ministries concerned, i.e. to the ministers personally. Letters were also sent to two representatives of the Federal Council of Germany, the *Bundesrat* (the second parliamentary chamber that represents the various federal states). Most of the letters contained a formal request for a personal meeting with the ministers.

The parliamentary committee for human rights and humanitarian aid had been informed about the project of the four conferences beforehand. It was also consulted on the question of choosing the conference dates.

As the committee was very busy, it proposed a special procedure: The institute was invited, once meetings were concluded, to present key recommendations of the meetings to the entire committee in a separate session. In the end, the institute was even invited twice. It thus got the chance to explain the reporting and examination procedures of the treaty bodies, as well as some of their most important recommendations. The parliamentary committee, which normally works on many country and thematic issues, seized the opportunity to familiarize itself with the UN human rights reporting system.

Finally, reports were distributed among civil society actors and NGOs. At the request of the association of German human rights organizations, the *Forum Menschenrechte*, the director of the institute presented the results of all the meetings at a plenary session of the *Forum*. The institute considers human rights NGOs as very important partners in monitoring human rights implementation in Germany and will continue a process of follow-up in close co-operation with them. While alternative reporting is an obvious task for NGOs, meetings as described in this paper can be held by NGOs or their association.

Actually, such a meeting has already been held on the concluding observations of the Committee on the Rights of the Child. The National Coalition for the Rights of the Child hosted a meeting on concluding observations, exclusively focussing on questions of monitoring. This division of tasks had been agreed on and welcomed by both the coalition and the institute.

3.2 Feedback to treaty bodies

Minutes of the four meetings have been translated. Together with a description of the project, they will be sent to the four treaty bodies whose observations were taken up at the conference. Hopefully, treaty bodies will find the minutes helpful for their own follow-up processes with the German government. Moreover, the project can be seen as a contribution to making treaty body reporting more efficient.

4

Recommendations

Following up treaty bodies' examination of state reporting:

- The follow-up to the observations and recommendations of treaty bodies forms an important step in the long-term process of implementing UN human rights norms at the national level. While the possibilities of the treaty bodies themselves are limited, there are many ways of monitoring the realization of human rights guarantees at the national level. Ultimately, the dialogue between governments and treaty bodies can be continued at the national level by civil society, government, parliament and other actors. Thus, further recommendations for measures to enhance the realization of treaty rights could be developed while state and alternative reporting to treaty bodies would be refined and improved.
- Several actors, such as NGOs, NGO associations, parliamentary groups or academic human rights institutes, could organize follow-up conferences on the concluding observations of treaty bodies. National human rights institutions are in a partic-

ularly appropriate position to undertake that kind of project. This could be a way to fulfill their monitoring role.

Choosing issues and priorities:

- Meetings could focus either on the implementation of one treaty, or on one or more issues that cut across several treaties.
- Concerns raised by treaty bodies in concluding observations to two or more consecutive state reports, as well as recommendations reiterated by several committees might indicate an important area of concern and thus a priority issue for consideration at a dialogue meeting.
- If a meeting focuses on one treaty, rather than taking up all recommendations of treaty bodies in one meeting, the items on the agenda should amalgamate recommendations into three to five key topics so as to allow problems and solutions to be discussed in depth.

Choosing the participants:

- If the purpose of the meetings is to make progress in the implementation of treaty guarantees in a country, the participation of ministries is essential. First of all, the conference dates should be arranged with the ministries early on in order to ensure that the participating ministry representatives will be from the right department and belong to an appropriate level in the hierarchy.
- Hardly any participant will be knowledgeable about, and interested in, all subjects of the conference. For each individual priority theme though, a few stakeholders should be present: At least, the persons invited should include civil society and government representatives, and if possible, some members of parliament, as well as a few academic experts or representatives of relevant professional groups, such as judges or social-security officials. For some issues, the invitation of economic agents, such as delegates of employer organizations and trade unions might be valuable.
- The presence of treaty body members is particularly helpful. Rapporteurs of the country at stake would be able to provide some background information on the deliberations of the committee in charge of the country report, as well as on the list of issues. All treaty body members could

inform the meeting about procedural questions, relevant trends, and the analyses of the committee. Treaty body experts who are nationals of the country in question might find it difficult to make pronouncements on domestic affairs as this is not allowed in the committees.

Conducting the meetings:

- Meetings are not a repetition of state examination before a treaty body – they are a dialogue on implementation. This may not always be remembered by all participants. As the meeting might become confrontational, integrative chairing is helpful. For the same reason, the first subject to be addressed should not be the most controversial.
- Ministry representatives are in a much stronger position if they can explain their views on the recommendations at the beginning. This may be an advantage in sessions on very contentious issues.
- Rapporteurs, in summarizing the discussions, provide the intermediate conclusions of the discussions that are necessary to proceed to the next subject. A final summary of recommendations by the chair, or by a general rapporteur, helps participants to recollect the main results of the meeting.

Working with the media:

- Getting the media involved in treaty body work would be highly desirable but it may collide with other objectives. If governments are to give informative and detailed answers on procedural and political questions, media presence at the conferences is probably a serious impediment.
- There are other ways to disseminate important findings of treaty bodies: The treaty body members invited could give interviews before or after the meetings without quoting any government officials that took part in the conference. Also, a press release could summarize the results, or a journalist could write a background article on one of the subjects of the conference, using the concluding observations and conference statements.
- A compilation on the internet of documents on human rights treaties, including government reports, alternative reports and concluding observations, helps disseminate knowledge on human rights obligations. A report on an implementation conference could be added as a source of information.

Following up with important actors:

- Key concerns and recommendations of the conferences need to be addressed to ministries in charge of their implementation. This could be done in writing and in personal meetings.
- Members of parliament have a particular responsibility for monitoring government performance and should be properly informed of the outcome of the conferences and of issues that require the specific attention of parliament.
- The same is true for civil society actors in NGOs, academia and other professional fields as they can use the recommendations of treaty bodies as a reference for their own human rights agenda.
- To conclude the cycle of coordinating the national and international levels of human rights monitoring, treaty bodies should be informed of the results of the domestic dialogue.

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