



Joint Submission for the Consultation of the UN Committee on the Elimination of Racial Discrimination (CERD) with Civil Society

23 November 2016

Introduction

On the occasion of the consultation with civil society organised by the UN Committee on the Elimination of Racial Discrimination (CERD), this joint submission seeks to respond to one of the questions raised by the Committee, *“How can the CERD improve and enhance its engagement with civil society, and its work on racial discrimination for greater impact on the ground?”*

While it is critical that the Committee’s recommendations to the State parties are precise and concrete, such recommendations will have a maximum positive impact only if they are followed up effectively both by the Committee and by civil society actors. For a continuing engagement of the Committee with civil society for the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) at the national level, the follow-up procedure should be transparent and accessible to civil society actors. In order to identify the best ways to strengthen the existing mechanism, this paper make a comparative analysis of the follow-up procedures of other treaty bodies. As of November 2016, the Human Rights Committee, the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee against Torture (CAT) and the Committee on Enforced Disappearances (CED) have taken actions to follow up on concluding observations. While the Human Rights Committee, the CERD, the CAT and the CED take follow-up actions on a yearly-basis, the CEDAW allocates two years to follow-up its recommendations.¹

Letters of reminder

It is regrettable that quite a number of State parties fail to present follow-up information within their respective deadlines. Hence, it is advisable that State parties receive reminders right after their deadlines have passed in order to ensure that swift measures are taken to implement follow-up recommendations. The Human Rights Committee, CAT and CEDAW have adopted the policy to send letters of reminder to the State parties if they do not receive follow-up information by the deadline.² The three Committees send such letters up to twice.³ The CAT requests a meeting with the State party’s Permanent Representative in the second letter of reminder which is sent six months after the deadline.⁴ The Human Rights Committee and CEDAW request such a

¹ Office of the High Commissioner for Human Rights (OHCHR), Follow-Up to Concluding Observations, <http://www.ohchr.org/EN/HRBodies/Pages/FollowUpProcedure.aspx>

² CCPR/C/108/2, CAT/C/55/3, CEDAW/C/54/3

³ Ibid

⁴ CAT/C/55/3, paragraph 27

meeting if they do not receive a reply to the second reminder.⁵ The three Committees upload their letters of reminder on their websites. While the CERD would send reminders within a month of expiry of the deadline,⁶ those reminders cannot be found in the Committee's website. There is no official document available in public to indicate whether the CERD requests a meeting with Permanent Missions in cases of the State parties' non-compliance with the request for follow-up information.

Lack of cooperation by the State parties on follow-up reports

The submission of State parties' follow-up reports is essential for the Committee to make assessment on the level of implementation of its recommendations. Yet, some State parties fail to cooperate with the Committee despite receiving reminders. In such cases, the Human Rights Committee makes references to the lack of engagement during its dialogue and in the next concluding observations on the State party.⁷ The CAT includes the information on such shortcomings in the list of issues or the list of issues prior to reporting.⁸ The CERD, particularly its follow-up coordinator, may ask a question to the State parties during the consideration of its next periodic report regarding the lack of cooperation in submitting the follow-up information. Yet, the CERD has not adopted an official policy to address the issue of non-cooperation for follow-up information.

Follow-up information from civil society

For civil society members, including indigenous and minority groups, the follow-up procedure provides another important opportunity to engage with the Committee and a concerned State party to promote the implementation of the ICERD. Thus, a clear and accessible guidance on how to cooperate with the Committee in the follow-up to its recommendations can encourage civil society to assess the State parties' efforts and present their own views on the implementation of recommendations. The Human Rights Committee has set out a short set of rules for civil society to guide them on how they can submit follow-up reports, including a word limit (3,500 words).⁹ In addition to rules similar to the Human Rights Committee, the CAT encourages civil society to send follow-up reports within three months of the deadline for submission of the concerned State party's own follow-up report, in order to offer reactions to the State party's report.¹⁰ The CEDAW calls on civil society to submit reports one month after the State party's follow-up report is made public.¹¹ While in practice the CERD welcomes follow-up reports from civil society, it has not adopted guidelines to the attention of civil society on that matter.

⁵ CCPR/C/108/2, paragraph 23 and CEDAW/C/54/3, paragraph 6

⁶ CERD/C/66/Misc. 11/ Rev.2, paragraph 2

⁷ CCPR/C/108/2, paragraph 24

⁸ CAT/C/55/3, paragraph 29

⁹ CCPR/C/108/2, paragraphs 11-12

¹⁰ CAT/C/55/3, paragraph 29

¹¹ CEDAW, *Information on the follow-up procedure*, page 3

Criteria for assessing implementation efforts

The Human Rights Committee, the CAT, the CEDAW and the CED have adopted their own criteria to assess the implementation of follow-up recommendations. The Human Rights Committee set out eight classifications: A – *the State party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee*; B1 – *the State party took some steps towards the implementation of the recommendation but additional information remains necessary*; B2 – *the State party needs to take further action and provide information to the Committee in that regards*; C1 – *the State party has taken no action to implement the recommendation*; C2 – *the action taken has not addressed the situation under consideration*; D1 – *the State party has not replied within the deadline, or the State party has not provided information on the measures taken for the implementation of one of the follow-up recommendations*; D2 – *the State party has not provided information despite the reminder(s)*; and E – *the State party adopted measures that are contrary or have results contrary to the recommendation of the Committee*.¹² Follow-up letters to the State parties contain grades on the implementation level based on the criteria above. The CAT and CED apply a similar set of categories than that of the Human Rights Committee, yet they do not have subcategories within the C and D classes.¹³ The CEDAW has established the following four categories: *Implemented*; *Partially Implemented*; *Not Implemented*; and *Lack of sufficient information to make an assessment*.¹⁴ The four Committees indicate the categories above in their follow-up letters to the State parties. Although the CERD provides a detailed assessment on the level of implementation of follow-up recommendations by the State parties, it has not adopted such criteria so far. Such objective criteria would help civil society to engage with the State parties for the full implementation of follow-up recommendations.

Access to discussions on follow-up recommendations

As of November 2016, only the Human Rights Committee provides civil society a full access to the discussions on follow-up recommendations, which the follow-up rapporteur presents his/her analysis of follow-up reports from the State parties and civil society. Then the Committee makes collective decisions on its evaluation on the implementation of follow-up recommendations. The CAT's discussions on follow-up to concluding observations are partially public, in which mostly technical issues are discussed. These discussions are also accessible via webcast¹⁵. On the contrary, follow-up discussions of the CERD, CEDAW and CED are closed. Access to and publicity of the follow-up discussions would increase the attention to the State parties' compliance with the follow-up procedure and encourage civil society to contribute to the discussions.

Conclusion

While appreciating follow-up actions taken by the CERD, we encourage the Committee to strengthen the follow-up procedure by adopting, in consultation with civil society actors: a policy on letters of reminder;

¹² CCPR/C/108/2, paragraph 18

¹³ CAT/C/55/3, paragraph 20 and CED/C/7/2, paragraph 4

¹⁴ CEDAW/C/54/3, paragraph 3

¹⁵ www.webtv.un.org

measures against non-cooperation by the State parties; a clear guidance for civil society on follow-up information; criteria for the assessment of the implementation of follow-up recommendations; and a decision to provide public access to the discussions on follow-up recommendations.

International Movement Against All Forms of Discrimination and Racism ('IMADR') is an international human rights NGO founded in 1988 by one of Japan's largest minorities, the Buraku people and devoted to eliminating discrimination and racism, forging international solidarity among discriminated minorities and advancing the international human rights system. IMADR is in consultative status with the United Nations Economic and Social Council (ECOSOC).

Minority Rights Group International ('MRG') is an international NGO working to secure the rights of ethnic, religious and linguistic minorities worldwide. MRG has consultative status with the United Nations Economic and Social Council (ECOSOC), observer status with the African Commission on Human and Peoples' Rights (ACHPR) and is a civil society organisation registered with the Organization of American States (OAS). MRG and its partners have researched and advocated for the rights of the ethnic minorities for many years.

Race and Equality is an international, human rights capacity-building organization that works side by side with activists in Latin America to enhance their ability to promote and protect the human rights of marginalized and vulnerable people who suffer from discrimination based on their national or ethnic origin, their sexual orientation or gender identity. R&E strengthens grassroots organizations, helping them to become political actors able to promote structural changes in the countries where they work.