



Discussion Paper

Key Proposals regarding the Follow-up on Views Issued by UN Human Rights Treaty Bodies

ESCR-Net's Strategic Litigation Working Group

The Strategic Litigation Working Group (SLWG) is composed of 78 leading human rights organizations, advocates and academics, located in 30 countries, and seeks to provide a space for members to share resources and information, discuss key issues, and explore possibilities for collective efforts to support the effective litigation and enforcement of economic, social, and cultural rights (ESCR) globally. The SLWG engages directly in strategic litigation and implementation, including in regard to UN treaty bodies (UNTBs), and also focuses on institutional development to support participatory and effective realization of ESCR in practice. The SLWG is part of a larger network, the International Network on Economic, Social and Cultural Rights (ESCR-Net), which is composed of over 280 social movements, NGOs and advocates across 75 countries—seeking to build a global movement to make human rights and social justice a reality for all. Please see a list of SLWG members at the end of this document.

ESCR-Net's SLWG recognizes the significance of decisions issued by UNTBs under the complaints procedures (Views) in the advancement of human rights enjoyment by people around the world, and welcomes the past action and willingness of the UNTBs to continue developing constructive practices regarding the impact and implementation of such Views.

In order further to increase the visibility and implementation of UNTBs' Views, the SLWG presents eight key proposals for consideration by the UNTBs themselves and by the UN system more broadly. These are informed by the expertise and experience of the members of the SLWG in litigating and engaging in implementation activities across a range of jurisdictions, and also include (non-exhaustive) reference to current practices and recommendations by international and regional bodies, including UNTBs, as well as other commentators.¹

¹ This paper was prepared for, and informed by, the SLWG's discussions with members of the Committee on Economic, Social and Cultural Rights (CESCR) and the Human Rights Committee (HRC) held in Geneva in June 2016, and the SLWG greatly welcomes the openness of both UNTBs to continue to engage positively with civil society to identify areas of agreement, gaps or the need for further nuancing, feasibility, obstacles, and ways in which UNTBs and civil society can work together to realize enhanced approaches in practice.

Three principles underpin the SLWG’s proposals: the **principle of non-repetition** (consistently applied by the HRC in its views and by the CESCR in its General Comments); the **principle of reasonableness** (developed by the CESCR through its General Comments and 2007 Statement on Maximum Availability of Resources, and made explicit in the OP-ICESCR); and the **principle of participation** (recognized under a number of UN human rights treaties). Taking into account the practice of different international and regional human rights bodies, the SLWG proposes that the three principles should be applied during the consideration of a case, follow up and implementation, in order to maximize the effectiveness of human rights remedies.

As set out in more detail below, these are the SLWG’s key proposals:

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1. Ensure that Views are precise, practical, and in line with the 'reasonableness' standard and the principle of non-repetition

Recommendations issued by UN Treaty Bodies (UNTBs) are more effective when they are more precise and practical, and when they avoid, as far as possible, vague and abstract language. Recommendations should provide guidance as to how States can develop an implementation plan that is grounded in a reasonableness approach and is aimed at ensuring non-repetition of the violation(s).

Specific, concrete recommendations

- Some **HRC** members and commentators have suggested a more prescriptive approach to the remedies-related portions of views, that is, an approach that is more **pragmatic, specific, precise and concrete**.² States parties themselves have, at times, raised with the HRC's Special Rapporteur on Follow-Up of Individual Communications that abstract or vague recommendations are a factor that inhibits the implementation of views.³
- The **Committee on the Elimination of Discrimination Against Women (CEDAW)** has taken a more prescriptive, pragmatic approach to recommendations in a number of cases.⁴ In certain instances, CEDAW has provided **highly specific remedies and measures of compensation** to the individuals bringing the case, including

restitution of legal costs, lost income, housing, and psychological support.

- In *Belousova v. Kazakhstan*, the Committee recommended reparations for income lost during specific dates when the violation had occurred, "for legal costs and expenses incurred in connection with the author's numerous complaints against [defendant], [...] costs incurred in relation to the civil proceedings instituted by [defendant]"; and costs incurred due to suffering from depression and post-traumatic stress disorder caused by the defendant's actions.⁵
- In *Kell v. Canada*, the Committee specified that the author should be compensated for her deprivation of housing, not only with shelter, but with "housing commensurate in quality, location and size to the one that she was deprived of".⁶
- In *R.P.B. v. The Philippines*, the Committee recommended "free-of-charge psychological counseling and therapy for the author and her affected family members".⁷ In the same case, the Committee recommended that the state "review the legislation of rape so as to remove any requirement that sexual assault be committed by force or violence, and any requirement of proof of penetration, so as to place the lack of consent at its centre".⁸

² See Open Society Justice Initiative (OSJI), *From Judgment to Justice: Implementing International and Regional Human Rights Decisions*. New York: OSF, 2010, pp. 127-129; M. Schmidt, Follow-up by UN Human Rights Treaty Bodies and Special Procedure Mechanisms of the Human Rights Council - Recent Developments, in G. Alfredsson, J. Grimheden, B. Ramcharan & A. de Zayas (eds), *International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob Th. Möller*, Leiden: Martinus Nijhoff Publishers, 2007, pp. 25-32.

³ Belarus has specially noted that greater specificity in relation to recommendations would enable State parties to more effectively implement such recommendations. OSJI, *From Judgment to Justice*, supra note 1, p. 127.

⁴ OSJI, *From Judgment to Justice*, supra note 1, p. 129.

⁵ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Belousova v. Kazakhstan*, Communication No. 45/2012 (2015), para. 11(a)(i)-(iii).

⁶ CEDAW, *Kell v. Canada*, Communication No. 19/2008 (2012), para. 11(a)(i).

⁷ CEDAW, *R.P.B. v. The Philippines*, Communication No. 34/2011 (2014), para. 9(a)(ii).

⁸ CEDAW, *R.P.B. v. The Philippines*, supra note 6, para. 9(b)(i).

- The **Inter-American Court of Human Rights** (IACtHR) has ordered **highly prescriptive, pragmatic and specific remedies** in its judgments. The remedial scheme is considered by many to be the “among the most comprehensive and progressive”,⁹ with the IACtHR issuing a wide array of different types of remedies.¹⁰
 - In instances where the Court has ordered for the payment of pecuniary damages or reparations, the Court has detailed how such **compensation** should be paid and even specified the exact amount to be paid.¹¹ The Court has also retained a **sustained supervisory role** until the State party complies with its order.¹² In *Velásquez-Rodríguez v Honduras*, for example, the Court ordered that the State party should pay the victims “just compensation”¹³ and, in its decision on reparations, it specified the exact amounts to be paid and the means of payment. The Court also specified that it would “supervise indemnification and [...] close the file only when compensation has been paid”.¹⁴
 - The Court has also ordered **symbolic and equitable remedies**, including orders requiring State parties to publicly acknowledge wrongdoing, erect memorials or otherwise commemorate the victims of human rights violations, or establish commemorative scholarships. In *Villagrán Morales v. Guatemala*, the

respondent State was ordered to name a school after a group of massacred children who used to live on the streets.¹⁵ In *Mack Chang v. Guatemala*, the Court ordered the State party to establish commemorative university scholarships to honor the prominent sociologist who had been extrajudicially executed.¹⁶ In both cases, the State party complied with the orders of the Court.¹⁷

- The Court has also issued orders requiring State parties to **investigate** human rights violations and punish those responsible for such violations.¹⁸

- Further participation of civil society organizations, affected groups and States during adjudication and follow up procedures can also facilitate the issuing of more specific remedies and reparations.

Non-repetition – addressing structural/systemic issues

- The **OHCHR**, in its 2012 report on the UNTBs’ strengthening process, reinforced the relevance of non-repetition, stating that committees should consider:

...to include in final decisions on the merits, to the extent possible, not only specific and targeted remedies for the victim in question but also general recommendations in order to ensure the non-repetition of similar violations in the

⁹ OSJI, *From Judgment to Justice*, supra note 1, p. 65. See also, generally, T.M. Antkowiak, Remedial Approaches to Human Rights Violations: The Inter-American Court of Human Rights and Beyond, in 46 *Columbia Journal of Transnational Law*, 2008, p. 351.

¹⁰ OSJI, *From Judgment to Justice*, supra note 1, pp. 65-72; and T.M. Antkowiak, supra note 8, p. 351.

¹¹ OSJI, *From Judgment to Justice*, supra note 1, pp. 65-66.

¹² OSJI, *From Judgments to Justice*, supra note 1, p. 66.

¹³ Inter-American Court of Human Rights (IACtHR), *Velásquez-Rodríguez v. Honduras*, decision on merits, Series C No. 4, Jul. 29, 1988, para. 189.

¹⁴ IACtHR, *Velásquez-Rodríguez v. Honduras*, decision on reparations, Jul. 21, 1989, paras. VIII (57) and IX(5). See also,

generally, C. Grossman, The Inter-American System of Human Rights: Challenges for the Future, 83(4) *Indiana Law Journal* 2008, p. 1267.

¹⁵ IACtHR, *Villagrán-Morales et al. v. Guatemala*, Reparations and Costs, May 26, 2001, paras. 103 (general) and para. 7 of the decision.

¹⁶ IACtHR, *Myrna Mack-Chang v. Guatemala*, Merits, para. 258 (general) and para. 11 of the decision.

¹⁷ OSJI, *From Judgment to Justice*, supra note 1, p. 67.

¹⁸ OSJI, *From Judgment to Justice*, supra note 1, pp. 68-69.

future, such as changes in law or practice. To the extent possible, remedies should be framed in a way that allows their implementation to be measured and should be prescriptive. This could include compensation, rehabilitation, satisfaction, restitution and guarantees of non-repetition; stipulation of other forms of satisfaction, including legislative and institutional reforms or other measures as appropriate; and, where relevant, clarification of the obligation to investigate and prosecute. Proposed remedies may be structured around short and long-term goals, specifying concrete steps to be taken by States.¹⁹

- Approaches to non-repetition have been extensively developed by **HRC's** and **CESCR's General Comments**. For instance, the HRC has established that:

...[i]n general, the purposes of the [International Covenant on Civil and Political Rights] would be defeated without an obligation integral to article 2 to take measures to prevent a recurrence of a violation of the Covenant. Accordingly, it has been a frequent practice of the Committee in cases under the Optional Protocol to include in its Views the need for measures, beyond a victim-specific remedy, to be taken to avoid recurrence of the type of violation in

question. Such measures may require changes in the State Party's laws or practices."²⁰

- The principle of non-repetition is also applied in the **HRC's views**, establishing a key best practice for follow up. A stronger application of the principle would likely lead to more effective implementation. Illustratively, the concurring decision of Fabián Salvioli in *Farida Khirani v. Algeria* suggests the adoption of more precise recommendations with more specific language, such as the adoption of a "firm statement declaring [the HRC's] opposition to the continued applicability of a legislative text that is per se incompatible with the Covenant, since it does not meet current international standards for reparation in cases of human rights violations"²¹
- As to **reasonableness**, it is constructive to consider how (1) the standard of reasonableness in **article 8 of the OP-ICESCR**,²² as detailed further in (2) **CESCR's 2007 statement** on maximum availability of resources²³ (which explains how CESCR considers the adequacy or reasonableness of State parties measures when considering a communication concerning an alleged failure of the State to comply with its obligation to take steps to the maximum of available resources to realize ESCR), could also be applied to the follow up process, especially with regard to addressing structural or systemic issues to avoid non-repetition of violations.

¹⁹ Navanethem Pillay, *Strengthening the United Nations human rights treaty body system - A report by the United Nations High Commissioner for Human Rights*, 2012, p. 69. Available at: <file:///Z:/Working%20groups/Strategic%20Litigation%20WG/2012-2016/Geneva/Geneva%202016/Position%20paper/Second%20draft/HCRReportTBStrengthening.pdf>

²⁰ Human Rights Committee (HRC), *General Comment no. 31*, CCPR/C/21/Rev.1/Add. 1326, May 2004, para. 17.

²¹ HRC, *Communication No. 1905/2009*, U.N. Doc. CCPR/C/104/D/1905/2009, 2012, paras. 11 and 12.

²² Article 8 states: "[w]hen examining communications under the present Protocol, the Committee shall consider the reasonableness of the steps taken by the State Party in

accordance with part II of the Covenant. In doing so, the Committee shall bear in mind that the State Party may adopt a range of possible policy measures for the implementation of the rights set forth in the Covenant." For a useful discussion of the historical development and significance of the standard of reasonableness to the effective realization of ESCR, see Bruce Porter, Reasonableness and Article 8(4), in M. Langford, B. Porter, R. Brown, and J. Rossi, *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: A Commentary*, Pretoria: Pretoria University Press – PULP, 2006, pp. 37-76.

²³ CESCR, *An evaluation of the obligation to take steps to the "maximum of available resources" under an Optional Protocol to the Covenant*, ECOSOC, E/C.12/2007/1, 10 May 2007, para. 8.

'Reasonableness' is a standard used to assess compliance with human rights treaty obligations, and is particularly helpful in circumstances of structural or systemic violations, as such violations often cannot be linked to a single act or simple remedial order and therefore require a State party to undertake a series of considered and connected positive legislative, administrative and/or other measures to realize ESCR (rather than the State simply refraining from certain action). Similarly, reasonableness is also a standard that UNTBs can use to guide States parties to develop a clear plan to ensure that a finding of violation is implemented with a view to ensuring that no similar violations take place in the future. It could also be a standard, therefore, for strengthening the outcome of non-repetition in certain cases. Following CESCR's 2007 statement, UNTB Views that request States to address structural or systemic issues by adopting an implementation plan that addresses the following considerations could offer a more effective process of follow up and implementation, not only related to ESCR issues but also to cases concerning civil and political rights: (a) the need to take "deliberate, concrete and targeted towards the fulfilment of [human] rights"; (b) the need to adopt "non-discriminatory" policies; (c) the need "to allocate available resources...in accordance with international human rights standards"; (d) the need to adopt policies "that least restricts Covenant rights"; (e) the need to adopt a "time frame in which the steps [are to be] taken"; (f) the need to take "into account the precarious situation of disadvantaged and marginalized individuals

or groups" and to prioritize "grave situations or situations of risk".²⁴

- The application of the principle of reasonableness in the follow up of views can be further understood in connection with the 'strong-moderate-strong' remedial framework suggested by Professor Cesar Rodriguez-Garavito, which notes that: "[t]he most dialogic decisions in structural cases involve a clear affirmation of the justiciability of the right in question (strong rights); leave policy decisions to the elected branches of power while laying out a clear roadmap for measuring progress (moderate remedies); and actively monitor the implementation of the court's orders through participatory mechanisms like public hearings, progress reports, and follow-up decisions (strong monitoring)".²⁵ The application of a reasonableness standard by UNTBs can guide States parties in the development and monitoring of a clear implementation 'roadmap'.
- Comparatively, the IACtHR has issued a range of general measures for guaranteeing non-repetition of violations through an examination of the root causes.²⁶
 - **Legislative framework:** In *Yean and Bosico v. Dominican Republic*.²⁷ the Court ordered State parties to revoke or adopt national legislation to rectify the violations. In *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, the Court recognized indigenous peoples' communal right to ancestral land. In implementing the decision, the State party along with civil society organizations created two joint commissions: (1) to invest the damages

²⁴ CESCR, *An evaluation of the obligation to take steps to the "maximum of available resources"*, supra note 22, para. 8.

²⁵ Cesar Rodriguez-Garavito, *Beyond the courtroom: the impact of judicial activism on socioeconomic rights in Latin America*, *Texas Law Review*, vol. 89, 2010-2011, p. 1692.

²⁶ OSJI, *From Judgment to Justice*, supra note 1, pp. 69-72. See also L. Hennebel, *The Inter-American System of Human Rights: Operation and Achievements*, in F. Gomez Isa & K. de Feyter

(eds), *International Human Rights Law in Global Context*, 2009, pp. 33-37.

²⁷ IACtHR. *Girls Yean and Bosico v. Dominican Republic*, Preliminary Objections, Merits, Reparations and Costs, Judgment of September 8, 2005, para. 8 of the decision.

that the State party was ordered to pay to the community for the violations, and (2) to delimit, demarcate, and title the territory, while also protecting it from intrusion by third parties.²⁸ After the second joint committee initially struggled to implement the Court's decision, the Nicaragua legislature passed a demarcation of land law, known as Law 445. While the Awas Tingni insisted that their right to demarcations existed beyond the confines of the law, the community agreed to submit to the process created in terms of the law. This was critical to the effective implementation of the decision as it empowered State officials by providing a clear legal and regulatory framework within which to apply such decision.²⁹

- **Human rights education and training (where systematic human rights violations resulted from the activities of State officials):** In *Mapiripán Massacre v. Colombia*, the Court ordered that the State party “implement, within a reasonable term, permanent education programs on human rights and international humanitarian law within the Colombian Armed Forces, at all levels of its hierarchy” in order to comply with the specifications laid down in its reparations decision.³⁰ As a result, the State party adopted a human rights and humanitarian law policy and worked with the UN High Commissioner on

Human Rights and consultants to train the State party's armed forces.³¹

- In 2004, the Committee of Ministers of the Council of Europe (CoM)³² requested the **European Court of Human Rights (ECtHR)** “as far as possible, [to] identify in its judgments [...] what it considers to be an underlying systemic problem and the source of this problem, in particular when it is likely to give rise to numerous applications, so as to assist states in finding the appropriate solution and the [CoM] in supervising the execution of judgments.”³³ As a result, in cases involving systemic problems or violations, the ECtHR has ordered States to take “general” measures, which have grown increasingly specific, in particular in “pilot judgments”.³⁴ Among other things, the ECtHR has ordered States to amend specific legislation,³⁵ and to hold new criminal trials.³⁶

2. Provide guidance to States parties regarding the components of implementation plans

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International and regional human rights bodies have determined and enforced a timeframe by when State parties should present a comprehensive compliance plan or road map, to include the State party's timeline of activities to fully comply with the decision. The compliance plan should follow the principle of reasonableness, as stated by the

²⁸IACtHR, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations, Costs, August 31, 2001, paras. 148-167.

²⁹ See also OSJI, *From Judgment to Justice*, supra note 1, pp. 72-74.

³⁰ IACtHR, *Mapiripán Massacre v. Colombia*, Series C No. 134, Sep. 15, 2005, operative para. 13.

³¹ OSJI, *From Judgment to Justice*, supra note 1, pp. 69-72.

³² The CoM's role includes, among other things, supervising the execution of judgments of the European Court of Human Rights.

³³ COM, *Resolution on Judgments Revealing an Underlying Systemic Problem*, May 12, 2004.

³⁴ European Court of Human Rights (ECtHR), *Factsheet – pilot judgments*, Nov. 2016, available at:

www.echr.coe.int/Documents/FS_Pilot_judgments_ENG.pdf.

See, for instance: ECtHR (Grand Chamber), *Broniowski v. Poland*, Application no. 31443/96, 2004, paras. 193–94.

³⁵ See, among others, ECtHR, *Lukenda v. Slovenia*, Application no. 16492/02, Apr. 13, 2006, para. 5 of the decision (ordering Slovenia to amend existing legal remedies with respect to length of proceedings, where 500 cases were pending before the court).

³⁶ ECtHR, *Alfatti v. Turkey*, Application no. 32984/96, Oct. 30, 2003, para. 52

CESCR, as well as the principle of non-repetition, as stated by numerous bodies, including the HRC.

- In regard to a clear timeframe, different bodies have established reasonably clear rules.
 - **HRC:** 180 days for respondent States to provide information on the measures taken in response to the Committee's views (as extended in 2007 from a former period of 90 days).³⁷
 - **CESCR:** “[w]ithin six months of the Committee's transmittal of its Views on a communication or decision that a friendly settlement has closed its consideration of a communication, the State party concerned shall submit to the Committee a written response, which shall include information on action taken, if any, in the light of the Views and recommendations of the Committee.”³⁸
 - **CAT:** many recommendations require follow-up by the State party within 90 days, with no further guidance as to length of time of follow-up.
 - **CEDAW:** many recommendations require follow-up by the State party within 6 months, with no further guidance as to length of time of follow-up.³⁹
- Regional bodies have established useful principles for guidance regarding compliance plans:

- In *Centre for Minority Rights Development (Kenya) and Minority Rights Group International (on behalf of the Endorois Welfare Council) v. Republic of Kenya*, following Kenya's failure to implement a decision, the **African Commission on Human and Peoples' Rights** (ACHPR) issued a resolution requesting that the Kenyan government “inform the Commission of the measures proposed to implement the...decision, and more particularly, the concrete steps taken to engage all the players and stakeholders, including the victims, with a view to giving full effect to the decision” and “to immediately transmit to the Commission, a comprehensive report, including a roadmap, for implementation”.⁴⁰
- The **IACtHR** has almost always ordered State parties to produce reports on the measures they have taken to comply with a decision within a certain period (usually ranging from six months to 18 months from the date of the order).⁴¹ Since 2002, the Court has included detailed timetables to specific aspects of its reparation decisions to clearly articulate the timeline in which it expects State parties to comply with specific aspect of its order.⁴² Over time these timetables have become increasingly more specific.⁴³ In *Barrios-Altos v. Peru* and *Durand and Uguarte v. Peru*, for instance, the Court ordered the State party to present a compliance report within six months of the date that the decision was issued,⁴⁴ and in *Cantoral-*

³⁷ M. Schmidt, *supra* note 1, p. 26; and OSJI, *From Judgment to Justice*, *supra* note 1, p. 123.

³⁸ CESCR, *Provisional Rules of Procedure under the OP-ICESCR*, E/c. 12/49/3, 2012, Rule 18.

³⁹ CEDAW, *X and Y v. Georgia*, Communication No. 24/2009, para. 12; CEDAW, *Elisabeth de Blok et al. v. The Netherlands*, Communication No. 36/2012, para. 10; CEDAW, *S.V.P. v. Bulgaria*, Communication No. 31/2011, para. 11.

⁴⁰ ACHPR, *Resolution calling on the Republic of Kenya to Implement the Endorois Decision*, adopted during the 54th Ordinary Session held 22 October-5 November 2013.

⁴¹ OSJI, *From Judgment to Justice*, *supra* note 1, p. 81.

⁴² OSJI, *From Judgment to Justice*, *supra* note 1, p. 81.

⁴³ OSJI, *From Judgment to Justice*, *supra* note 1, n. 333.

⁴⁴ IACtHR, *Barrios Altos v. Peru*, Series C No. 87, Nov. 30, 2001, operative para. 7; IACtHR, *Durand and Ugarte v. Peru*, Series C No. 89, Dec. 3, 2001, operative para. 5.

Benavides it required such a report “every six months” following the decision.⁴⁵

- In 2008, the **CoM** issued a recommendation requesting States to designate a national coordinator of judgments and design mechanisms to ensure communication and the transmission of relevant information between this coordinator and the CoM, on the basis that institutionalization of implementation would help develop normative pathways, to increase future implementation and avoid future violations. Foremost among these strategies are plans to increase coordination among relevant government actors and agencies.

- The United Kingdom has developed an implementation form which provides lead departments with advice on the completion of the Action Plan related to a particular judgment, in addition to ensuring that the CoM and Foreign and Commonwealth Office have the necessary information. The form requires that the identification of a lead department, lead minister, lead department lawyer, and lead policy official.

- Poland and the Netherlands have similar forms called the algorithm and the blue letter respectively.⁴⁶ Poland established an inter-ministerial task force made up of experts from 14 ministries, including finance, economy, construction issues, labor and social policy, treasury, justice, interior and administration, foreign

affairs, transport, and health, which brings together key officials necessary to implementing decisions.⁴⁷

- As mentioned above, the **CESCR** has established clear criteria to assess reasonableness. Such criteria should be applied not only to assess whether or not a violation has occurred, but also in the drafting of compliance plans. Such plans should therefore: (a) include “deliberate, concrete and targeted” measures “towards the fulfilment of economic, social and cultural rights”; (b) abide to the principle of non-discrimination; (c) determine the allocation of “available resources is in accordance with international human rights standards”; (d) prioritize “policy options” that the “least restricts Covenant rights”; (e) adopt a “time frame in which the steps” are to be taken; (f) take “into account the precarious situation of disadvantaged and marginalized individuals or groups” and, prioritize “grave situations or situations of risk.”⁴⁸ A reasonableness approach will not involve determination by the UNTB as to exactly what the State ought to do or suggest that there is only one possible remedial option, but rather guide a constructive dialogue between the Committees, States, the claimants and other relevant entities.

- In developing a compliance plan, coherence and coordination across sectors on issues that cut across ministerial bodies will be important. An explanation of which sectors/bodies/ ministries will be involved in the implementation of a decision and what coordination mechanisms will be established for effective implementation of the decision

⁴⁵ IACtHR, *Cantoral-Benavides v. Peru*, Series C No. 88, Dec. 3, 2001, operative para. 12.

⁴⁶ OSJI, *From Rights to Remedies: Structures and Strategies for Implementing International Human Rights Decisions*, New York: OSF, 2013, p. 44, appendix 158.

⁴⁷ OSJI, *From Rights to Remedies*, supra note 45, pp. 46-47.

⁴⁸ CESCR, *An evaluation of the obligation to take steps to the “maximum of available resources”*, supra note 22, para. 8.

could be standard requirements for a compliance plan. Decentralization, especially in resource allocation, also affects the implementation of a decision, so compliance plans should also ensure sub-national governments and local municipalities are accountable for their role in the implementation process.⁴⁹

3. Create or further develop dedicated and effective follow-up mechanisms, either within each treaty body or to work with all treaty bodies

UN Treaty bodies (UNTBs) may designate a Special Rapporteur or Follow Up Committee/Working Group to take responsibility for rigorous, systematic and sustained follow-up procedures, to ensure that the decisions of these bodies are complied with.

- The **HRC** was the first UNTB to begin monitoring the compliance with its views by establishing the position of (now-named) Special Rapporteur on the Follow-Up of Individual Communications. He or she is responsible for: obtaining information on the actions taken by State parties in relation to the views adopted by the HRC by communicating with the State parties and, if he or she deems it appropriate, the victims; conducting direct follow-up consultations with State party representatives; and conducting follow-up missions to State parties.⁵⁰
- Most of the other UNTBs have adopted a model similar to that of the HRC.

□ **CERD**: the Committee may designate one or several special-rapporteurs for the purposes of follow-up, in particular to ascertain the measures adopted by State parties in relation to the Committee's recommendations and suggestions.⁵¹

□ **CAT**: the Committee may designate one or more Rapporteur(s) for follow-up on decisions, for the purpose of ascertaining the measures taken by States parties to give effect to the Committee's findings.⁵²

□ **CEDAW**: the Committee shall designate for follow-up on Views a rapporteur or working group to ascertain the measures taken by States parties to give effect to the Committee's Views and recommendations.⁵³

- As to the **ECtHR**, the CoM is responsible for monitoring implementation of Court decisions. The CoM is supported by a permanent Secretariat, which has a directorate of human rights and legal affairs. The directorate of human rights and legal affairs has a Department of Execution of Judgment, which works with States and the CoM on the implementation of Court decisions.
- As to the **IACtHR**, its members, along with their permanent support staff, are responsible for ensuring that State parties implement their decisions. The former President of the IACtHR, Judge Antônio Cançado Trindade, has suggested that the political organs of the Organization of American State (OAS) (namely the General Assembly and the Permanent Council) establish permanent mechanisms to monitor

⁴⁹ Human Rights Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, A/HRC/31/54, 30 December 2015, p. 22.

⁵⁰ OSJI, *From Judgment to Justice*, supra note 1, pp. 122-125. See also, generally, M. Schmidt, supra note 1.

⁵¹ Rule of Procedure 95.

⁵² Rule of Procedure 120(1).

⁵³ Rule of Procedure 73(4).

and promote compliance through resolution.⁵⁴ Trinidad suggested that a compliance mechanism should take the form of a working group of the Committee on Juridical and Political Affairs that could be modelled on the CoM,⁵⁵ with the main aim to create a space for sustained discussion on implementation and exchange of best practice by State parties.⁵⁶

- A useful example of domestic best practice is the **Indian Supreme Court**, which appoints a senior counsel as *amicus curiae* to assist it in the proceedings. In addition to assistance at the litigation stage, the *amicus curiae* ensures continuity during the implementation stage. Additionally, the Court has used commissioners or expert bodies to monitor implementation.⁵⁷

4. Ensure a participatory approach by involving all relevant stakeholders in follow-up processes

As part of a wider process of encouraging a participatory approach throughout the communications procedure (including greater transparency with respect to pending cases and facilitation of third party interventions that support the determination of, and appropriate remedial recommendations to address, relevant structural/systemic issues), the follow up process adopted by UN Treaty Bodies (UNTBs) should encourage the involvement of other UN organs, NHRI, as well as NGOs,

affected individuals and communities, and other interested actors in the implementation process, in order to obtain additional information on implementation, increase domestic pressure and better tailor implementation to claimants' needs and priorities. In this vein, State parties should also be requested to create meaningful spaces for responsible officials to engage directly with the victims of human rights violations, civil society and other experts with regard to the reforms needed to respond effectively to structural human rights violations.

- As to the involvement of other international bodies, a number of best practices can be highlighted:
 - **CESCR** is empowered "to consult, as appropriate, relevant documentation emanating from other United Nations bodies, specialized agencies, funds, programmes and mechanisms, and other international organizations, including from regional human rights systems, and any observations or comments by the State Party concerned."⁵⁸
 - The **IACtHR** can request expert opinions about issues related to compliance pursuant to art 69.2 of its Rules of Procedure.
 - The **Human Rights Treaties Branch of the OHCHR** has provided assistance to UNTBs in relation to concluding

⁵⁴ Antônio Augusto Cançado Trindade, *Fragmentos de Primeras Memorias de la Corte Interamericana de Derechos Humanos*, in *Jornadas de Derecho Internacional*, 2007, pp. 19–26. See also OSJI, *From Judgment to Justice*, supra note 1, p. 78. It should be mentioned that there is precedent for the General Assembly of the OAS to create such a mechanism through resolutions. OSJI, *From Judgment to Justice*, supra note 1, p. 89.

⁵⁵ OSJI, *From Judgment to Justice*, supra note 1, p. 78.

⁵⁶ OSJI, *From Judgment to Justice*, supra note 1, p. 78.

⁵⁷ The former Solicitor General of India was appointed as *amicus curiae* in a case regarding the protection of forest cover (*T.N. Godavarman Tirmulapad v. Union of India*, 2 SCC 267, 1997). Lawyers were appointed as commissioners in the case

concerning child labour in Tamil Nadu (*M.C.Mehta v. State of Tamil Nadu* 6 SCC 756, 1996). *Amicus curiae* and commissioners have also been appointed to assist in the implementation of the *Sheela Barse v. Union of India Case* (4 SCC 204, 1993), regarding the imprisonment of persons with intellectual disabilities, and in the *Right to Food Case* (Supreme Court of India, Civil Original Jurisdiction, *People's Union for Civil Liberties v. Union of India & Ors*, Writ Petition (Civil) No.196, 2001).

⁵⁸ Article 8, OP-ICESCR.

observations by highlighting, in its newsletter, good practices by State parties.⁵⁹ It may be useful to extend this publication to follow up procedures in relation to individual communications.

- UNTBs and **Special Rapporteurs** could more closely collaborate in the implementation of specific rights, for instance, in conducting in situ State party visits.
- The **General Assembly of OAS** has regularly issued resolutions highlighting the importance of implementation and request the Permanent Council to consider ways to encourage compliance by State parties with the decisions and recommendations of the Inter-American Court and Commission.⁶⁰
- In 2006, the **European Commissioner for Human Rights, the Parliamentary Assembly, and the CoM** decided to hold annual meetings “to promote stronger interaction with regard to the execution of judgments.”⁶¹
- As to the participation of national organizations, NGOs, and persons impacted by human rights violations:
 - The **ECtHR** has established a framework for NHRIs’ participation in implementation monitoring.”⁶² One of the mandates of the Commissioner for Human Rights is to facilitate the work of **national ombudspersons and NHRIs**.⁶³ Article 9 of the Rules of Procedure allow NGOs and NHRI to

submit written submissions regarding a state’s implementation of individual and general measures to the Secretariat.

- Conclusions from a UN international roundtable recommend that **NHRIs** follow up on UNTBs’ recommendations regarding individual human rights complaints and monitor State action to implement those recommendations.⁶⁴
- The **IACHR** and **IACtHR** have facilitated the **active participation of victims** in crafting remedies for violations in friendly settlements, decisions on the merits, and during the implementation stage. In friendly settlements, for instance, the Commission has acted as a mediator between parties and helped them reach a mutually acceptable agreement regarding reparations and non-repetition measures. Claimants have also helped develop the types of reparations that the Court orders.⁶⁵ In *Loayza Tamayo v. Peru*, for instance, the discussion regarding the impact of illegal detention for years on the petitioner and her family gave rise to the Court’s concept of reparations from harm to victims’ “life projects.”⁶⁶ Additionally, the Court has explicitly established that reparations must be implemented with the participation and consultation of the claimants.⁶⁷
- Moreover, during the monitoring stage, the **IACtHR** has held compliance hearings to provide parties with the opportunity to present their evidence

⁵⁹ M. Schmidt, supra note 1.

⁶⁰ OSJI, *From Judgment to Justice*, supra note 1, pp. 80-83.

⁶¹ The European Commissioner for Human Rights is also charged with cooperating with other international institutions in the protection of human rights and, in so doing, has the authority to visit member states and contact governments directly.

⁶² COM, Resolution 97(11), 30 September 1997.

⁶³ COM, Resolution 99(50), May 7, 1999.

⁶⁴ Berlin Roundtable, *Conclusions of the International Roundtable on the Role of National Human Rights Institutions and Treaty Bodies*, OSCE: 2006, paras. 6–8.

⁶⁵ IACtHR, *Kichwa Indigenous People of Sarayaku v. Ecuador*, Merits and reparations, Judgment of June 27, 2012, para. 281.

⁶⁶ IACtHR, *Loayza Tamayo v. Peru*, Reparations and Costs, Judgment of November 27, 1998, paras. 144-154.

⁶⁷ See, inter alia, IACtHR, *Kaliña and Lokono Peoples v. Suriname*, Merits, Reparations and Costs, Judgment of November 25, 2015, paras. 272, 281, 284, 290, 296; IACtHR, *Kichwa Indigenous People of Sarayaku v. Ecuador*, supra note 64, paras. 293, 294, 301, 305, 317, 323.

and arguments orally. In those hearings, the Court has sought to establish agreements between the parties, suggesting alternatives for problem resolution, encouraging compliance, and calling attention to incidents of non-compliance. The Court has encouraged the State and petitioners to work together to establish timetables for implementation.⁶⁸

- At the domestic level, **South African jurisprudence**, for instance, has required the government to consult with parties whose rights will be affected by its decisions in order to determine adequate reparations. In the *Olivia Road* case, regarding the forced eviction of a large number of poor residents in an informal settlement, the Constitutional Court ordered the parties to “engage with each other meaningfully...in an effort to resolve the differences and difficulties aired in this application in light of the values of the Constitution, the constitutional and statutory duties of the municipality and the rights and duties of the citizens concerned.”⁶⁹ The Court has developed standards to ensure that engagement is a productive process that allows those affected to actively participate in developing policies and plans: (1) a government agency that plans a project that may impact individuals’ rights must incorporate engagement with affected individuals from the outset; (2) the responsible government entity must

ensure that relevant agencies have the capacity to undertake such a negotiation; (3) the State must address the power imbalance between State actors and affected communities, in part by including civil society organizations.⁷⁰

- Similarly, the **Supreme Court of India** has also facilitated the participation of claimants in the determination of reparations and the monitoring process. In public interest litigation cases, the Court may request third party interventions, as it did in the *People’s Union for Civil Liberties* case, a structural litigation case that addressed the problem of hunger in India and established a constitutionally protected right to food.⁷¹ In this case, the Right to Food Campaign, a grassroots movement, including many individuals affected by the decision, provided the Court with invaluable information regarding violations of court orders, the status of implementation of court ordered programs, how to improve implementation, and how to improve court ordered programs and other remedies. Additionally, Court appointed Commissioners in the case worked both with the Right to Food Campaign and state agencies and officials, developing a positive, rather than adversarial, relationship with the State, and helping devise implementation solutions that satisfied both the petitioners and the State.⁷² Fostering participation in

⁶⁸ IACtHR, *2012 Annual Report*, OEA/Ser.LN/II.147 Doc. 1, p. 25, available at: http://www.corteidh.or.cr/sitios/informes/docs/ENG/eng_2012.pdf.

⁶⁹ South African Constitutional Court, *Occupiers of 51 Olivia Road Berea Township and 197 Main Street Johannesburg v. City of Johannesburg*, CCT 24/07, Interim Order, 20 August 2007, para. 1.

⁷⁰ South African Constitutional Court, *Occupiers of Olivia Road v. City of Johannesburg*, 2008 (5) BCLR 475 (CC), para. 15-21.

⁷¹ Supreme Court of India, *People’s Union for Civil Liberties v. Union of India & Ors.*, Civil Writ Petition No. 196/2001.

⁷² Birchfield, Lauren and Jessica Corsi, *Between Starvation and Globalization: Realizing the Right to Food in India*, in *Michigan*

Journal of International Law, 2010, vol. 31, pp. 691-764; Nora Graham, *The Right to Food in India: From ‘Parchment Victories’ to Legal Enforcement: Utilizing the Judicial System to Gain Social and Economic Rights*, Political Science Senior Thesis, Haverford College, 2011; S. Muralidhar, *Implementation of Court Orders in the Area of Economic, Social and Cultural Rights: An Overview of the Experience of the Indian Judiciary*, in International Environmental Law Research Center (IELRC), IELRC Working Paper, 2002, available at <http://www.ielrc.org/content/w0202.pdf>.

procedures has increased not only the visibility but also the legitimacy of courts in India.⁷³

- In perhaps its most famous decision, case T-025 of 2004, the **Constitutional Court of Colombia** specifically made victim participation a cornerstone of its decision in a case on the situation of internally displaced persons (IDPs) as a result of armed conflict. Like the Right to Food case, this case is a structural case that has involved long-term monitoring of a vast network of programs, agencies, and policies in order to implement adequate remedies for the variety of ESCR violations of IDPs throughout the country. The Court has requested reports from relevant state institutions, organizations of IDPs, civil society organizations, and organizations such as the UNHCR. Based on this information, the Court has convened public hearings to monitor implementation.⁷⁴ Moreover, the Court has received technical support from the follow up commission to the policies of forced displacement, an initiative of civil society organizations that decided to contribute to the development of a new policy towards IDPs. The Commission has been fundamental in the monitoring process, through the presentation of reports regarding the situation of IDPs, as well as the technical evaluation of the distinct components of the policy.⁷⁵

- Finally, participation can support implementation if fostered during the communication procedure through third party interventions. Such interventions provide more information to allow Committees to make informed decisions and remedial recommendations about systemic issues; they are likely to facilitate increased continuity regarding discussions between parties that could foster a collaborate approach to implementation; and they raise visibility about treaty body decisions.

5. Provide greater clarity regarding levels of compliance

Follow up mechanisms should more precisely define levels of compliance in order to facilitate monitoring and better identify the steps that should be still taken for full compliance.

- The **HRC** traditionally distinguished between three different levels of compliance with its recommendations. These grades correspond with two broad categories of compliance, namely cases where compliance has been “satisfactory”,⁷⁶ and cases where compliance is not deemed satisfactory.⁷⁷ More recently, categories have gotten more complex, encompassing levels A, B, C, D and E.⁷⁸ The **Inter-American Commission on Human Rights** (IACHR) initially monitored compliance of its recommendations in terms of three

⁷³ Kranti L.C., executive director, Human Rights Law Network, India. Meeting in Geneva with HRC and CESCR members held on June 20, 2016.

⁷⁴ Rodrigo Yepes Uprimny and Nelson Camilo Sánchez, Juzgar y medir: el uso de indicadores de derechos humanos por la Corte Constitucional colombiana, in Victor Abromavich and Laura Pautassi, *La medición de derechos en las políticas sociales*, Buenos Aires, 2010, p. 300; César Rodríguez-Garavito and Diana Rodríguez-Franco, *Cortes y cambio social: cómo la Corte Constitucional transformó el desplazamiento forzado en Colombia*, Dejusticia, 2010.

⁷⁵ Rodrigo Yepes Uprimny and Nelson Camilo Sánchez, Juzgar y medir, supra note 73, p. 301-302.

⁷⁶ This is defined as “the willingness of a State party to implement the Committee’s recommendations or offer the complainant an appropriate remedy” (emphasis added). OSJI, *From Judgment to Justice*, supra note 1.

⁷⁷ This usually refers to instances where State parties do not respond to the Committee’s finding or do respond, but “do not address the Committee’s Views at all or relate only to aspect of them”. OSJI, *From Judgment to Justice*, supra note 1.

⁷⁸ See, for instance, HRC. *Follow-up progress report on individual communications received and processed between June 2014 and January 2015*, CCPR/c/113/3, 29 June 2015.

categories: full compliance, partial compliance, non-compliance where the State party has provided information on the measures, and non-compliance where the State party has provided no information to the Commission.⁷⁹ In 2002, in response to concerns raised by State parties, the Commission changed to three new categories: total compliance, partial compliance, and pending compliance.⁸⁰

- Commentators have indicated that there is a need for **greater clarity** in relation to exactly what each **category of compliance** entails and how they are defined,⁸¹ so that parties have more clarity about whether compliance has occurred, States better understand the steps that should still be taken towards full compliance, and other stakeholders involved in monitoring and implementation activities can be aware of the status of the case.
- National level practice may be instructive in this regard. In particular, the **use of indicators** to measure implementation is one strategy for verifying the impact of decisions on the fulfillment of the rights,⁸² which follow up bodies could usefully employ in defining categories of compliance. A noteworthy example of their use is by the **Colombian Constitutional Court** in T-025/94. Similarly, the Center for Economic and Social Rights (CESR) and the Legal Resources Centre are piloting how CESR's versatile four-step framework OPERA (which stands for Outcomes, Policy Efforts, Resources and Assessment) might be employed to track progress in implementing court decisions. In the High Court of South Africa case, *Madzodzo and others v. Department of Basic Education and others*, a case on the long-standing failure to provide

adequate school furniture, the OPERA framework facilitated comprehensive thinking about the type of data needed and more creatively about the tools needed to collect it.⁸³

6. Consider a range of additional monitoring activities

When not already the case (and recognizing resources constraints), rules of procedure should more clearly specify that follow up mechanisms hold the mandate to periodically request information and interim measures, and conduct fact finding missions, annual consultations and hearings with different stakeholders in a particular case.

(1) Follow up bodies should have the mandate to request information:

- If the State party does not provide sufficient information regarding information about the measures it has adopted or intends to adopt in relation to its views, the **HRC** can request further information to be included in the States' periodic reports.⁸⁴ If the special rapporteur on follow up deems it appropriate, it can request more information from claimants.
- The **CESCR** has established that “[a]fter the six-month period [of the Committee’s transmittal of its Views on a communication or decision that a friendly settlement has closed its consideration of a communication], the Committee may invite the State party concerned to submit further information

⁷⁹ See, for instance, IACommissionHR, 2001 Annual Report, para. 66.

⁸⁰ OSJI, *From Judgment to Justice*, supra note 1, p. 79.

⁸¹ OSJI, *From Judgment to Justice*, supra note 1, p. 118-121.

⁸² Dejusticia, *Making Social Rights Real: Implementation Strategies for Courts, Decision Makers and Civil Society*, available at:

http://www.dejusticia.org/files/r2_actividades_recursos/fi_name_recurso.639.pdf.

⁸³ CESR website, <http://www.cesr.org/article.php?id=1790>.

⁸⁴ M. Schmidt, supra note 1, pp. 25-27.

about any measures the State party has taken in response to its Views or recommendations or in response to a friendly settlement agreement.”⁸⁵

- The **IACHR** has wide-ranging powers to request information from parties.⁸⁶ Similarly, the **IACtHR** has frequently ordered State parties to provide compliance reporting within specified timeframes on their compliance with its decisions.⁸⁷
- As to the European System, in addition to the power to request information from States, the **CoM** permits claimants and their representatives, NGOs, and national human rights institutions (NHRIs) to provide information regarding the implementation of measures.⁸⁸

(2) *Follow up bodies could request meetings with State party representatives and NHRIs:*

- The **HRC** special rapporteur is empowered to organize direct follow-up consultations with the diplomatic representatives of the State party (usually the permanent representatives in Geneva or New York). By 2010, 35 of these consultations had taken place.⁸⁹
- Commenters on the **ACHPR** have also recommended greater interaction between follow up bodies and domestic bodies focused on implementation and compliance with international law, as well as with NHRIs.

- For example, in **Cameroon**, a unit exists within the Ministry of Justice whose purpose is to communicate directly with the ACHPR on follow up. Its existence has allowed the ACHPR to more effectively transmit information to the State party, and the unit to then transmit information about communications with the ACHPR throughout Cameroon’s decentralized government. The result has been a more informed population. It also gives victims and civil society organizations a central point of communication about their case.⁹⁰ The unit also releases an annual report on compliance with international bodies.⁹¹
- The ACHPR has a formal procedure which **allows NHRIs to attend proceedings**, which has been found to facilitate implementation at the domestic level. However, although over 23 NHRIs are registered with the ACHPR, few attend proceedings because they are not aware of them. Follow up bodies should be in regular contact with NHRIs and keep them informed of activity in cases related to their state.⁹² Some NHRIs are empowered to hear complaints and investigate claims related to violations of human rights, such as the **Ugandan** Human Rights Commission. These quasi-judicial NHRIs are useful for implementation.⁹³

⁸⁵ CESCR, *Provisional Rules of Procedure under the OP-ICESCR*, supra note 37.

⁸⁶ Article 46 of its Rules of Procedure.

⁸⁷ See the section on timeframes above.

⁸⁸ OSJI, *From Judgment to Justice*, supra note 1, p. 17.

⁸⁹ M. Schmidt, supra note 1, p. 26. See also OSJI, *From Judgment to Justice*, supra note 1, pp. 124-125.

⁹⁰ R. Murray and D. Long, *The Implementation of the Findings of the African Commission on Human and Peoples’ Rights*, 2015, pp. 101-102.

⁹¹ Ministry of Justice of Cameroon, *Reports on the State of Human Rights in Cameroon*, available at: http://minjustice.gov.cm/index.php?option=com_content&view=article&id=123&Itemid=80&lang=fr.

⁹² R. Murray and D. Long, supra note 89, pp. 105.

⁹³ R. Murray and D. Long, supra note 89, p. 107.

- In relation to the **ECtHR**, the Secretariat of the CoM has undertaken a proactive role, providing technical assistance to States in the development of compliance action plans, determining necessary actions, and developing bilateral or multilateral programs. Additionally, the Secretariat may propose an oral debate on implementation in which the State explains problems related to implementation to the CoM.⁹⁴

(3) *Follow up bodies should consider undertaking country missions:*

- If the nature of the non-compliance is particularly grievous or the State party repetitively fails to comply with the views of the **HRC**, the special rapporteur is empowered to organize a follow-up mission to the State party. However, the ability to effectively utilize this power has been significantly curtailed by the lack of independent funding for these missions. In fact, even though a number of these missions have been planned, only one such mission - to Jamaica in 1995 - has actually taken place.⁹⁵
- Holding **ACHPR** sessions in States has led to increased awareness of the ACHPR in that state, and sometimes greater compliance with reporting by the State party, in the form of increased submission of communications by the State party.⁹⁶
- As to the **European System**, the former rapporteur of the Legal Affairs Committee (within the CoM's

Parliamentary Assembly) visited Bulgaria, Greece, Italy, Moldova, Romania, Russia, Turkey, and Ukraine based on information he requested from national parliamentary delegations from States that had failed to implement decisions for long periods of time, or that raised "important implementation issues" as identified by the CoM interim resolutions.⁹⁷

(4) *Follow up bodies should consider requesting State parties to adopt interim measures within follow up procedures:*

- In relation to **ECtHR** judgments, at its quarterly human rights meetings, the **CoM** may adopt interim resolutions in order to obtain information on implementation or to make suggestions. The CoM also issues public memoranda explaining what steps a State should undertake in cases raising structural violations.⁹⁸
- Within the **Inter-American system**, interim measures are regularly adopted to protect rights in situations where States are delayed in implementing decisions. The **IACtHR** decisions in *Yakye Axa*,⁹⁹ *Sawhoyamaxa*,¹⁰⁰ and *Xamok Kasek*¹⁰¹ against Paraguay are good examples, as the Court issued orders establishing that the State should provide, while the community remained landless, sufficient drinking water, medical check ups, food, and education among others.¹⁰²

⁹⁴ Basak Cali and Nicola Bruch, *Monitoring the Implementation of Judgments of the European Court of Human Rights: A Handbook for Non-Governmental Institutions*, London: University College, 2011, p. 14.

⁹⁵ M. Schmidt, *supra* note 1, p. 27; and OSJI, *From Judgment to Justice*, *supra* note 1, pp. 124-125.

⁹⁶ R. Murray and D. Long, *supra* note 89, pp. 96.

⁹⁷ OSJI, *From Judgment to Justice*, *supra* note 1, p. 50.

⁹⁸ OSJI, *From Judgment to Justice*, *supra* note 1, p. 17.

⁹⁹ IACtHR, *Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Judgment of June 17, 2005.

¹⁰⁰ IACtHR, *Sawhoyamaxa Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Judgment of March 29, 2006.

¹⁰¹ IACtHR, *Xákmok Kásek Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment of August 24, 2010.

¹⁰² See, for instance, IACtHR. *Sawhoyamaxa Indigenous Community v. Paraguay*, *supra* note 99, par. 230.

(5) **Committees should be open to granting further interim measures where there is a failure to implement Views:**

- Since 2008, the **IACtHR** can hold “compliance hearings”, allowing State parties and victims to present evidence and oral arguments in relation to the State party’s compliance with the Court’s decision.¹⁰³ These hearings are also public hearings, which means that they can be used for advocacy and as a mechanism to shame non-complying State parties. In *Sawhoyamaxa Indigenous Community v. Paraguay*, the Court held the first public compliance hearing with the intention of promoting implementation by holding the State publicly accountable for its human rights failures in that case. The Court has also held compliance hearings for numerous cases against the same State party, where the non-compliance relates to the same aspect.
- The **IACtHR** may also issue compliance orders if it determines that a State party has not adequately fulfilled their obligations to implement its reparation orders.¹⁰⁴

(6) **Follow up bodies should consider other frameworks to address non-compliance:**

- Commentators have suggested that annual consultations with diplomatic representatives of State parties to review compliance with the decisions of UN Treaty Bodies (UNTBs) may be a potentially useful mechanism. This suggestion is based on the model followed by the **CoM**.¹⁰⁵

- The **IACtHR** has the power to order State parties to identify the agents responsible for carrying out the implementation to its decision at national level.¹⁰⁶ For example, the Court, in *Molina Theissen v. Guatemala*¹⁰⁷ ordered the State party to name the State agents that would act as interlocutors for implementation of its orders to investigate and punish those responsible for the human rights violations complained of in the case.
- The **IACtHR** has maintained sustained follow-up procedure. The Court does this by continuing to report annually to the OAS on the non-compliance of State parties until they have indicated that they have fully complied with its orders.¹⁰⁸ It can also use its report back function to the General Assembly of OAS¹⁰⁹ in terms of article 65 to deliver a more substantial report on non-compliance by consistently and vocally expressing concern about a particular State party during its address. This is a sanction that is rarely utilized and is usually reserved as a “final measure” for cases where there is no hope for implementation.¹¹⁰
- UNTB follow up mechanisms should continue to share relevant recommendations and implementation compliance information with the Human Rights Council to support and enhance the Universal Periodic Review process, with encouragement to both the UNTBs and the Human Right Council to adopt a

¹⁰³ Art 69.3 of the Court’s Rules of Procedure. See also OSJI, *From Judgment to Justice*, supra note 1, p. 83.

¹⁰⁴ Art 69.4 of its Rules of Procedure.

¹⁰⁵ A. de Zayas, supra note 1.

¹⁰⁶ OSJI, *From Judgment to Justice*, supra note 1, p. 83.

¹⁰⁷ IACtHR, *Molina Theissen v. Guatemala*, Monitoring Compliance with Judgment, November 16, 2009.

¹⁰⁸ OSJI, *From Judgment to Justice*, supra note 1, p. 82.

¹⁰⁹ OSJI, *From Judgment to Justice*, supra note 1, pp. 81-82.

¹¹⁰ OSJI, *From Judgment to Justice*, supra note 1, pp. 81-82.

coordinated approach to follow up and non-dilution of recommendations.¹¹¹

7. Ensure follow-up mechanisms have adequate resourcing

The UN should assign a larger amount of resources from its regular budget to follow up activities in order to assure the credibility and further independence of the human rights system. UN Treaty Bodies (UNTBs) should consider ways in which they can fund follow-up activities across different UNTBs by sharing resources or collaborating on follow-up activities.

- The UNTBs lack sufficient funding and resources to ensure that their follow-up procedures are effectively implemented. This extends to the constraints on personnel, who are often apparently understaffed, and, at times, over-specialized (thereby lacking more general cross-cutting expertise), lack of funds for sessions,¹¹² and absence of field visits.¹¹³ This threatens the sustainability of the UNTB system. For 2010 and 2011, funds for UNTBs came from two sources: the UN regular budget and voluntary contributions from States. The former totaled more than 70 per cent of UNTB resources.¹¹⁴
- Commentators have suggested that monitoring and compliance may be improved by establishing a rapporteurship on implementation in the **IACHR**. This should be funded separately.¹¹⁵

¹¹¹ For overview of the relationship between the processes, see: Olivier de Frouville, *The missing link: What kind of relationship should there be between the treaty bodies and the Human Rights Council?*, ISHR, 2016.

¹¹² Crawford points out that in some cases CERD has had to suspend sessions due to lack of funding. J. Crawford, *The UN Human Rights Treaty System: A System in Crisis?*, in P. Alston and J. Crawford (eds), *The Future of UN Human Rights Treaty Monitoring*, Cambridge: Cambridge University Press, 2000, pp. 1-13.

- Recourse to external funding has been made in relation to missions to State parties by Commissioners and Rapporteurs of the **ACHPR**. Some say that those Rapporteurs who have been able to secure external funding for their missions have seen more positive results than those directly funded by States. For example, the Rapporteurs for the Rights of Prisoners in Africa and the Rights of Women have received external funding, and the result has been greater implementation of projects in those areas.¹¹⁶
- **External resourcing** has also been used in the UN system in various ways, in terms of reliance on outside experts and academics,¹¹⁷ although any such proposals of external resourcing or financial support for the UNTBs would have to involve careful consideration regarding public perceptions of such resourcing on the impartiality of the UNTBs.

8. Make follow-up mechanisms and activities more visible

Measures to enhance the visibility of follow-up procedures of UN Treaty Bodies (UNTBs) should be adopted, including more comprehensive publication of follow-up information.

- The **CESCR** has established that it “may issue press communiqués on its activities under the Optional Protocol for the use of the media and the general public.”¹¹⁸

¹¹³ J. Crawford, *supra* note 111. See also OSJI, *From Judgment to Justice*, *supra* note 1, p. 132.

¹¹⁴ Navanethem Pillay, *supra* note 18, p. 26.

¹¹⁵ OSJI, *From Judgment to Justice*, *supra* note 1, p. 91.

¹¹⁶ M. Hansungule, *African courts and the African Commission on Human and Peoples’ Rights*, in A. Bosl and J. Diescho (eds), *Human Rights in Africa: Legal Perspectives on their Protection and Promotion*, Windhoek, Namibia: Macmillan, 2009, p. 257.

¹¹⁷ M. Hansungule, *supra* note 115, p. 258.

¹¹⁸ CESCR, *Provisional Rules of Procedure under the OP-ICESCR*, *supra* note 37, Rule 47.

- Follow up documentation and State party reports on the measures adopted in relation to the **HRC's** views are public documents.¹¹⁹ In the past, the HRC had a practice of shaming non-complying State parties into compliance by highlighting their names in a special "blacklist" in the follow-up chapter of its annual report. However, this practice has since been discontinued.¹²⁰
- As established by the **OHCHR report** on the UNTB strengthening process, "all public meetings of the UNTBs should be webcasted and UNTBs [should] benefit from videoconferencing facilities".¹²¹
- The Department for the Execution of Judgments of the **ECtHR** maintains a public website that organizes information on all the cases it is supervising, including the implementation status and information on the measures the State has taken to implement the Court's decision.¹²²
- The **IACtHR** publishes a list of non-complying State parties in its annual report to OAS members. State parties must inform the Court of any progress in relation to implementation if it wants to be removed from the list.¹²³ Commentators have remarked that the IACtHR has effectively used visibility and publicity as a political method to ensure that State parties comply with its decisions and recommendations.¹²⁴
- The **IACHR** has collected data about State parties' compliance with its recommendations and published this information in its annual reports. The Commission has also published longer term compliance reports to update the OAS members about the compliance record for longer period (up to 9 years in some instances).¹²⁵ These reports have been compiled by writing to State parties requesting information about the measures they have taken to implement the recommendations of the Commission and granting State parties a month to provide such information.¹²⁶
- Commentators on implementation of decisions of the **ACHPR** have called for increased access to information, something closely connected to visibility, in order to help facilitate the role of lawyers and the judiciary.¹²⁷ Materials related to cases must be made freely available and accessible on the Internet in multiple languages.
- Further transparency during the whole communication procedure would increase the UNTBs' visibility both internationally and domestically. Such visibility can be fostered by facilitating the publication of case documents (with the authorization of plaintiffs) and fostering the presentation of third party interventions. By welcoming third party interventions by expert civil society organizations as well as social movements, UNTBs will be better placed to draft remedies that more effectively address violations from a systematic perspective, assuring non-repetition. It will also allow UNTBs to more effectively identify urgent issues in need of urgent responses. Effective interventions as well as the direct connection with affected groups will increase the UNTBs legitimacy and, once again, their visibility.

¹¹⁹ Rule of Procedure 103.

¹²⁰ M. Schmidt, *supra* note 1, p. 27.

¹²¹ Navanethem Pillay, *supra* note 18, p. 88.

¹²² See http://www.coe.int/t/dghl/monitoring/execution/Reports/pending_Cases_en.asp.

¹²³ OSJI, *From Judgment to Justice*, *supra* note 1, p. 82.

¹²⁴ Diego Rodriguez-Pinzón, Basic Facts of the Individual Complaint Procedure of the Inter-American Human Rights

System, in G. Alfredsson, J. Grimheden, B. Ramcharan & A. de Zayas (eds), *International Human Rights Monitoring Mechanisms, Essays in Honour of Jakob Th. Möller*, Leiden: Martinus Nijhoff Publishers, 2007, p. 623.

¹²⁵ OSJI, *From Judgment to Justice*, *supra* note 1, p. 79.

¹²⁶ OSJI, *From Judgment to Justice*, *supra* note 1, p. 79.

¹²⁷ R. Murray and D. Long, *supra* note 89, p. 95.

SLWG Organizational Members	Country
Asociación Civil por la Igualdad y la Justicia (ACIJ)	Argentina
Action Contre Impunitie Pour Les Droits Humains; Action against impunity for human rights (ACIDH)	DRC
Adalah	Israel
AIDA	Colombia
Amnesty International (AI)	International
Bangladesh Legal Aid and Services Trust (BLAST)	Bangladesh
Bulgarian Helsinki Committee	Bulgaria
CALS	South Africa
Center for Constitutional Rights	U.S.
Citizen, Democracy and Accountability/Obcan, demokracia a zodpovednost (CDA)	Slovakia
Center for Legal and Social Studies, Centro de Estudios Legales y Sociales (CELS)	Argentina
Centro Mexicano de Derecho Ambiental (CEMDA)	Mexico
Center for Minority Rights Development (CEMIRIDE)	Kenya
Center for Economic and Social Rights (CESR)	U.S.
Center for Human Rights and Development (CHRD)	Mongolia
Center for Reproductive Rights (CRR)	International
Child Rights International Network (CRIN)	International
CIEL	U.S.
Comisión Colombiana	Colombia
Conectas Human Rights	International
Dejusticia	Colombia
Due Process of Law Foundation (DPLF)	U.S.
Dullah Omar institute	South Africa
Egyptian Center for Economic and Social Rights (ECESR)	Egypt
Egyptian Initiative for Personal Rights (EIPR)	Egypt
Environmental Defender Law Center (EDLC)	U.S.
Equipo Pueblo	Mexico
Equis	Mexico
FESPAD	El Salvador
FI	Switzerland
FIDA Kenya	Kenya
FIDH	International
FIAN International	International
FOCO	Argentina
FUNDAR	Mexico
Global Initiative for Economic, Social and Cultural Rights (GI-ESCR)	International
Habi Center	Egypt
Habitat International Coalition (HIC-LA)	Latin American Office

Hakijamii	Kenya
Harvard Law School Project on Disability (Harvard Law School)	U.S.
Human Rights Law Center (HRLC)	Australia
Human Rights Law Network (HRLN)	India
ICJ	International
Initiative for Social and Economic Rights (ISER)	Uganda
Instituto de Estudios Legales y Sociales del Uruguay (IELSUR)	Uruguay
Instituto de Liderazgo Simone de Beauvoir AC (ILSB)	Mexico
Instituto de Políticas Públicas en Derechos Humanos del MERCOSUR (IPPDH)	Argentina
Instituto Latino Americano De Servicio Legales Alternativos (ILSA)	Colombia
International Women's Rights Action Watch (IWRAP) Asia Pacific	International
Kenyan Human Rights Commission (KHRC)	Kenya
Kituo Cha Sheria	Kenya
Land Center for Human Rights (LCHR)	Egypt
Legal Resources Center (LRC)	South Africa
Masimanyane Womens Support Center	South Africa
Minority Rights Group (MRG)	UK
Movement for the Survival of the Ogoni People (MOSOP)	Nigeria
Nazdeek	India
Observatori DESC	Spain
Program on Human Rights and the Global Economy at Northeastern University (PHRGE)	U.S.
Pro Public	Nepal
Proyecto de Derechos Económicos, Sociales y Culturales (PRODESC)	Mexico
Right to Education Project (RTE)	UK
Social and Economic Rights Action Center (SERAC)	Nigeria
Social Rights Advocacy Centre (SRAC)	Canada
Socio-Economic Rights Institute (SERI)	South Africa
Terra de Direitos (TDD)	Brazil
Tierraviva	Paraguay
YUCOM – Lawyers' Committee for Human Rights	Serbia
SLWG Individual Members	Country
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Aoife Nolan	UK
Jackie Dugard	South Africa
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