

# UN Treaty Bodies Litigators' Meeting

Geneva, 3-4 October 2018

Report



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## I. Executive Summary

The Centre for Civil and Political Rights (CCPR) and Open Society Justice Initiative (OSJI) organised and financially supported the UN Treaty Bodies Litigators' Meeting that took place in Geneva on the 3<sup>rd</sup> and 4<sup>th</sup> October 2018, in partnership with TB-Net, the International Service for Human Rights (ISHR) and Amnesty International.

This event was the fourth in a series of meetings with UN Treaty Bodies Litigators, aiming at bringing together lawyers working with the UN Treaty Bodies (UNTBs) and in particular with the complaints procedure. This year's meeting focused on sharing the most recent developments of the jurisprudence and procedural issues and discussing litigation strategies with a special emphasis on implementation and follow-up.

The meeting was attended by 39 participants and panellists, including NGO representatives, lawyers interested in submitting individual complaints, UNTB members, one representative of the Petitions Unit of the Office of the High Commissioner of Human Rights (OHCHR) and researchers (see list of participants in Annex I).

Members of TB-Net presented the most recent developments of the jurisprudence of the UNTBs and procedural issues. A session was also dedicated to discuss the inquiry procedures of the Committee against Torture (CAT) and the Committee on the Elimination of Discrimination against Women (CEDAW), and the Urgent Actions of the Committee on Enforced Disappearances (CED).

Various keynote speakers led discussions on issues relating to the individual complaints procedures and their implementation. Christof Heyns, member of the Human Rights Committee (HR Committee), and Sandra Liebenberg, member of the Committee on Economic, Social and Cultural Rights (CESCR) discussed individual communications in relation to their respective Committees.

Debra Long, researcher at the Human Rights Implementation Centre at the University of Bristol, and Kate Fox, staff member of the OHCHR, presented the outcomes of their researches on the implementation of UNTB individual communications at the national level.

Finally, the meeting ended off with a talk by Basak Çali, of the European Implementation Network (EIN), explaining the work of EIN in following up on the implementation of the recommendations of the European Court of Human Rights.

Prior to this meeting, there was a pre-workshop for a limited number of participants, to get an overview of the UNTBs complaint mechanism, focusing on working methods and the admissibility criteria. Participants of the workshop attended the meeting and exchanged views with litigators with experience in using the complaints procedure.

## II. Agenda

The agenda of the UN Treaty Bodies Litigators' Meeting was the following:

## Wednesday 3 October 2018

- 9.30-10.30 Welcome and introduction  
*Introductions, review key takeaways from previous meetings, objectives for this session, inputs from participants on their priorities*
- 10.30-11.30 Main procedural developments before the UNTBs  
*Recent developments regarding the procedural issues, including interim measures; hearings; third party submissions; remedies...*
- 11.30-12.30 Discussion with staff from the Petitions Unit (OHCHR)
- 12.30-13.30 Lunch
- 13.30-14.30 Discussion with a Member of the HR Committee and a member of the ESCR Committee
- 14.30-15.00 Introduction to the inquiry procedure
- 15.00-17.00 Main developments in jurisprudence in each of the UNTBs  
*Caseload of the Committees; trends in the issues that they have addressed; trends in dissenting or separate opinions; any impact of reform efforts on litigation; developments in response to any of the issues identified in the previous meetings*
- 17.00-17.15 Review and Recap
- 18.30 Apéro / Dinner

## Thursday 4 October

- 09.15-11.00 Implementation and follow-up by the UNTBs - Overview of recent developments at the regional and international levels:  
  
*Analysis of the findings in the paper “UN Individual Complaints Procedure: How do States comply?” by Kate Fox*  
  
*Strategies to monitor the implementation of the individual cases and decisions: Experiences from the ESRC Human Rights Law Implementation Project (HRLIP) from Human Rights Implementation Centre (University of Bristol)*
- 11.00-11.20 Coffee
- 11.20-12.00 Follow-up to the UNTBs’ cases: which role for the NGOs? Learning from the European Implementation Network (EIN)
- 12.00-13.15 Conclusions and next steps
- 13.15-14.00 Lunch

### III. Summary of the sessions and discussions

#### Opening remarks

Participants introduced themselves and the work that each of their organisations has done with regards to individual communications.

#### Session I: Main procedural developments before the UNTBs

##### Backlog of cases pending review

The report of the Secretary-General on the Status of the human rights treaty body system reveals that by December 2017, 977 individual communications were pending review. The HR Committee had the largest number of communications pending review, with 693 communications out of the 977. CAT had 168. The Committee on the Rights of the Child (CRC) recorded the largest increase in the number of communications pending review, from 1 at the end of 2015 to 35 at the end of 2017.

The number of cases pending review is increasing. It has doubled since 2013. Given the current circumstances it is difficult to catch up as UNTBs can only decide on around 200 cases per year.

The HR Committee has an informal policy of prioritising cases with interim measures, cases concerning children or torture victims, or cases raising issues that have not been addressed in the past.

Delay on the cases also depends on the language of the communication. The Petitions Unit has more Spanish speaking staff, hence cases in Spanish go faster. Cases in Russian have the biggest backlog.

##### Hearings

In a case against New Zealand, the HR Committee granted a hearing with the author and State representatives requested by the Government. Hearings are important to provide relief to the victims.

CAT is not keen to hearings while HR Committee members have different opinions on this. The policy towards hearings is not clear.

##### Third party interventions

The policy on third party interventions is not clear for all the UNTBs. CESCR has third party interventions guidelines. It also has a list of pending cases uploaded on the website. This allows NGOs to know if there are cases where a third party intervention would be useful, although summaries of pending cases are not always accurate.

Based on the list of pending cases and the summaries, a number of NGOs and one Special Rapporteur have made the third party interventions to CESCR cases.

It would be good for UNTBs to have clear guidelines on third party interventions and a list of pending cases with a (good) summary of the case available on the website as is the case at the European Court on Human Rights.

The Committee on Rights of Persons with Disabilities (CRPD) has accepted third party interventions, but only when the State party has agreed on it. This is a practice and it is not established in the rules of procedure or in any guidelines. CEDAW's procedure is not clear. It does not accept third party interventions but legal opinions.

The Petitions Unit and Committee members seem to be keen to accept third party interventions, but procedures are not clear. It would be good to adopt guidelines for all the UNTBs.

## Session II: Discussion with staff from the Petitions Unit

A representative from the Petitions Unit of OHCHR explained that the Petitions Team is composed of 15 lawyers supported by 3 or 4 secretaries. They are permanently understaffed.

They receive 40 to 50 individual complaints in Russian per week. Some communications come in handwriting from detained persons, which take a lot of time to analyse. The volume of cases pending review is increasing, in particular those in Russian.

### Confidentiality of cases

Each UNTB decides how much information concerning the cases is made public on the website. For example, CESCO accepts to publish the pending cases with a summary because they are keen to receive third party interventions, while other Committee are more sceptical in order to keep the confidentiality of the cases.

### Working languages and translations

Russian, English, French and Spanish are the working languages of the Petitions Team. Individual communications must be sent in one of these languages. Annexes do not need to be translated, but summaries of the most important annexes are welcomed.

### Press releases

Each of the UNTBs decide on their own whether to publish press releases regarding cases. The HR Committee usually issues press releases on certain cases. The decision on which cases should get media attention, comes from the Committee members.

## Session III: Discussion with a Member of the HR Committee and a member of the ESCR Committee

**Sandra Liebenberg, member of the Committee on Economic, Social and Cultural Rights**, provided a thorough presentation of the individual communications procedure under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR).

The OP-ICESCR has now 24 State parties and 25 signatories. Some provisions in the OP are not the same as in the other UNTBs' complaints procedures. For example, the rule that **a complaint must be submitted within one year after the exhaustion of domestic remedies** except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit; the possibility of declining to consider a communication where it does not reveal that the author has suffered a **clear disadvantage**, unless the Committee considers that the

communication raises a serious issue of general importance, and the consideration of **reasonable standards** (when examining communications under the OP-IECESR, the Committee shall consider the reasonableness of the steps taken by the State Party in accordance with part II of the Covenant).

Regarding the admissibility criteria, *ratione temporis* has been one of the most discussed issues because of the recent entry into force of the OP. Jurisprudence has established that if a higher court has the possibility of addressing the violation after the entry into force of the OP in a State Party and fails to do so, the communication will be considered admissible.

As of 3 October 2018, the CESCR has adopted 16 decisions out of which 12 cases were considered inadmissible and 4 were decided on the merits. From the 4 cases decided on the merits, the Committee found violations in 3 cases and 1 non-violation. An extensive number of interim measures has been granted.

Ms. Liebenberg then made a presentation of the four cases in which the Committee has decided on the merits:

- Case 1/2013 **Miguel Ángel López Rodríguez v. Spain** regarding right to social security - access to non-contributory disability benefits for prisoners (non-violation)
- Case 2/2014 **IDG v. Spain** regarding the right to adequate housing (violation)
- Case 5/2015 **Mohamed Ben Djazia and Naouel Bellili v. Spain** regarding the right to adequate housing - forced eviction (violation)
- Case 10/2015 **Marcia Cecilia Trujillo Calero v. Ecuador** regarding the right to social security - discrimination of a female domestic worker in access to the national social security system (violation)

**Human Rights Committee member Christof Heyns** shared some of the challenges faced by the HR Committee in dealing with the complaints procedure, such as the backlog of cases. He explained that some of the cases are 8 years old when examined. The Committee is considering different options to address this issue. For example, to seat in chambers to deal with more cases. However, it mainly depends on the number of cases that the Petitions Team can process as there is a bottleneck at that level.

Other aspect discussed during the meeting was the **repetitive cases** (cases with similar facts). These cases mainly come from Belarus and Nepal. The Committee decided to deal faster with this type of cases by not discussing them in plenary. Christof Heyns is the Rapporteur for repetitive cases.

He also raised the issue of **oral hearings**, giving the example of the case on New Zealand in which the author came to Geneva. One suggestion is to use videoconference for oral hearings.

The HR Committee would be interested in receiving **cases raising new issues**. For example, to “test” the General Comment 36 to affirm the Committee’s views on issues like death penalty, precaution/prevention of the use of force, extraterritorial application of the Covenant and others.

Specifically, the issue of **cases related to climate change** was discussed: the HR Committee is willing to receive cases on ICCPR violations due to climate change as long as the case meets the admissibility requirements. General Comment 36 opens the possibility of cases on climate change with the concept of dignity and the paragraph dealing specifically with the right to life and climate change.

The next General Comment of the HR Committee will deal with article 21 “right of peaceful assembly”, hence it would be good to receive cases on that issue as well.

## Session IV: Introduction to the inquiry procedure

Upon receipt of reliable information on serious, grave or systematic violations by a State Party of rights set forth in the Conventions they monitor, some UNTBs may initiate inquiry procedures.<sup>1</sup>

### Inquiry procedures by CAT

Up to date, **CAT has carried out 10 enquiry procedures** (Nepal, Mexico, Brazil, Turkey, Egypt (2), Lebanon, Sri Lanka, Peru and Federal Republic of Yugoslavia (Serbia and Montenegro)).

**The enquiry procedure is a mechanism that has been underused.** It is not clear if that is because lack of requests or because the CAT has decided not to do more enquiries.

It is also a **lengthy procedure**. It took 6 years for the CAT to publish its conclusions on the inquiry procedure carried out in Egypt. As it is a **confidential procedure**, the State has to accept to make the report public.

In the case of the Lebanon inquiry, the State Party did not accept to make public the full report, but a summary of the report was published in CAT’s annual report. After the summary of the report of Lebanon was published, the State Party complained. Now CAT refuses to publish summaries of the reports of the enquiry procedures.

The inquiry procedure on Egypt did not go well because CAT wanted to avoid a repetition of the Lebanon experience. For three years, no information was provided to Alkarama, who requested the inquiry. Alkarama learnt by chance about the inquiry because of a mistake from the translator.

It would be good for this procedure to be more efficient and transparent.

### Inquiry procedures by CEDAW

As of now, **4 inquiries from CEDAW have a public concluding report** (Kyrgyzstan, United Kingdom of Great Britain and Northern Ireland, Canada and Mexico). A summary of the inquiry on the Philippines is also available.

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<sup>1</sup> The Committee against Torture (article 20 CAT), the Committee on the Elimination of Discrimination against Women (article 8 of the Optional Protocol to CEDAW), the Committee on the Rights of Persons with Disabilities (article 6 Optional Protocol to CRPD), the Committee on Enforced Disappearances (article 33 of CED), the Committee on Economic, Social and Cultural Rights (article 11 of the Optional to ICESCR) and the Committee on the Rights of the Child (article 13 of the Optional Protocol (on a communications procedure) to CRC).

Inquiries are so opaque that it is even difficult for the petitioners to get information about it. To request an inquiry, CSOs have to show the widespread and systematic human rights violations (by the laws, practices, cases...). The number of individual cases needed to request an inquiry is not relevant as long as the widespread and systematic violations are demonstrated.

#### Inquiry procedures by other UNTBs

Article 11 of the Optional Protocol to ICESCR establishes the procedure but it has not been used yet. It establishes that reports of inquiries are public. CRPD did an inquiry in the UK and in Spain and the CRC in Chile. These reports are public.

### Session V: Main developments in jurisprudence in each of the UNTBs

TB-Net members presented the main developments in the jurisprudence of the UNTBs.

#### CAT

Between 2016-2017 there was a peak of complaints submitted against Australia to prevent forcible removals, in particular to Sri Lanka, of ethnic Tamils who would claim a real, foreseeable and personal risk to be subjected to torture upon return on grounds of alleged ties with the LTTE. All applications were rejected on grounds of lack of sufficient evidence or low profile.

It is worth noting that in the same time span reports had come out pointing to consistent patterns of torture and ill-treatment against LTTE upon return, triggering a public condemnation by the High Commissioner.

The number of cases concerning reprisals against the authors of the individual communications increased.<sup>2</sup> The Committee addressed reprisals either through issuing interim measures or declaring a violation of article 13 (right to lodge a complaint and do so free from aggressions or intimidation) making reference to the San José Guidelines and the CAT Guidelines on Reprisals.

Other relevant decisions:

- *A.N. v Switzerland* (Comm. No. 742/2016), views adopted on 3 August 2018

Expulsion of an Eritrean national to Italy under the Dublin regulation. When states return torture survivors to a country where they will not have access to rehabilitation, they disregard their obligation vis à vis the Convention, and in particular of article 3 and 16. States need to ensure that appropriate rehabilitation services are available and accessible before they return torture survivors to third countries regardless of whether they are being individually persecuted in that country. There were no rehabilitation services available in Italy.

Important call to Swiss migration authorities to review their practice under the Dublin Regulation to ensure that all pending and future cases of highly vulnerable asylum seekers are decided in a manner consistent with this new jurisprudence.

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<sup>2</sup> Cases: *Rached Jaïdane v Tunisia*, 654/2015, views adopted in August 2017 and *Ennaâma Asfari v Morocco*, 606/2014, views adopted in November 2016.

- *John Alfred Vogel against New Zealand* (Comm. No. 672/2015), views adopted on 14 Nov 2017

The complainant was imposed 21 days of cell confinement for drug-related disciplinary offences which is in contravention with domestic legislation that states there is a maximum period of 15 days of cell confinement. The Committee considered it was a violation of article 16 of the Convention due to the prolonged solitary confinement to which the victim was subjected and the denial of his right to adequate compensation thereof.

### CRC

Since the entry into force of the OP3 CRC, the Committee has taken decisions on 12 communications. Out of the 12 decisions, 6 cases have been declared inadmissible and 4 have been discontinued. Only 2 have been decided on the merits:

- Case 3/2016 - I.A.M. v. Denmark (violation)
- Case 12/2017 - Y.B. and N.S v. Belgium (violation)

In the case I.A.M. against Denmark, the CRC adopted an important decision in relation to female genital mutilation (FGM). The CRC established that a woman and her daughter had the right to stay in Denmark because her daughter risks being forcefully subjected to FGM if deported to Somalia.

46 cases are pending at the moment with numerous cases on unaccompanied children and the age assessment (medical test) - most of them against Spain. Others are cases about of deportation of families with children against Denmark, Finland, Switzerland and Belgium.

In September 2018, the CRC used issued interim measures for the first time to release a Serbian family from an immigration detention where they were locked up in Belgium since the beginning of August. Belgium did not implement the decision.

### CERD

CERD decided 3 cases in 2016-2017 as well as a number of actions under the *Early Warning and Urgent Action Procedure*.<sup>3</sup> One of the Urgent Actions concerns the Philippines, for which the Committee adopted a [decision](#) on the listing of indigenous leaders and defenders on the “terrorist” list. The list includes the UN Special Rapporteur on the Rights of Indigenous Peoples, Ms. Victoria Tauli-Corpuz, and other former UN independent experts. CERD urged the State party to remove indigenous leaders and defenders as well as other human rights defenders from the list, and to provide an enabling environment for those human rights defenders.

Another Urgent Action concerns Israel, for which the Committee adopted a [statement](#) on the disproportionate use of force displayed by the Israeli Security Forces (ISF) against Palestinian demonstrators. It raises concerns on the denial of access to urgent medical treatment for the injured, the absence of accountability mechanisms, increasing racist hate speech against Palestinians and the lack of an independent investigation.

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<sup>3</sup> <https://www.ohchr.org/EN/HRBodies/CERD/Pages/EarlyWarningProcedure.aspx>

On Chile, the Committee issued a [letter](#) concerning the impact of a real estate and tourism project on the indigenous Mapuche communities in Coñaripe, due to its damages to the wetland.

The Committee also adopted a [decision](#) on the events in Charlottesville, USA, condemning the actions of white nationalists, neo-Nazis, and the Ku Klux Klan in promoting white supremacy and racial violence which occurred on 11-12 August 2017. In this case, CERD stated that there was a failure at the “highest political level” to reject racist violent events.

### CESCR

Up to 24 September 2018, CESCR had registered 27 cases under the OP-CESCR. All cases so far have been against 3 countries: Spain, Ecuador & Portugal.

Most of the cases have been declared inadmissible, mainly on the grounds of *ratione temporis* (the violation occurred before the entry into force of the Covenant for that State). Only 3 were inadmissible on the grounds of failure to exhaust domestic remedies and 1 on insufficient substantiation of the facts.

Out of the 4 cases decided on the merits, the Committee has found 3 violations: 2 on the right to adequate housing against Spain and 1 on the right to social security against Ecuador. There was 1 non-violation in a case against Spain, on social security.

The Committee has not been very challenged by the cases before it, so far. The cases have not been particularly controversial or complex. However, there are some interesting cases pending before the Committee:

- 3 more pending cases against Spain on housing.
- 1 case pending against Italy on the use of donated embryos in IVF which relates to Art 10 (protection of children and family), Art 12 (right to health) and Art 15 (right to scientific progress and freedom).
- 1 case against Luxembourg regarding workers’ rights and unions, relating to Art 8 (the right to form and join trade unions), one of the more controversial articles of the Covenant.

### HR Committee

The HR Committee decided 137 cases in 2017:

- 45 violations
- 16 non violation
- 22 inadmissible
- 50 discontinued
- 3 pending

In 2018, the Committee had decided 83 cases so far:

- 47 violations
- 6 non violation
- 14 inadmissible
- 11 discontinued

In 2016-2017, Algeria, Belarus and Sri Lanka had failed to cooperate in the procedure by not providing observations on the admissibility and/or the merits of the authors’ allegations.

Regarding the decisions on admissibility, the following cases were highlighted:

*Ratione loci*: In *C. v. Australia*, which addressed the absence of divorce proceedings in Australia for a same-sex marriage contracted abroad which was not recognised under Australian Law, the State argued that such a marriage lacked legal effects in its territory and the fact that the action took place overseas rendered the claim inadmissible *ratione loci*. However, the Committee considered that the legal uncertainty of the author's position in Australia caused by the lack of access to divorce proceedings was a legal effect sufficient to render the case admissible.

*Ratione personae* (victim status): Notion of a victim: In *M. A. K. v. Belgium*, the HR Committee recalled that a person cannot claim to be a victim if the State has already taken action to redress the violation. In this case, the author claimed to be a victim of a violation of Article 14.3(c) due to the unreasonable length of 17 years that criminal proceedings took.

The HR Committee recalled its jurisprudence on the reasonableness of proceedings having to be assessed case by case, considering the complexity of the issue, the behaviour of the accused and the actions of the authorities. It further noted that the Brussels's Tribunal considered the length of the proceedings when imposing the sentence and gave the author significantly reduced prison time in order to compensate for the violation. The HR Committee therefore concluded that the conduct of the authorities had redressed the author's complaint and that he did not have victim status for purposes of Article 1 of OP 1.

In *Reyes v. Chile*, the author submitted a claim on behalf of the citizens of Santiago regarding their right to receive information. The Committee reaffirmed that a person is not a victim unless their own rights have actually been violated. It also explained that a person may not object, by *actio popularis* or in theoretical terms, to a law or practice that they consider to be incompatible with the Covenant. In consequence, the claim was inadmissible to the extent that it referred to citizens' rights in general terms and not to a specific person.

Regarding the admissibility criteria under Article 5(2)(a) of OP 1 (same matter under examination by another procedure of international investigation or settlement), in the cases *S. L. v. Netherlands*, *N. K. v. Netherlands* and *M. A. K. v. Belgium*, the authors had previously resorted to the ECtHR, but all three cases were declared inadmissible. The HR Committee, while confirming its jurisprudence, stated that the cases were no longer pending before the ECtHR, and were admissible before the Committee.

In the individual communications assessed in 2017, the HR Committee elaborated on the situations that may constitute exceptions to the requirement under Article 5(2)(b) (Non-exhaustion of local remedies). In *S. L. v. Netherlands*, the HR Committee stated that established case-law on an issue may render the domestic remedies ineffective, and the situation may therefore fall within the said exceptions.

However, in *B. Z. et al. v. Albania*, the HR Committee recalled that although there is no obligation to exhaust domestic remedies if there is no chance of success, authors of communications must exercise due diligence in the pursuit of available remedies, and that mere doubts or assumptions about their effectiveness do not absolve the authors from exhausting them.

On the merits:

Siobhán Whelan v. Ireland, UN Doc. CCPR/C/119/D/2425/2014, 2017.

This communication involved allegations of cruel, inhuman and degrading treatment as well as the violation of rights to equality and non-discrimination on the ground of sex, and arbitrary interference with the right to privacy with regard to the legal prohibition of abortion in Ireland. Due to complications with her pregnancy, the author had to seek abortion and ensuing services in the United Kingdom, suffering considerable distress in Ireland due to unavailability of such services there. The HR Committee found that the existence of domestic legal prohibition of abortion cannot be invoked to justify a failure to meet the requirements of Article 7 of the Covenant. Moreover, the State was found to have interfered arbitrarily with the author's right to privacy under Article 17, since its scope encompasses a woman's decision to request termination of pregnancy. Finally, the failure of the State to provide the author with the services that she required constituted discrimination under Article 26.

Accordingly, the HR Committee recommended the State to provide the author with adequate compensation and to make available to her any required psychological treatment. Furthermore, the State was under an obligation to take steps to prevent similar violations in the future, in particular by amending its law on voluntary termination of pregnancy.

C v. Australia, UN Doc. CCPR/C/119/D/2216/2012, 2017.

The author claimed that she had been discriminated against by Australia on the basis of her sexual orientation as the State did not recognise foreign same sex marriages, and therefore, did not provide for divorce proceedings.

The HR Committee considered that the author being precluded from accessing divorce proceedings, while other heterosexual foreign marriages, which would not be legal if carried out in Australia, were recognised, amounted to a differential treatment. It recalled that for such a treatment not to constitute discrimination it has to derive from reasonable and objective criteria which aim to achieve a legitimate purpose. However, it considered that State's justification for recognising the other categories of marriages so as to enable them to access assistance, relief and help in relation to children's, property and maintenance matters was not reasonable, as Australia failed to explain why these motives did not apply for same sex marriages.

The HR Committee therefore declared a violation of Article 26 of the Covenant. The State was asked to make full reparations and prevent future violations.

Miriana Hebbadj v. France UN Doc. CCPR/C/123/D/2807/2016 and Sonia Yaker v. France CCPR/C/123/D/2747/2016<sup>4</sup>

The authors are two French Muslim women who were prosecuted and convicted to pay a fine for wearing the niqab, according to the Act No. 2010-1192. Article 1 of the Act stipulates that: "No one may, in a public space, wear any article of clothing intended to conceal the face."

The Committee concluded that the ban and the authors' conviction under the Act for wearing the niqab violated article 18 of the Covenant as the limitation of the freedom

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<sup>4</sup> Although not discussed during the meeting, these two Views published in October and December 2018 are considered relevant for the Committee's jurisprudence.

to manifest their religion or belief by wearing the niqab is not necessary and proportionate within the meaning of article 18(3) of the Covenant.

Regarding article 26 of the ICCPR, the Committee analysed whether the differential treatment of the authors, who wear the full Islamic veil, with regard to other forms of face covering authorised under the exceptions established by the Act met the criteria of reasonableness, objectivity and legitimacy of the aim. The Committee considered that the criminal ban introduced by article 1 of Act, disproportionately affects the authors as Muslim women who choose to wear the full-face veil and introduces a distinction between them and other persons who may legally cover their face in public that is not necessary and proportionate to a legitimate interest, and is therefore unreasonable.

The Committee decided that the State party is obligated, inter alia, to ensure that similar violations do not occur in the future, including by reviewing Act No. 2010-1192 in the light of its obligations under the Covenant.

Both cases present two concurring opinions and two dissident opinions. One concurring opinion considers whether the introduction of a blanket ban on the full-face veil in public, enforced through a criminal sanction imposed on the very women such a ban would purport to protect, is an appropriate measure as opposed to less intrusive measures, such as education and awareness-raising. The second establishes that penalising wearing the full-face veil in order to protect women could, instead of promoting gender equality, potentially contribute to the further stigmatisation of Muslim women who choose to wear the full-face veil.

The dissenting opinions focus say that the “niqab in itself is a symbol of the stigmatization and degrading of women and as such contrary to the republican order and gender equality in the State party, but also to articles 3 and 26 of the Covenant” and that public safety and public order “require that everyone can be identified if need be, to prevent attacks on the security of persons and property and to combat identity fraud. This implies that people must show their faces, a vital concern in the context of current international terrorist threats”. Both of them consider that articles 18 and 26 of the Covenant were not violated by France in these cases.

## Session VI: Implementation and follow-up by the UNTBs - Overview of recent developments at the regional and international levels

In this session, Debra Long and Kate Fox presented their respective researches on implementation of UNTB decisions.

Debra Long did a research on Belgium, Czech Republic, Georgia, Canada, Colombia, Guatemala, Burkina Faso, Cameroon and Zambia looking at implementation of decisions adopted by UNTBs and regional mechanisms. Despite difficulties in finding the information on follow-up in the countries, she concluded that “**overall States have done something on some of the cases**”.

Kate Fox presented the main outcomes of her two articles published in the Human Rights Law Journal: “*United Nations Individual Complaint Procedure - How do States comply?*” and “*Internal Mechanisms to Implement UN Human Rights Decisions*”. Based on the 1,141 adverse decisions taken by the UNTBs under the individual complaints procedure, she compiled 268 cases of “satisfactory” implementation under the follow-up procedure, mainly regarding the HR Committee. This means that **State Parties have taken measures to implement around 23% of the UNTB decisions**.

In general, there is **lack of awareness in the Judiciary about the regional and international cases**. **Political factors** affect how decisions are implemented. The **status of the complainant** is another factor that affects the implementation. A higher profile might get more media attention and sometimes this can help, but other times is counterproductive.

Usually the State gets the decision through the Ministry of Foreign Affairs, who then passes it to the Ministry of Justice. In general, States do not know what to do when they receive cases. And some of the authors also do not know who to contact or how to follow-up on their case. **Processes of implementation of decisions at the domestic level are not clear.**

When the recommendation is not precise, this may result in conflict between the author and the State on how the decision should be implemented. The HR Committee has adopted a guidance paper on reparations.

The deadline of 180 days to report back to the Committee on implementation of the decision is too short for States to implement. One solution would be to identify the measures that can be implemented in a short time and others that need longer time, putting different deadlines for different measures.

Some countries have budgetary lines for providing compensation to victims according to cases of the regional and universal system, for example Colombia.

A suggestion for litigators is having a plan for implementation from the outset: which type of reparations would the case require.

National mechanisms for reporting and follow-up (NMRF) should also work on the UNTBs decisions regarding individual complaints.

The reporting process under the UNTBs and the Universal Periodic Review (UPR) can be used to follow up on the implementation of views.

The indigenous people's rights mechanism can do follow-up of recommendations of the Human Rights Council or the UNTBs regarding indigenous peoples. This is a mechanism that can be used for implementation of decisions on individual complaints as well.

## **Session VII: Follow-up to the UNTBs' cases: which role for the NGOs? Learning from the European Implementation Network (EIN)**

Through a Skype call, Basak Cali presented the **work of the European Implementation Network (EIN)** on following up to the cases of the European Court of Human Rights.

The EIN works with members and partners - lawyers, civil society organisations and communities - from across the Council of Europe region to advocate for the full and timely implementation of judgments of the European Court of Human Rights. Some of the advocacy for implementation of cases is done thematically, not case by case. This means that EIN joins all the cases adopted by the European Court on a specific issue and does advocacy for the implementation of all of them at a public policy level and by supporting more robust structures that facilitate implementation.

## Session VIII: Conclusions and next steps

At the closing session, two participants shared their experience in submitting and following up on cases from Nepal. They have set up a website with all the cases to monitor the implementation of more than 300 Views. People can comment online on the implementation status of the cases. At the beginning, Nepalese government was paying attention and implementing the measures for some of the cases, but now there are too many cases and government takes them less seriously.

After winning a case, it is important to continue working on its implementation. Not only on the remedies for the victim, but also on the general measures.

## Annex - List of participants

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