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Issues arising under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

Contents

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List of abbreviations

CAT	Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment
CCPR	International Covenant on Civil and Political Rights
CCPR-OP	Optional Protocol to the International Covenant on Civil and Political Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEDAW-OP	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CESCR	Covenant on Economic, Social and Cultural Rights
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ACHR	American Convention on Human Rights
IACtHR	Inter-American Court of Human Rights
ILO	International Labour Organization
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	Office of the United Nations High Commissioner for Refugees

I. Introduction

1. At its twenty-seventh session, the Committee recommended that the Division for the Advancement of Women prepare a background paper on several provisions of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. That background paper was submitted to the Working Group on Communications under the Optional Protocol at its second session. The present paper is the final background paper requested by the Committee at its twenty-ninth session. The paper was prepared by Ms. Ineke Boerefin of the Netherlands Institute of Human Rights.

2. This background paper provides an overview and analysis of the interpretation of provisions in other human rights treaties that are identical or similar to provisions in the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP). The case-law of the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee Against Torture and the European Commission and Court of Human Rights and the Inter-American Commission and Court of Human Rights will be examined.

3. The paper deals first with a number of admissibility requirements laid down in article 4 of CEDAW-OP. The first issue addressed is the requirement that the Committee on the Elimination of Discrimination against Women shall declare inadmissible a communication where the same matter has already been examined by it or has been or is being examined under another procedure of international investigation or settlement. The exact notion of the term “the same matter” and which are “the other procedures” referred to will be examined. Another admissibility issue concerns admissibility *ratione temporis*, meaning that the Committee cannot examine a communication if the facts that are the subject of the communication occurred prior to the entry into force of the Convention, unless those facts continued after that date.

4. Next, the paper examines a number of issues dealt with in article 7 of the Optional Protocol, namely the question of remedies recommended to States parties upon conclusion of the examination of a communication and the follow-up of the views by States parties.

5. Finally, the paper examines the accountability of States parties for the conduct of non-State actors, a question that falls within the scope of article 2, which provides that individuals must claim to be victims of a violation “by that State party”.

II. Article 4(2)(a): same matter

A. Introduction

6. Article 4(2)(a) of CEDAW-OP states that:

> “The Committee shall declare a communication inadmissible where:
>
> (a) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;”

Similar provisions[1] are contained in article 5(2)(a) of the Optional Protocol to the International Covenant on Civil and Political Rights (CCPR-OP), article 22(5)(a) of the Convention Against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment (CAT), article 35(2)(b) (former article 27) of the European Convention on Human Rights (ECHR) and article 47(d) of the American Convention on Human Rights (ACHR). This provision lays down the principle of *res judicata* in the context of the conditions for admissibility. This principle means that no State can be submitted to the examination of the subject of a communication that is being or has already been examined by an international supervisory body. It prevents "forum shopping" by individuals.

7. CERD has no provision that is comparable to article 4(2)(a) CEDAW-OP.[2] This means that there is no obstacle for the Committee on the Elimination of Racial Discrimination to examine a communication that is being or has been examined under another procedure. In a case in which the State party objected against admissibility on the ground that a similar case had been filed with the European Court of Human Rights, the Committee noted "that the author of the present communication was not the petitioner before the European Court and that, even if she [had been], neither the Convention nor the rules of procedure prevented the Committee from examining a case that was also being considered by another international body".[3]

8. The CCPR-OP formulation stands out, the Human Rights Committee is the only organ that can examine communications the examination of which by another international organ has been concluded. A number of States parties to the CCPR-OP have made reservations to this provision, to the effect that the Human Rights Committee cannot examine communications that have been examined by another organ.[4]

9. In the case of the CCPR-OP, this ground for inadmissibility is a suspensive barrier,[5] which means that the Human Rights Committee can continue examination of the communication if the ground for inadmissibility has been lifted, either through withdrawal of a communication or through conclusion of the examination.[6] Under the other treaties, this ground for inadmissibility is final.

10. In deciding whether a submitted communication concerns the "same matter", relevant aspects to be taken into account concern the identity of the author of the communication (section 2.2), the facts underlying the complaint and the scope of the provision invoked (section 2.3), the nature of the examination by another international organ (section 2.4) and the exact meaning of the phrase "has been examined" (section 2.5). The possibility for the European Court of Human Rights to re-examine applications that contain new information is addressed in section 2.6. A closely related aspect is the meaning of the term "another procedure of international investigation or settlement", which is dealt with in section 3.

B. Identity of the author

11. In the case of *Fanali v. Italy*, the Government of Italy objected against admissibility of the communication on the ground that, in its view, the same matter had been submitted to the European Commission of Human Rights by Mr. Fanali's former co-defendants, complaining about the same alleged violations related to the procedure, competence and judgement of the Italian Constitutional Court. The State party argued that the determining element should be the substance of the case, i.e. the "matter" submitted to the international body, not the individual author who submitted the complaint.[7] The Human Rights Committee disagreed with the State party and held that:

> "the concept of 'the same matter' within the meaning of article 5 (2) (a) of the Optional Protocol had to be understood as including the same claim concerning the same individual, submitted by him or someone else who has the standing to act on his behalf before the other international body".[8]

12. If the communication has been submitted to another international body by a close relative, the case must be withdrawn from that body before the Human Rights Committee can examine the case.[9] However, the Human Rights Committee is not barred from examining a communication if the same matter has been submitted to another international body by an unrelated third party. The Human Rights Committee observed that article 5(2)(a):

> "cannot be so interpreted as to imply that an unrelated third party, acting without the knowledge and consent of the alleged victim, can preclude the latter from having access to the Human Rights Committee. It therefore concluded that it was not prevented from considering the communication submitted to it by the alleged victim himself, by reason of a submission by an unrelated third party to IACHR. Such a submission did not constitute 'the same matter', within the meaning of article 5(2)(a)."[10]

13. This view is similar to the procedure laid down in rule 33 of the rules of procedure of the Inter-American Commission on Human Rights, which provides that the Commission is not barred from examining a complaint when "the petitioner before the Commission or a family member is the alleged victim of the violation denounced and the petitioner before the other organization is a third party or a non-governmental entity having no mandate from the former". However, when the Commission itself has already examined the same matter submitted by an unrelated party, it cannot examine the complaint when it is subsequently submitted by a family member. For example, it dismissed a petition submitted on behalf of a deceased victim's wife, on the ground that it had already examined the issue pursuant to the submission of a petition by another, unrelated, individual. The petitioners argued that the first case had been brought before the Commission without the knowledge or consent of the victim's family and that the Commission's report lacked a full statement of the questions of fact and law underlying it. The Commission pointed to the broad formulation of article 44 of the American Convention on Human Rights which specifies that "any person or group of persons, or any non-governmental entity legally recognized in one or more member States of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party". It stated that the Convention makes a distinction between a petitioner and a victim. This provision implies, among others,

that no connection at all is required between the victim and the petitioner and, as a corollary, that the victim's consent to a petition is not a requirement, either.[11]

14. In *Council of Civil Service Unions a.o.*, the European Commission of Human Rights had before it a case that was similar to a case submitted to the ILO Committee on Freedom of Association. The European Commission considered that the applicants in the case were not identical, since the complaints before the ILO had been brought by the Trades Union Congress, through its General Secretary, on its own behalf. It stated that the six individual applicants before the Commission "would not have been able to bring such complaints since the Committee on Freedom of Association was set up to examine complaints from organizations of workers and employees, as opposed to individual complainants. (...)"[12] The fact that the Council of Service Unions was a member of the Trade Union Congress did not constitute an obstacle for admissibility. In another, quite similar, case, the Commission declared a petition inadmissible because it had also been brought before the ILO by the World Federation of Industry Workers; four trade union branches joined the proceedings that concerned the dismissal of the employees concerned. The European Commission acknowledged that the 23 individual applicants were not the complainants who appeared before the ILO organs, but the complaint was in substance submitted by the same complainants. It therefore declared the communication inadmissible under article 27(1)(b) (now article 35(2)(b)).[13]

15. In subsequent case-law, the Commission reaffirmed its original position and stated that if complainants before the European Commission and, for instance, the Human Rights Committee are not identical, the complaint cannot be considered as being substantially the same. It stated that "an application which has the same purpose as an application previously submitted to another procedure of international investigation but by a different applicant, cannot be regarded as being substantially the same as the matter submitted to that other international procedure".[14]

16. In the case of the death of the author of a previously filed complaint, the heirs are considered to be the applicant's legal successors and, as such, are considered to have the same identity as the deceased applicant. If the heirs wish to reintroduce the complaints previously submitted by the applicant, they must therefore submit relevant new information in order for the application to be admissible.[15]

C. Facts of the case and the scope of provisions in other human rights treaties

17. The next aspect to be considered concerns the question of the substance of the case and the extent to which the provisions in the human rights treaties concerned provide the same level of protection.

18. In a number of cases, the Human Rights Committee had to go into the substance of the communication in order to decide whether a communication dealt with the "same matter" as a case that had been dealt with by another international body. It had to do so especially in cases where a State party invoked a reservation to article 5(2)(a) of CCPR-OP, which precludes the Human Rights Committee from examining a communication when the same matter has been examined under another international procedure. If a communication does not concern "the same matter" within the meaning of article 5(2)(a) of CCPR-OP, the Human Rights Committee

may continue the examination of the communication submitted to it, even though another organ has previously examined a complaint by an author. In determining whether a communication concerns "the same matter", the Human Rights Committee examines the facts and arguments of the case, as well as the text and scope of the relevant treaty provisions. In some cases, the underlying facts appeared to be the decisive factor, in other cases the scope of the treaty provisions.

19. In the case of *V.Ø. v. Norway*, a father complained of the denial of a fair hearing in a custody case, which allegedly violated his right to a fair trial, his right to respect for family life and his right not to be discriminated against. The State party objected against admissibility on the ground that the same matter had been examined by the European Commission. The European Commission had declared the complaint inadmissible as manifestly ill-founded. The author of the communication submitted, inter alia, that the relevant provisions in the ECHR and the CCPR were not identical. In its views, the Human Rights Committee reaffirmed that the phrase "the same matter" referred to identical parties, to the complaints advanced and facts adduced in support of them. In this case, the Committee found that the matter before it was, in fact, the same matter that had been examined by the European Commission,[16] without going into detail about the scope of the various provisions invoked.

20. In a case in which Austria invoked its reservation to article 5(2)(a) of CCPR-OP on the ground that the communication had previously been examined by the European Commission on Human Rights, the Human Rights Committee concluded that the author was advancing "free-standing claims of discrimination and equality before the law, which were not, and indeed could not have been, made before the European organs". It concluded that it was not precluded by the reservation from considering the communication.[17] In a case concerning the right to a fair trial, however, the Human Rights Committee considered that, even though there were certain differences in the interpretation of article 6(1) of ECHR and article 14(1) of CCPR by the supervisory organs, both the content and scope of these provisions largely converged. The State party concerned, Austria, had invoked its reservation to article 5(2)(a) of CCPR-OP, and because of the great similarities between the two provisions, the Human Rights Committee declared the communication inadmissible, stating that it was "precluded from reviewing a finding of the European Court on the applicability of article 6, paragraph 1, of the European Convention by substituting its jurisprudence under article 14, paragraph 1, of the Covenant".[18]

21. According to the Human Rights Committee, a case that had been submitted to the Inter-American Commission on Human Rights prior to the entry into force of the CCPR and the CCPR-OP for the State party cannot concern the same matter.[19] The European Court has taken the same view: if a case concerns a period of time that differed from the period covered by a previous judgement, the petition is not inadmissible.[20] Furthermore, a two-line reference to the author in a case before the Inter-American Commission on Human Rights, in which the names of hundreds of persons allegedly detained in Uruguay were listed in a similar way, does not constitute the same matter as that described in detail by the author in his communication to the Human Rights Committee.[21]

22. In the case of *Blaine v. Jamaica*, the Inter-American Commission on Human Rights examined whether it could receive a case that had been examined by the Human Rights Committee. It stated that the fact that a communication involves the

same person as a previously presented petition is only one element of duplication and that the nature of the claims presented and the facts adduced in support thereof must also be examined. It noted that the presentation of new facts and/or sufficiently distinct claims about the same person could, under certain circumstances, provide the basis for consideration. It also stated that, where a second presentation of claims concerned rights that were not covered by the subject matter jurisdiction of the body before which a first petition had been presented, the matter would not, in principle, be barred as duplicative. The Commission then explained its understanding of the phrase "substantially the same", which is the language used in article 47(d) as follows:

> "A prohibited instance of duplication involves, in principle, the same person, the same legal claims and guarantees, and the same facts adduced in support thereof. This essentially means that a petitioner cannot file a petition before the UNHRC complaining of the violation of a protected right or rights based on a factual predicate, and then present a complaint before this Commission involving identical or integrally related rights and facts which were or could have been raised before the UNHRC."[22]

D. Investigations of another nature

23. In a number of cases the Human Rights Committee decided that human rights investigations with a wide scope did not constitute an examination of "the same matter" as an individual claim within the meaning of article 5(2)(a) of CCPR-OP. In the case of *Baboeram et al. v. Suriname*, the Committee observed that:

> "(...) a study by an intergovernmental organization either of the human rights situation in a given country (such as that by the Inter-American Commission on Human Rights in respect of Suriname) or a study of the trade union rights situation in a given country (such as the issues examined by the Committee on Freedom of Association of the ILO in respect of Suriname), or of a human rights problem of a more global character (such as that of the Special Rapporteur of the Commission on Human Rights on summary or arbitrary executions), although such studies might refer to or draw on information concerning individuals, cannot be seen as being the same matter as the examination of individual cases within the meaning of article 5, paragraph 2 (a), of the Optional Protocol. (...)"[23]

24. In the case of *Zelaya Blanco v. Nicaragua*, the State party objected to admissibility on the ground that the case was already being examined by the Inter-American Commission on Human Rights, Amnesty International, the International Commission of Jurists and the Nicaraguan section of the International Committee of the Red Cross. In this case, the Human Rights Committee made a more general finding. It stated that "the general investigation, by regional and intergovernmental human rights organizations, of situations affecting a number of individuals, including the author of a communication under the Optional Protocol, does not constitute the 'same matter' within the meaning of article 5, paragraph 2(a)".[24] In the case of *Broeks v. The Netherlands*, it observed that the examination of State parties' reports in the context of the reporting procedure under human rights treaties did not constitute an examination of the "same matter" as a claim submitted under the CCPR-OP.[25] The procedure under Economic and Social Council resolution 1503

(XLVIII) of 27 May 1970, which is concerned with the examination of situations that reveal "a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms" is not, in the view of the Human Rights Committee, concerned with the examination of the same matter, within the meaning of article 5(2)(a) of CCPR-OP as a claim by an individual under the Protocol.[26]

25. The Human Rights Committee has not yet taken a position on the Working Group on Arbitrary Detention. In a case that was both before the Committee and the Working Group, the Committee decided to reach no decision on whether the matter fell within the scope of article 5(2)(a) of CCPR-OP, since it had received information from the Working Group indicating that the Working Group was aware of the communication and had referred the case to the Committee without any expression of its views.[27]

E. Complaints already examined

26. The next issue addressed under this heading is the question of whether another international organ has actually "examined" a complaint. As was noted before, in this respect the texts of the CEDAW-OP and the CCPR-OP are different. On the basis of article 5(2)(a), the Human Rights Committee examines whether a case is under active consideration by an international organ. If that is the case, the author has to withdraw his complaint from the other international organ, or wait until consideration has been concluded, before the Human Rights Committee can consider it. The fact that a communication has previously been submitted to another organ does not constitute an obstacle to admissibility.[28] However, since many States parties have made reservations to article 5(2)(a) of CCPR-OP to the effect that communications that have been examined by another organ may not be examined by the Human Rights Committee, the Committee has also had to determine the exact meaning of the phrase "has been examined".

27. In determining whether a complaint has been "examined", a distinction must be made between complaints that have been declared inadmissible on purely procedural grounds and complaints that have been dealt with in substance by another international organ. A case that was not even registered by the secretariat of the European Commission of Human Rights, because it had been submitted after the expiration of the six-month-time limit, cannot be considered to have been examined.[29] A case that had been declared inadmissible by the Commission under article 27(1)(b) of ECHR[30] was considered not to have been "examined", because it had been declared inadmissible on procedural grounds.[31] The same conclusion was reached when an application had been declared inadmissible because the author had been denied standing by the Commission to bring a complaint on behalf of his daughter. The Human Rights Committee concluded that that aspect of the complaint had not been "considered" by the Commission.[32]

28. When the other international organ has declared a communication inadmissible pursuant to an examination of the substance of the complaint, the Human Rights Committee cannot examine it. According to the Committee, this is the case wherein the European Court of Human Rights has gone beyond making a procedural or technical decision on admissibility, and has made an assessment of the merits of the case. In such instances, the Court can be said to have "examined" the case. When an application had been declared inadmissible by the European Commission of Human

Rights on the ground that it did not disclose any appearance of a violation of the rights and freedoms set out in the ECHR or its Protocols, the Human Rights Committee decided that it was precluded from examining the communication on the ground that the State party concerned had made a reservation to article 5(2)(a) of CCPR-OP.[33] In addition, when the Commission had declared an application "manifestly ill-founded" and therefore inadmissible, the Human Rights Committee considered that that implied that the application had been "examined" and must be declared inadmissible.[34] However, when the European Court of Human Rights struck down a case because respect for human rights did not require its continued consideration subsequent to the withdrawal of the application, the Human Rights Committee concluded that it was not precluded from examining the communication. It stated that that did not amount to a real assessment of the substance of the application and that the complaint could not be said to have been "examined" by the Court.[35]

29. When there are significant differences between the relevant provisions, communications can be declared admissible. In respect of a case on the right to freedom of expression that had been declared inadmissible *ratione materiae* by the European Commission of Human Rights, the Human Rights Committee stated that:

> "Since the rights of the European Convention differed in substance and in regard of their implementation procedures from the rights set forth in the Covenant, a matter that had been declared inadmissible *ratione materiae* had not, in the meaning of the reservation, been 'considered' in such a way that the Committee was precluded from examining it."[36]

30. In determining whether the same matter has been "examined", the Human Rights Committee takes into account the wording of the treaties concerned and the way in which the provisions are interpreted by the supervisory organs. It has stated that:

> "In terms of the author's argument that the provisions of the European Convention are different from the provisions of the Covenant now invoked, the mere fact that the wording of the provisions vary is not enough, of itself, to conclude that an issue now raised under a Covenant right has not been 'considered' by the European Commission. A material difference in the applicable provisions in the instant case must be demonstrated. In this case, the provisions of articles 6, 8 and 14 of the European Convention, as interpreted by the European Commission, are sufficiently proximate to the provisions of articles 14 and 17 of the Covenant now invoked that the relevant issues arising can be said to have been 'considered'. That conclusion is not altered by the additional pleading before the Committee of article 23 of the Covenant, as any issues arising under that article have in their substance been addressed in the foregoing consideration by the European Commission."[37]

F. Relevant new information

31. An important difference between CEDAW-OP and article 35(2)(b) of ECHR is that the latter provides for the possibility to re-examine a complaint that has been dealt with by the European Court of Human Rights or another international organ, provided that the complaint contains relevant new information. This provision gives applicants the possibility to reintroduce their application.[38] It must be noted,

however, that the European Commission of Human Rights interpreted this term narrowly. According to the Commission, new information must "add to the substance" of the original complaint. An elaboration of the legal reasoning previously submitted, aiming to demonstrate that the previous submissions were incorrectly evaluated by the Commission, is not considered to be "relevant new information".[39] Complaints that are entirely different from the applicant's original complaint are not considered to constitute relevant new information and can therefore not be a ground for reopening the case. In addition, the Commission does not accept as a basis for reconsidering a case "information, further submissions or reformulated complaints which were known to the applicant and could clearly have been presented by him with the original application".[40] A relevant error of facts established by the Commission can be considered as relevant new information. That was the case when the Commission established that an applicant was considered to belong to a specific category of prisoners, which turned out to be incorrect. Since different prison conditions applied to different categories of prisoners, the information was considered to be relevant.[41]

32. If a case has been declared inadmissible on the ground of non-exhaustion of domestic remedies and the remedies are subsequently exhausted, this constitutes relevant new information.[42] The same holds true when proceedings that were still pending at the time of the previous application have in the meanwhile been terminated.[43] The information that proceedings have been terminated must be "relevant" to the case. In a case in which appeal proceedings on the use of deoxyribonucleic acid (DNA) were terminated, and where the use of evidence was not the subject of the application, the information does not constitute "relevant new information".[44]

III. Article 4(2)(a): another procedure of international investigation or settlement

33. A noteworthy distinction between articles 4(2)(a) of CEDAW-OP and 5(2)(a) of CCPR-OP[45] in this respect is that the Human Rights Committee can examine communications that concern the same matter that it has itself examined previously, while the Committee on the Elimination of Discrimination against Women is precluded from examining the same matter twice. The Human Rights Committee has, on a few occasions, examined such communications.[46] The present section focuses on what constitutes "another procedure".

34. Procedures that obviously fall within the scope of article 5(2)(a) of CCPR-OP are individual complaint procedures established under the United Nations human rights treaties and the regional human rights treaties. The Human Rights Committee has declared inadmissible a number of communications that were under examination by the European Commission of Human Rights and the Inter-American Commission on Human Rights. So far, it has not had before it communications examined by the African Commission on Human Rights, but it may be assumed that this procedure also falls within the scope of article 5(2)(a) of CCPR-OP. Other procedures that are likely to be covered are the article 26 procedure of the ILO Constitution and the special procedure before the ILO Committee on Freedom of Association based on Economic and Social Council resolution 277 (X).[47] The European Commission of Human Rights has indeed ruled that the procedure before the ILO Committee on

Freedom of Association is a "another procedure" within the meaning of article 27(1)(b) (now 35(2)(b)).[48]

35. Chapter II, section D, of the present paper addressed the question whether procedures in which another type of investigation is carried out concern "the same matter". The procedures that the Human Rights Committee deemed not to concern "the same matter" are listed. The Committee holds the view that investigations of a general nature do not concern "the same matter" as a case submitted under the CCPR-OP. It drew this conclusion with respect to a number of procedures, including country studies by the Inter-American Commission on Human Rights, studies of the trade union rights situation in a given country by the ILO Committee on Freedom of Association, studies by thematic special rapporteurs, the examination of States parties' reports under the reporting procedure under the various human rights treaties, the procedure under Economic and Social Council resolution 1503 (XLVIII) and country studies by non-governmental organizations. When individual situations constitute part of an investigation under such procedures, this does not constitute an obstacle to consideration of an individual communication by the Human Rights Committee because the nature of the procedure is entirely different and, equally important, the outcome of these procedures is significantly different from the outcome of a complaints procedure.

36. In other cases, the Human Rights Committee expressed itself more explicitly on the procedures, rather than on the question whether the organs involved concerned themselves with the same matter. In a case concerning general allegations of human rights violations that had also been submitted to UNESCO, the Committee held that that organization had no procedure of international investigation or settlement, as referred to in article 5(2)(a) of the Protocol relevant to that case.[49] Procedures established by non-governmental organizations (such as Amnesty International, the International Commission of Jurists or the International Committee of the Red Cross) do not constitute a procedure of international investigation or settlement within the meaning of article 5(2)(a) of CCPR-OP.[50] In the case of *Laureano v. Peru*, the Committee observed that:

> "(...) extra-conventional procedures or mechanisms established by the United Nations Commission on Human Rights or the Economic and Social Council, and whose mandates are to examine and publicly report on human rights situations in specific countries or territories or on major phenomena of human rights violations worldwide, do not, as the State party should be aware, constitute a procedure of international investigation or settlement within the meaning of article 5, paragraph 2 (a), of the Optional Protocol. The Committee recalled that the study of human rights problems of a more global character, although it might refer to or draw on information concerning individuals, could not be seen as being the same matter as the examination of individual cases within the meaning of article 5, paragraph 2 (a), of the Protocol".[51]

37. The Committee Against Torture dealt with an objection to admissibility on the ground that UNHCR had already dealt with a case, and had made a determination on the compatibility of an expulsion with the State party's obligations under article 33(2) of the Convention relating to the Status of Refugees of 1951. The Committee noted that neither the Refugee Convention nor the Statute of UNHCR provided for the establishment of a procedure of international investigation or settlement. It held the view that "a written opinion or advice given by a regional or international body

on a matter of interpretation of international law in relation to a particular case does not imply that the matter has been subject to international investigation or settlement".[52]

38. According to rule 33 of the rules of procedure of the Inter-American Commission on Human Rights, the Commission is not barred from examining a case when "the procedure followed before the other organization is limited to a general examination of the human rights situation in the State in question and there has been no decision on the specific facts that are the subject of the petition before the Commission, or it will not lead to an effective settlement". According to the Commission, this implies:

> "the actual existence of a mechanism whereby the violation denounced can be effectively resolved between the petitioner and the authorities of the State or, failing that, the proceeding instituted can lead to a decision that ends the litigation and/or gives other bodies jurisdiction".[53]

39. The Inter-American Commission on Human Rights has also stated that "the procedure in question must be equivalent to that set forth for the processing of individual petitions in the inter-American system".[54] The Commission has determined that examinations by the United Nations Special Procedures do not qualify as another procedure of international investigation or settlement, but that these procedures are aimed at making it possible to bring international attention to a specific situation in which fundamental rights have been ignored.[55]

40. According to the European Commission of Human Rights, the term "another procedure" within the meaning of article 27(1)(b) of ECHR relates to judicial or quasi-judicial proceedings similar to those established by the Convention and the term "international investigation or settlement" refers to institutions and procedures set up by States, thus excluding non-governmental bodies, such as the Inter-Parliamentary Union.[56]

IV. Article 4(2)(e): admissibility *ratione temporis*

41. Article 4(2)(e) reads:

> "The Committee shall declare a communication inadmissible where:
>
> (...)
>
> (e) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date."

This rule can be seen as the expression of a general rule of international law that a treaty is not applicable to situations that occurred or ceased to exist prior to the entry into force of the treaty for the State concerned. Neither the other United Nations human rights treaties nor the regional human rights conventions contain an express reference to this condition for admissibility. In practice, however, all supervisory organs apply this requirement, commonly known as "admissibility *ratione temporis*". The Human Rights Committee has generally examined this question under article 3 of CCPR-OP, which requires that a communication must not be incompatible with the CCPR, or under article 1, which states that

communications can only be received if they concern a State party to the relevant instrument.[57]

42. CEDAW-OP unambiguously states that it is the date of the entry into force of the Optional Protocol that is decisive for this admissibility requirement. This will avoid discussions on the admissibility of communications dealing with events that occurred prior to the entry into force of the Optional Protocol, but after the entry into force of the Convention. Such discussions have taken place in the context of the CCPR-OP,[58] and the Human Rights Committee's case-law has been unclear for some time. Some States parties to the CCPR-OP have made reservations or declarations upon ratification of the CCPR-OP, limiting the power of the Human Rights Committee to receive communications to situations that took place after the entry into force of the CCPR-OP. It is currently the Committee's practice to receive communications only when the alleged violation took place after the entry into force of the CCPR-OP; it does so in respect of all States parties, regardless of the presence of a reservation or declaration. Article 4(2)(e) of CEDAW-OP codifies an important aspect developed in the practice of the Human Rights Committee, by specifying that the Committee on the Elimination of Discrimination against Women may declare a communication admissible if the facts continued after the date of entry into force of CEDAW-OP. This rule is also applied by the Inter-American Commission on Human Rights, which explicitly adopted the practice of the Human Rights Committee and the European Commission of Human Rights when it observed:

> "... the doctrine according to which the European Commission and the Human Rights Committee of the Civil Rights Pact have jurisdiction to take cognizance of events occurring prior to the date of entry into force of the Convention for a specific State, provided and to the extent that those events are likely to result in a continuous violation of the Convention extending beyond that date, is applicable to the inter-American system".[59]

43. The case of *Lovelace v. Canada* played an important role in the development of the Human Rights Committee's case-law on this issue. As a result of marrying a non-Indian in 1970 Sandra Lovelace had lost her status as a Maliseet Indian. The relevant law contained a de jure distinction on the ground of sex. CCPR-OP entered into force for Canada on 19 August 1976, so the Human Rights Committee was not competent to express itself on the original cause of the loss of her status. It considered, however, that:

> "the essence of the present complaint concerns the continuing effect of the Indian Act, in denying Sandra Lovelace legal status as an Indian, in particular because she cannot for this reason claim a legal right to reside where she wishes to, on the Tobique Reserve. This fact persists after the entry into force of the Covenant, and its effects have to be examined, without regard to their original cause. (...)"[60]

44. In this case, the Human Rights Committee made clear that a situation that occurred during a period in which a State was a party neither to the CCPR nor to the CCPR-OP could nevertheless be examined by the Committee and lead to the finding of a violation. The decisive factor is whether there are effects that continue to exist after the entry into force of the CCPR-OP. Many cases before the Human Rights Committee in which it had to take a decision on admissibility *ratione temporis* concerned allegedly arbitrary detention that started prior to the date of entry into force but continued after that date. In such cases, the Human Rights Committee

considered itself competent to examine the alleged violation.[61] A continuing effect has further been found in the consequences of court hearings[62] and restrictions on the liberty of movement.[63] Furthermore, a failure to bring a person under judicial control immediately after arrest was found to constitute a continuing violation of article 9(3) of CCPR (the right to be brought promptly before a judge) until cured.[64] In 1994, the Human Rights Committee gave a clear definition of the term "continuing effect" when it stated that:

> "A continuing violation is to be interpreted as an affirmation, after the entry into force of the Optional Protocol, by act or by clear implication, of the previous violations of the State party."[65]

45. To illustrate the issue of continuing effects, a brief overview of the Human Rights Committee's case-law is included. An author had been convicted prior to the entry into force of the CCPR and the CCPR-OP, but his appeals had been heard after that. The Human Rights Committee considered that the alleged violations (of articles 18 and 19 of CCPR) had continued after the entry into force and that it was thus not precluded *ratione temporis* from examining the communication.[66] It indeed found a violation of article 19 (the right to freedom of expression). The case of *Kim v. Republic of Korea* concerned an author who had been arrested under the National Security Law. The State party had objected to admissibility on the ground that the case was based on events that had occurred prior to the entry into force of the CCPR and the CCPR-OP. According to the Committee, it did not have to refer to its jurisprudence on the issue, since the violation alleged by the author was his conviction under the National Security Law, which had taken place after entry into force of the CCPR-OP (the author alleged — and the Human Rights Committee found — a violation of article 19).[67] In a case in which the State party objected to admissibility because, in its view, the communication concerned confiscation of property in the 1940s, the Human Rights Committee stated that the author had specifically noted that his claim related to the court decisions in 1995 and 1996 and declared the communication admissible.[68] *Somers v. Hungary* demonstrates the importance for authors to make clear what exactly they are complaining about. While expropriation by the communist government of Hungary in 1951 constituted the cause of the communication, the authors complained before the Human Rights Committee of the discriminatory nature of the legislation on compensation for that expropriation. That legislation had been adopted in 1991 and 1992, which was after the entry into force of the Optional Protocol for the State party. The Human Rights Committee therefore decided that the communication was not inadmissible on that ground.[69]

46. In determining the "facts" of the case occurring prior to the entry into force of the CCPR-OP, it is important that the matter complained of should be clear. This could be either the facts that underlie a procedure before a domestic court or the court decision itself. If the court decision that constitutes the basis of the complaint was adopted after the entry into force of the CCPR-OP, the events that are at stake in the case may have occurred prior to that date.

47. Recent Human Rights Committee case-law shows how casuistic the matter is. *Love et al. v. Australia* concerned mandatory dismissal of pilots once they had reached the age of 60. The authors submitted that that constituted discrimination on the ground of age. The Human Rights Committee declared the complaints of a number of the authors inadmissible, since their dismissal had taken place prior to the

entry into force of the CCPR and CCPR-OP for Australia. According to the Human Rights Committee:

> "The acts of alleged discrimination, properly understood, occurred and were complete at the time of the dismissals. The Committee does not consider that the continuing effects in this case of these acts could themselves amount to violations of the Covenant, nor that subsequent refusals to take up re-employment negotiations could appropriately be understood as fresh acts of discrimination independent of the original dismissal. It follows that the claims of these three authors are inadmissible *ratione temporis*."[70]

48. In another case, which concerned alleged discrimination in access to public service, the Human Rights Committee considered that the relevant proceedings had been completed prior to the entry into force of the CCPR-OP. The Committee recalled that a persistent violation is understood to mean the continuation of violations which the State party committed previously, either through actions or implicitly. It noted that the author had been dismissed under the law in force at the time, and that administrative proceedings had not had the desired effect. The author had initiated legal proceedings only after the entry into force of the CCPR-OP, but the fact that he had not won did not, according to the Committee, in itself constitute a violation of the CCPR. The Committee stated that it had been unable to conclude that there was a violation that had occurred prior to the entry into force of the CCPR-OP and had continued thereafter.[71]

49. *Sarma v. Sri Lanka* concerned a disappearance that had taken place in 1990. The CCPR-OP entered into force for this State party in 1997; upon ratification Sri Lanka entered a declaration restricting the competence of the Human Rights Committee to events that followed the entry into force of the CCPR-OP. According to the Committee:

> "... although the alleged removal and subsequent disappearance of the author's son had taken place before the entry into force of the Optional Protocol for the State party, the alleged violations of the Covenant, if confirmed on the merits, may have occurred or continued after the entry into force of the Optional Protocol".[72]

On the merits, it indeed found a violation of articles 7 and 9 of CCPR.

50. Both the Inter-American Commission on Human Rights and the European Commission of Human Rights apply the same criteria as the Human Rights Committee. The Inter-American Commission examined a case in which, among others, the Convention of Belém do Pará had been invoked.[73] The case concerned a rape that had taken place prior to the entry into force of that Convention, while the relevant domestic court proceedings had taken place after its entry into force. The Inter-American Commission considered that it had "competence *ratione temporis* to apply the Convention of Belém do Pará to consider facts that occurred after Bolivia's ratification of that Convention, relating to the alleged denial of justice".[74] The circumstances can require that facts that occurred prior to the entry into force be taken into account. The European Commission has stated that, where a court delivers a judgement after the entry into force of the ECHR, it is competent *ratione temporis* to ensure that the proceedings which the judgement concludes comply with the ECHR, since the final decision is deemed to embody any defects in the preceding procedure.[75]

51. The case-law of the Human Rights Committee on the right to a remedy for violations that occurred prior to the entry into force of the CCPR and the CCPR-OP warrants separate attention. The Committee dealt with a number of cases in which amnesty legislation, namely the Argentinean *Ley de Punto Final* and the *Ley de Obediencia Debida*, prevented relatives of disappeared persons from seeking justice. According to the Committee, article 2 of CCPR, which provides, among others, a right to a remedy, can only be invoked in conjunction with other articles of the Covenant. The Committee held the view that, under article 2, the right to a remedy arises only after a violation of a Covenant right has been established. In the cases before it, the events that could have constituted violations of several articles of CCPR and in respect of which remedies could have been invoked occurred prior to the entry into force of CCPR and CCPR-OP for Argentina. It concluded that it could not deal with the right to a remedy and declared the communication inadmissible *ratione temporis*.[76] In July 2003, the Human Rights Committee changed its position concerning the requirement of establishing a violation of the Covenant for the applicability of article 2. It stated:

> "A literal reading of this provision seems to require that an actual breach of one of the guarantees of the Covenant be formally established as a necessary prerequisite to obtain remedies such as reparation or rehabilitation. However, article 2, paragraph 3(b), obliges States parties to ensure determination of the right to such remedy by a competent judicial, administrative or legislative authority, a guarantee which would be void if it were not available where a violation had not yet been established. While a State party cannot be reasonably required, on the basis of article 2, paragraph 3(b), to make such procedures available no matter how unmeritorious such claims may be, article 2, paragraph 3, provides protection to alleged victims if their claims are sufficiently well-founded to be arguable under the Covenant."[77]

52. A special situation exists in the Inter-American system. Member States of the Organization of American States that are not yet parties to the Convention of Belém do Pará are bound by the American Declaration of the Rights and Duties of Man, which sets forth standards applicable to the Commission's review. Many articles in the Declaration are also protected by the Convention. Once the ratification of the Convention becomes effective, the latter instrument becomes the principal source of legal obligation and the rights and obligations contained in that instrument become applicable. Accordingly, the Commission is competent *ratione temporis* to address claims that refer to the obligations contained in the Convention.[78]

53. ECHR does not contain an express reference to the principle of admissibility *ratione temporis*. In its practice, however, the European Commission of Human Rights has repeatedly referred to this generally accepted principle of international law and stated in many cases that it does not have the competence to deal with cases that concern facts that occurred prior to the entry into force of ECHR. It has said that "in accordance with the generally recognized rules of international law, the said Convention only governs, for each Contracting Party, facts subsequent to its entry into force with respect to that Party".[79] Like the other organs, the Commission accepts the "continuing-situation-concept" as an exception to the general rule. It has defined the concept of a "continuing situation" as "a state of affairs which involves continuous activities by or on the part of the State".[80] The case of *De Becker v. Belgium* dealt with a Belgian national who lodged a complaint concerning a conviction by a Belgian court for treason during the Second World War. The verdict

had been pronounced before Belgium had ratified the Convention, but the situation complained about did not concern the validity or justification of the judgment, but the forfeiture of rights imposed upon him, consisting of a limitation on the right of free expression, which continued as such after ECHR had become binding upon Belgium. The Commission recognized:

> "in regard to its competence *ratione temporis* that the Applicant had found himself placed in a continuing situation which had no doubt originated before the entry into force of the Convention in respect of Belgium (14th June 1955), but which had continued after that date, since the forfeitures in question had been imposed 'for life'".[81]

54. In a case in which the proceedings concerning a claim for damages were stayed prior to the entry into force of ECHR, the European Court of Human Rights observed that "the effect of that decision has been that the proceedings have continued to be pending since they have never been terminated", and that "domestic courts have, ever since, been prevented from proceeding with the applicant's claim for damages". It concluded that there was the necessary continuity in the applicant's situation for the Court to have its competence *ratione temporis* established.[82]

55. The Strasbourg organs distinguish instantaneous acts and acts of a continuous nature. In a case concerning the seizure of documents by the police and the refusal to return them, the Court decided that "the search and seizure of documents in question were instantaneous acts which, despite their ensuing effects, did not, in themselves, give rise to any possible continuous situation of a violation of Article 8 of the Convention".[83]

V. Article 7(3): remedies recommended by human rights treaty bodies

A. Introduction

56. Article 7(3) of CEDAW-OP reads as follows:

> "After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned."

57. The right to a remedy in case of human rights violations is an essential right. In several human rights treaties it is explicitly guaranteed (see articles 2(3) of CCPR, 6 of CERD, 13 and 14 of CAT and 25 of ACHR). According to article 2(3) of CCPR, States parties are obliged to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, without further specifying what the nature of this remedy should be. Article 25 of ACHR is similar. Article 6 of CERD obliges States parties to provide for effective remedies and for the right to seek just and adequate reparation or satisfaction for damage resulting from acts of racial discrimination. Article 13 of CAT contains an obligation for States parties to ensure that allegations of torture are examined promptly and impartially, and article 14 obliges States parties to ensure that victims of torture obtain redress and have an enforceable right to fair and adequate compensation, including the means for full rehabilitation as possible. It must be noted that on the basis of article 16 of CAT, article 13 is applicable to acts of cruel, inhuman or

degrading treatment or punishment, while article 14 does not apply to such acts. CEDAW does not contain an explicit "right to a remedy", though it provides in article 2(d) that States parties must establish the effective protection of women against discrimination.

58. Within the United Nations Commission on Human Rights, the drafting of basic principles on the right to a remedy is the subject of discussion. These draft principles[84] may be a source of inspiration for the Committee on the Elimination of Discrimination against Women in formulating concrete recommendations; therefore, attention is paid to them in the present paper.

59. The draft principles propose that remedies for violations of international human rights and humanitarian law include the victim's right to access to justice, reparation for harm suffered and access to the factual information concerning the violations.

60. According to the draft principles, restitution should, whenever possible, restore the victim to the original situation before the violations of international human rights or humanitarian law occurred. The draft principles state that restitution includes restoration of liberty, legal rights, social status, family life and citizenship; return to one's place of residence; and restoration of employment and return of property.

61. Furthermore, the draft principles state that compensation should be provided for any economically assessable damage resulting from violations, such as physical or mental harm, including pain, suffering and emotional distress; lost opportunities, including education; material damages and loss of earnings, including loss of earning potential; harm to reputation or dignity; and costs required for legal or expert assistance, medicines and medical services, and psychological and social services. Rehabilitation should include medical and psychological care as well as legal and social services.

62. Satisfaction and guarantees of non-repetition should include measures such as cessation of continuing violations; an official declaration or a judicial decision restoring the dignity, reputation and legal and social rights of the victim and of persons closely connected with the victim and judicial or administrative sanctions against persons responsible for the violations. Further, States should take measures to prevent the recurrence of violations by such means as ensuring effective civilian control of military and security forces; strengthening the independence of the judiciary; conducting and strengthening, on a priority and continued basis, human rights training to all sectors of society, in particular to military and security forces and to law enforcement officials and promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, and the staff of economic enterprises.

B. Formulation of suggestions and recommendations

63. Article 7(3) of CEDAW-OP is significantly different from article 5(4) of CCPR-OP and article 22 of CAT, as it provides that the Committee on the Elimination of Discrimination against Women shall transmit its views and recommendations to the parties. Article 14(7)(b) of CERD authorizes the Committee

on the Elimination of Racial Discrimination to provide suggestions and recommendations to the parties. According to article 41 of ECHR (former article 50), the European Court of Human Rights can afford just satisfaction to the injured party. Article 50(3) of ACHR authorizes the Inter-American Commission on Human Rights to draw up a report and to make such proposals and recommendations as it sees fit, while article 63(1) authorizes the Inter-American Court of Human Rights to rule that the injured party must be ensured the enjoyment of the right or freedom that was violated, and, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom must be remedied and that fair compensation must be paid to the injured party.

64. From the very beginning of the performance of its functions under the CCPR-OP, the Human Rights Committee not only gave its opinion as to whether or not there had been a violation of the CCPR, but it also expressed itself on the remedies that the State party should provide. The reports of the Human Rights Committee covering the year 2001 include detailed sections on the remedies called for under its views.[85] The Committee bases its authority to formulate recommendations on article 2 of CCPR. In views in which it finds a violation, it makes the following observation:

> "Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views."[86]

65. In its views, the Human Rights Committee systematically deals with the various CCPR provisions at issue and gives its opinion as to whether or not the provision has been violated. It then adds a separate paragraph in which it formulates (all of) its recommendations. The Committee on the Elimination of Racial Discrimination and the Committee Against Torture follow this model. The Human Rights Committee and the Inter-American Commission on Human Rights, especially have often found violations of more than one provision and subsequently recommended a package of measures, which could fall within the various categories mentioned above. Both organs always conclude by stating that the State party should ensure that similar violations do not occur in the future. The following example may illustrate the practice of the Human Rights Committee in this respect. In a case in which a victim received serious threats to his life, as a result of which he left the country, the Human Rights Committee found violations of articles 6(1), 9(1) and 12(1) and (4) of CCPR and stated that the State party was under an obligation to provide:

> "an effective remedy, including compensation, and to take appropriate measures to protect his security of person and his life so as to allow him to return to the country. The Committee urges the State party to carry out an independent inquiry into the attempt on his life and to expedite the criminal proceedings against those responsible for it. The State party is also under an obligation to try to prevent similar violations in the future."[87]

In this formulation, the State party was under an obligation to provide the victim with access to justice, restoration of his right to freedom of movement and compensation.

66. The Inter-American Court of Human Rights has stated that:

> "reparation of harm brought about by the violation of an international obligation consists in full restitution (*restitutio in integrum*), which includes the restoration of the prior situation, the reparation of the consequences of the violation, and indemnification for patrimonial and non-patrimonial damages, including emotional harm".[88]

67. The European Court of Human Rights interprets the term "just satisfaction" in a restrictive way. If *restitutio in integrum* is not possible, it can award monetary compensation for pecuniary and non-pecuniary damages.[89] However, it has stated that it does not have the jurisdiction to direct States to take certain measures, for instance to abolish the violation found by the Court, or to defray the costs. It has turned down many requests to order States to take certain measures or recommend that they take certain measures, by stating that is for the State to choose the means to be used in its domestic legal system to redress the situation that has given rise to the violation of the Convention.[90]

68. As a rule, United Nations treaty bodies adopt the recommendation on the remedies by consensus. Individual opinions concerning remedies have been rare.[91] It may be worth mentioning that, in a few cases, the failure to provide a remedy as recommended in the views of the Human Rights Committee, has given rise to a new communication alleging a violation of the right to an effective remedy.[92]

69. In the following sections, an overview is given of the types of remedies recommended.

C. Access to justice

70. Access to a remedy is a prerequisite for having allegations of human rights violations examined. The Human Rights Committee has had before it numerous cases in which victims had no access to an effective remedy. Various examples of violations of article 2(3) can be discerned. There have been cases in which no effective remedy was available under domestic law[93] or where there was no competent court to which an author could have appealed.[94]

71. In a case in which the Inter-American Commission on Human Rights found a violation of articles 25 and 8 of ACHR (the rights to effective judicial protection and to a fair trial, respectively) because the petitioner had been denied access to contentious administrative proceedings to challenge his dismissal, it recommended that the State party permit the petitioner "access to contentious administrative proceedings, in order that he might appeal the legality of the administrative act that mandated his dismissal". It further recommended that adequate compensation for violation of his rights to effective judicial protection and to a fair trial be paid.[95]

72. Under certain circumstances the denial of legal aid in criminal cases can constitute a violation of article 2(3) of CCPR. The CCPR does not contain an express obligation as such to provide legal aid to individuals in all cases, but only in the determination of a criminal charge where the interests of justice so require (article 14(3)(d)). In connection with the requirement that remedies must be made

"available and effective" in relation to claims of violations of Covenant rights, the denial of legal aid, which is necessary to submit a constitutional motion, can amount to a violation of article 14 in conjunction with article 2(3).[96] The Inter-American Commission on Human Rights has reached the same conclusion and has recommended that the State party adopt "such legislative or other measures as may be necessary to ensure that the right to a fair hearing under Article 8(1) of the Convention and the right to judicial protection under Article 25 of the Convention are given effect in Jamaica in relation to recourse to Constitutional Motions in accordance with the Commission's analysis in this report".[97]

73. The non-implementation of court orders can also give rise to a violation of article 2. In a case before it, the Human Rights Committee found that the author's rights under article 17, in conjunction with article 2(1) and (2) did not receive effective protection. It stated that the State party was under an obligation to provide an effective remedy, which should include measures to ensure prompt implementation of the court's orders regarding contact between the author and his son.[98]

74. Special attention is devoted to the emphasis of the Human Rights Committee and the Inter-American organs on the duty of States parties to investigate human rights violations and to punish those responsible. The Human Rights Committee has taken a very clear stand against impunity of human rights violators. It has strongly rejected legislation granting amnesty for gross human rights violations, which deprives victims of their right to a remedy. According to the Human Rights Committee, the adoption of such legislation effectively excludes in a number of cases the possibility of investigation of past human rights abuses and thereby prevents the State party from discharging its responsibility to provide effective remedies to the victims of those abuses. Moreover, it expressed concern that such amnesty legislation contributes to an atmosphere of impunity which may undermine the democratic order and give rise to further grave human rights violations.[99] In such cases, it urged the State party to carry out an official investigation into the author's allegations of torture, in order to identify the persons responsible for torture and ill-treatment and to enable the author to seek civil redress.[100] It has stressed that domestic law cannot set aside this obligation of States parties:

> "Under article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the victim and the author with an effective remedy. The Committee urges the State party to open a proper investigation into the disappearance of Ana Rosario Celis Laureano and her fate, to provide for appropriate compensation to the victim and her family, and to bring to justice those responsible for her disappearance, notwithstanding any domestic amnesty legislation to the contrary."[101]

75. The Inter-American Commission on Human Rights has also taken a clear position against impunity. In various cases, it has criticized States for enacting amnesty legislation, and also in individual cases it has urged States to revoke legislation that prevents the investigation, prosecution and punishment of individuals responsible for human rights violations.

76. In its jurisprudence, the Human Rights Committee has sometimes indicated more specifically that the remedies must be meaningful. It has stated that "purely disciplinary and administrative remedies cannot be deemed to constitute adequate and effective remedies within the meaning of article 2, paragraph 3, of the

Covenant, in the event of particularly serious violations of human rights, especially when violation of the right to life is alleged (...)".[102] In a case that concerned attacks on a political opponent of a government, the Committee stressed that an independent investigation should be carried out. It stated that the State party was under the obligation to provide the victim with:

> "an effective remedy and to take adequate measures to protect his personal security and life from threats of any kind. The Committee urges the State party to carry out independent investigations of the shooting incident, and to expedite criminal proceedings against the persons responsible for the shooting. If the outcome of the criminal proceedings reveals that persons acting in an official capacity were responsible for the shooting and hurting of the author, the remedy should include damages to Mr. Chongwe. The State party is under an obligation to ensure that similar violations do not occur in the future."[103]

77. In a number of cases, the Committee on the Elimination of Racial Discrimination found a violation of article 6 of CERD, relating to the duty of States to assure effective protection and remedies, and the right to seek adequate reparation or compensation. Furthermore, in some cases, it has formulated recommendations on this provision even though a case was declared inadmissible,[104] or when no violation was found, which underlines the importance it attaches to it. It dealt with a case in which an individual had been refused access to a public place on discriminatory grounds. Criminal proceedings had been instituted, and resulted in a fine for the perpetrator, but no compensation for the victim. According to the Committee, the conviction and punishment of the perpetrator of a criminal act and the order to pay economic compensation to the victim are legal sanctions with different functions and purposes. The Committee stated that the victim was not necessarily entitled to compensation in addition to the criminal sanction of the perpetrator under all circumstances. It observed that, in accordance with article 6 of CERD, the victim's claim for compensation has to be considered in every case, including those cases where no bodily harm has been inflicted, but where the victim has suffered humiliation, defamation or any other attack against his/her reputation or self-esteem. According to the Committee, being refused access to a place of service intended for the use of the general public solely on the ground of a person's national or ethnic background is a humiliating experience which may merit economic compensation and cannot always be adequately repaired or satisfied by merely imposing a criminal sanction on the perpetrator. The Committee found no violation of article 6 in the case in question, but nevertheless recommended "that the State party take the measures necessary to ensure that the victims of racial discrimination seeking just and adequate reparation or satisfaction in accordance with article 6 of the Convention, including economic compensation, will have their claims considered with due respect for situations where the discrimination has not resulted in any physical damage but humiliation or similar suffering".[105] In another case in which access to a public place had been refused, the Committee found a violation of article 5(f). The Committee recommended to the State party that "it complete its legislation in order to guarantee the right of access to public places in conformity with article 5(f) of the Convention and to sanction the refusal of access to such places for reason of racial discrimination". It further recommended that the State party take the necessary measures to ensure that the procedure for the investigation of violations would not be unduly prolonged.[106]

78. In a case in which a violation of article 6 of CERD had been found, the Committee recommended to the State party "to ensure that the police and the public prosecutors properly investigate accusations and complaints related to acts of racial discrimination which should be punishable by law according to article 4 of the Convention",[107] without, however, further specifying how the State party should act. In a case in which a violation of article 5(d)(i) of CERD was found, it recommended that the State party "take the necessary measures to ensure that practices restricting the freedom of movement and residence of Romas under its jurisdiction [were] fully and promptly eliminated".[108]

79. In a case in which it found a violation of articles 16(1), 12 and 13 of CAT, the Committee Against Torture urged the State party to conduct a proper investigation into the facts that occurred, and prosecute and punish the persons responsible for those acts and provide the complainants with redress, including fair and adequate compensation.[109]

80. The Inter-American Commission on Human Rights as a rule, stresses that the investigation to be carried out must be serious, effective and impartial. It has recommended frequently that the State party concerned conduct a serious, effective and impartial investigation of the events complained of, with a view to identifying the persons responsible for them and punishing them. In a case in which it found that the right to life as well as the right to judicial protection had been violated, it also recommended that those responsible for the irregularities in the investigation by the military police and those responsible for the unjustifiable delay in conducting the civil investigation be punished.[110] In various cases, the Commission has stressed that the perpetrators should receive the punishment that the grave violations warrant.[111] The Inter-American Court of Human Rights also stresses the need to order an investigation to determine the persons responsible for the human rights violations and punish those responsible; it has added that States must also publish the results of this investigation.[112]

81. The restrictive interpretation by the European Court of Human Rights of article 41 (former article 50) implies that, in cases where it found that no proper investigation of allegations of violations had taken place, no investigation can be ordered, even in cases where it found a violation of article 13 (right to an effective remedy).[113] In a case in which an applicant explicitly asked that the Court order an investigation, it recalled that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to such breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (*restitutio in integrum*). It noted that, if *restitutio in integrum* is in practice impossible, the respondent States are free to choose the means whereby they will comply with a judgment in which the Court has found a breach, and the Court will not in principle make consequential orders or declaratory statements in that regard. It observed that it is up to the Committee of Ministers to supervise compliance with the Court's judgements.[114]

D. Restoration

82. Restoration or restitution has been recommended in a number of cases, of which the following overview provides an illustration. In a case in which the Human Rights Committee found that denial of access to an area violated article 12 (liberty

of movement and freedom to choose residence), it recommended that the liberty of movement be restored.[115] In a case in which the legislation on compensation and restitution for expropriation in the past was considered to be in violation of article 26 (the prohibition of discrimination), the Committee recommended that an effective remedy include restitution of the property or compensation if the property could not be returned.[116] When the domestic court's decision to order individuals to award costs was found to be in violation of article 14(1) (the right to a fair trial), the Committee observed that the State party was under an obligation to restitute to the authors that proportion of the costs award already recovered, and to refrain from seeking execution of any further portion of the award.[117]

83. In many cases in which a conviction (often a sentence to death) was based on a trial in which the guarantees of article 14 had not been respected, the Human Rights Committee stated that the remedy should entail release of the victim, especially when the victim had spent many years in prison, a number of which on death row, or in prison conditions that violated article 10(1).[118] In cases in which the Committee found only a violation of the right to be tried without undue delay, the commutation of the death sentence to life imprisonment was considered to be an appropriate remedy.[119] In a case in which the State party had commuted the death sentence into life imprisonment prior to the adoption of the views, the Committee considered that that was insufficient, and that only release was an appropriate remedy.[120] In a case in which a violation of article 14(1) had been found, because a trial had taken place in the absence of the victim contrary to the provisions of CCPR, the Human Rights Committee has recommended that the State party provide for an "effective remedy, which must entail his immediate release or retrial in his presence".[121] Release has also been recommended following a finding of a violation of article 9,[122] and articles 7 and 10(1).[123]

84. Another example of restitution is reinstatement to employment, which was recommended, for example, after suspension of a public servant and subsequent failure to reinstate him in violation of article 25(c) in conjunction with article 2. The Human Rights Committee stated that the author was entitled to an appropriate remedy, including effective reinstatement to public service and to his post, with all the consequences that implied, or, if necessary, to a similar post. In that case, an appropriate remedy further entailed compensation equivalent to the payment of the arrears of salary and remuneration that he would have received from the time at which his reinstatement failed to materialize, beginning in September 1989 (i.e. the date on which the author's reinstatement was ordered by the domestic authorities, an order that was not complied with).[124] If appropriate, reinstatement should be at the rank that the victim would have held, had he not been dismissed, or to a similar post.[125]

85. In a case in which the Committee on the Elimination of Racial Discrimination found a violation of article 5(e)(i) of CERD (equality before the law in respect of the right to work and protection against unemployment), it suggested that "the State party take this into account and recommends that it ascertain whether Mrs. Yilmaz-Dogan is now gainfully employed and, if not, that it use its good offices to secure alternative employment for her and/or to provide her with such other relief as may be considered equitable".[126]

86. In the case of *Robles Espinoza and sons v. Peru*, the Inter-American Commission on Human Rights concluded that, through the imposition of enforced

retirement as a disciplinary measure, the filing of two criminal suits and other threats made by means of direct channels, the Peruvian State submitted Robles Espinoza to a process of harassment and intimidation in retaliation for his revelations regarding human rights violations committed by members of the Peruvian Armed Forces, resulting in a violation of, among others, the obligation of respecting and ensuring the petitioner's honour and dignity as laid down in article 11 of ACHR. It recommended, among others, that the State party adopt all the necessary means of reparation to restore his honour and reputation. Furthermore, it recommended that the Peruvian State immediately return to Robles Espinoza all the rights, benefits, honours and other privileges due to him as a member of the Peruvian Armed Forces on active duty that were arbitrarily suspended or annulled.[127]

E. Compensation

87. When restitution is not possible or is considered an inadequate remedy, monetary compensation can be recommended instead or as an additional remedy.[128] The Human Rights Committee has included a recommendation to award compensation to victims of violations of articles 6 (right to life), 7 (prohibition of torture and other forms of ill-treatment), 9 (right to liberty of person) and 10(1) (right to dignity and humane treatment). In cases of a violation of the right to life, the relatives of the victim should be compensated.[129] The term "compensation" has not been defined by the Human Rights Committee, although sometimes it has given some indication by stating that "loss and injury" should be compensated,[130] or in a case of a violation of the right to freedom of expression, "compensation amounting to a sum not less than the present value of the fine and any legal costs paid by the author".[131] It is not clear, for example, whether material as well as immaterial damages should be compensated. The Inter-American Commission on Human Rights has specified that the compensation to be paid can relate to "physical and non-physical damages, including pain and suffering".[132]

88. The Human Rights Committee does not normally express itself on the amount that would constitute appropriate compensation. It has sometimes given guidelines. For example, in a case in which it found a violation of the right to freedom of expression, it stated that the State party was under an obligation to provide the victim with "an effective remedy, including compensation amounting to a sum not less than the present value of the fine and any legal costs paid by the author".[133] The finding of a violation of the right to liberty of person (article 9) is often, though not always, followed by a recommendation to provide for compensation, even though such a right is included in the Covenant (article 9(5)). Compensation has also been recommended when violations of other provisions had been found. In a case in which the right to security had been violated because of harassment by the authorities, the Human Rights Committee recommended that appropriate compensation be granted.[134] Delays in criminal proceedings can lead to a recommendation of compensation,[135] as can a conviction for exercising the right to freedom of expression,[136] violations of article 24(1) and (2) (rights of the child),[137] and a violation of the prohibition of discrimination (article 26).[138] Upon finding a violation of articles 19 and 25(c) in a case of suspension of persons in the public service on discriminatory grounds, the Human Rights Committee recommended that the State party was obliged to provide "compensation determined on the basis of a

sum equivalent to the salary which they would have received during the period of non-reinstatement starting from 30 June 1988".[139]

89. Only in a limited number of cases did the Committee on the Elimination of Racial Discrimination recommend that compensation be paid. In a case in which a loan had been refused on the ground of being a non-national of the State party, the Committee considered that the individual was denied an effective remedy within the meaning of article 6. It recommended that the State party take measures to counteract racial discrimination in the loan market and that the State party provide the applicant with reparation or satisfaction commensurate with any damage he had suffered.[140] In a case in which it concluded that an individual had been subject to threats of racial violence, it recommended — in addition to a recommendation to change policy and procedures — that the State party provide the applicant with relief commensurate with the moral damage he had suffered.[141]

90. In a case in which it found a violation of articles 16(1), 12 and 13, the Committee Against Torture urged the State party, among other things, to provide the complainants with redress, including fair and adequate compensation. In so doing, it recommended that compensation be awarded, even though no act of torture had been committed.[142]

91. Both the European Court of Human Rights and the Inter-American Court of Human Rights can decide that the State party against which a violation has been found must pay compensation for material and immaterial damages. Both courts can specify the amount to be paid.

F. Rehabilitation

92. In a number of cases in which the Human Rights Committee found violations of articles 7 and 10(1), the Committee has stated that medical and/or psychiatric care would constitute an effective remedy, for example when a prisoner's mental health had seriously deteriorated on death row,[143] or when medical treatment was recommended by a prison doctor and not received.[144] In many of the cases against Uruguay, detailed submissions were made on the deteriorations in the state of health of prisoners detained during the military regime. In these cases, the Committee recommended that the State party ensure that the victims promptly receive all necessary medical care.[145]

93. The Inter-American Court of Human Rights has ordered extensive measures of rehabilitation; such as the provision of a fellowship and funds for related costs to pursue advanced or university studies at a centre of recognized academic excellence, to publish the operative part of the judgment of the Court and make a public apology acknowledging its responsibility, in order to prevent a repetition of the events, to provide medical treatment and psychotherapy.[146] In another case, it decided that the State party must establish a trust fund, as well as reopen a school and staff it with teaching and administrative personnel, and make the medical dispensary already in place operational.[147]

G. Measures of a general nature aimed at preventing future violations

94. The Human Rights Committee and the Inter-American organs especially have been creative in formulating recommendations aimed at preventing future violations. When national legislation is found to be contradictory to the terms of CCPR or is not giving effect to CCPR provisions, the Human Rights Committee recommends that legislation be amended in order to conform to CCPR. In a case in which immigration legislation was found to discriminate against women, the Committee stated that "the State party should adjust the provisions of the Immigration (Amendment) Act, 1977, and of the Deportation (Amendment) Act, 1977, in order to implement its obligations under the Covenant, and should provide immediate remedies for the victims of the violations found above".[148] In a number of the Czech expropriation cases, legislation dealing with restitution of confiscated property was found to be in violation of article 26. The Committee then stated that the State party should "review its legislation and administrative practices to ensure that all persons enjoy both equality before the law as well as the equal protection of the law".[149] Upon concluding that the imposition of corporal punishment violated article 7 of CCPR, it stated that the State party should ensure "that similar violations do not occur in the future by repealing the legislative provisions that allow for corporal punishment".[150] In the case of *Toonen v. Australia*, the Committee found that legislation criminalizing homosexual activities between consenting adults was in violation of article 17(1) juncto 2(1). The Committee noted that that finding required the repeal of the offending law.[151] On some occasions, recommendations to amend legislation were quite specific. In a case in which the Committee had found a violation of article 10(1), in particular as a result of limitation of time for hygiene and recreation, it recommended that "legal provision should be made for adequate time both for hygiene and exercise".[152]

95. The Inter-American Commission on Human Rights has made similar recommendations. For example, in a case in which an individual had been sentenced to a mandatory death penalty, which was found to be in violation of articles 4(1), 4(6), 5(1), 5(2) and 8(1), it recommended that the State party adopt "such legislative or other measures as [might] be necessary to ensure that the death penalty is not imposed in violation of the rights and freedoms guaranteed under the Convention, including Articles 4, 5 and 8, and in particular, to ensure that no person is sentenced to death pursuant to a mandatory sentencing law in Grenada".[153] In section V(C), mention was made of an example in which a recommendation was made to amend legislation to make recourse to a judicial remedy possible.[154] In a case against the United States of America, it has recommended that the State review "its laws, procedures and practices to ensure that the property rights of indigenous persons are determined in accordance with the rights established in the American Declaration, including Articles II, XVIII and XXIII of the Declaration".[155]

96. It is noteworthy that, in a number of cases, the Human Rights Committee considered the amendment of the law in itself an appropriate remedy. In a case in which a violation of article 19(2) was found because of a prohibition on advertising in English in Quebec, the Committee recommended only that the legislation be amended; it did not recommend that the individuals concerned be compensated, even though the plaintiffs had indicated that they had suffered material damages.[156] Canada indeed changed its legislation. In a case that was examined subsequently to

the amendment, the Committee stated explicitly that the author had been provided with an effective remedy.[157]

97. The Inter-American Commission on Human Rights has also recommended that legislation be brought into line with the obligations laid down in ACHR. In a case against Chile, it concluded that the State party, by establishing what have been called designated senators and the senator-for-life, General Augusto Pinochet, in Article 45 of the Chilean Constitution, and its application by the authorities, had violated the rights to political participation and to equality without discrimination (articles 23 and 24 of ACHR), as well as its obligation to adapt the legal order to carry out its international commitments, so as to ensure the rights established by the Convention, pursuant to Article 2. It recommended that Chile adopt the measures necessary to bring its domestic legal order into line with the provisions of the American Convention on Human Rights.[158]

98. Other concrete measures recommended by the Human Rights Committee aimed at preventing future violations include the improvement of the general conditions of detention[159] and review of the legal aid system.[160]

99. Upon finding a violation of article 6 of CERD, because of inadequate response to threats of racial violence, the Committee on the Elimination of Racial Discrimination recommended that "the State party review its policy and procedures concerning the decision to prosecute in cases of alleged racial discrimination, in the light of its obligations under article 4 of the Convention".[161]

100. The Inter-American Commission on Human Rights has also formulated recommendations of a general nature. It examined the deaths of 111 persons and the wounding of an indefinite number of others, all of whom were in custody, during the suppression of the Carandirú prison riot on 2 October 1992, as a result of actions by agents of the São Paulo military police. It recommended that the Brazilian State develop policies and strategies to ease congestion in detention centres, introduce programmes for rehabilitation and social integration in accordance with national and international standards, and take steps to prevent outbursts of violence at such establishments. It also recommended that the Brazilian State develop policies and strategies and provide special training to correctional facilities and law enforcement personnel in negotiating peaceful settlements of conflicts, and methods for restoring order that make it possible to suppress possible riots with minimal risk to the life and personal integrity of the inmates and law enforcement agencies.[162]

101. The following formulation constitutes another example of a general recommendation. Upon finding a violation of the right to life, the right to a fair trial and the right to judicial protection, the Inter-American Commission on Human Rights recommended, among others, that the State party adopt "the measures necessary to carry out programs targeting the competent judicial authorities responsible for judicial investigations and auxiliary proceedings, in order for them to conduct criminal proceedings in the accordance with international instruments on human rights".[163]

H. Principle of non-refoulement

102. The Committee Against Torture has dealt with many cases in which individuals invoked the principle of non-refoulement laid down in article 3 of CAT.

In cases in which the Committee finds that there are "substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited (...)". According to the Committee, the author must prove that such "danger is personal and present".[164] If this is indeed the case, the Committee concludes that the State party is under an obligation not to expel, return or extradite the author.[165] The Human Rights Committee also recognizes this principle. On various occasions, it has observed that States parties have a duty to refrain from deporting the author to a State where he would face treatment incompatible with article 7 of CCPR.[166] In a case in which extradition had already taken place before the adoption of views, it recommended that the State party take diplomatic steps to avoid imposition of the death penalty by the State to which the author had been extradited.[167] In another case, in which Austria had extradited an individual to the United States despite a request by the Human Rights Committee not to do so, the Committee stressed that the State party was under an obligation "to make such representations to the United States authorities as [might] be required to ensure that the author [did] not suffer any consequential breaches of his rights under the Covenant, which would flow from the State party's extradition of the author in violation of its obligations under the Covenant and the Optional Protocol".[168]

I. Miscellaneous

103. The Inter-American Court of Human Rights has been quite creative in finding other forms of satisfaction. In the street children case, it decided that the State of Guatemala "must designate an educational centre with a name allusive to the young victims in this case and place, in this centre, a plaque with the names of [the victims]".[169] In a judgement in which it found a violation of the right to property of an indigenous community, it decided that the State should invest, as reparation for moral damages, the sum total of US$ 50,000 in public works and services in the collective interest and for the benefit of the community.[170]

104. In some cases, the Human Rights Committee determined that the finding of a violation was a sufficient remedy. In a case in which the law complained of[171] had been changed at the time of the adoption of the views, the Committee noted that action with satisfaction and stated that "in the circumstances of the present case, the Committee considers that the finding of a violation constitutes sufficient remedy for the author".[172] In a case in which it had found a violation of the right to freedom of expression, the Inter-American Court of Human Rights decided that the State party must bring its legislation into compliance with ACHR, and stated that with regard to other forms of reparation, "the Court believes that this judgment constitutes, per se, a form of reparation and moral satisfaction of significance and importance for the victims".[173]

105. In quite a number of cases, it has been left to the State party to decide on the measures to be taken to implement the views of the Human Rights Committee or of the Committee Against Torture. On various occasions, the Human Rights Committee recommended that the State party should take "a remedy", "an effective remedy", or "an appropriate remedy", without giving details on the nature of such remedies. The Committee Against Torture has also adopted formulations such as a request to ensure "that similar violations do not occur in the future."[174] In one case, it did not recommend a remedy at all, but after finding that articles 12 and 13 of CAT had

been violated, it merely said that it wished to receive information on any relevant measures taken by the State party in accordance with the Committee's views.[175]

VI. Article 7(4) and (5): implementation of views by States parties

106. Article 7(4) and (5) of CEDAW-OP deal with the follow-up of recommendations. These provisions state:

> "The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.
>
> The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under article 18 of the Convention."

107. As the other United Nations human rights treaties do not contain comparable provisions, it is indeed the first time that States parties' obligations in this respect have been included in an international legally binding instrument. CCPR-OP does not provide for tools for follow-up to the views of the Human Rights Committee.[176] The Committee has therefore itself taken various measures aimed at the improvement of the follow-up to its views. It bases its authority to do so on CCPR, in particular on article 2(3), which obliges States parties to ensure that any person whose rights have and freedoms are violated shall have an effective remedy. In its views, the Committee refers to this provision. It states:

> "Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views."[177]

108. Other relevant bodies have confirmed the authority of the Human Rights Committee to monitor compliance with its views. In a joint submission to the World Conference on Human Rights, held at Vienna in June 1993, the treaty bodies stated that international monitoring of treaty obligations was designed to assist States parties in fulfilling the obligations they had voluntarily undertaken. According to the treaty bodies, such monitoring was incomplete unless accompanied by adequate follow-up measures. It was stated that follow-up measures should be taken by both the treaty bodies and the States parties.[178] The Vienna Declaration supported in general terms the developments designed by the treaty bodies aimed at improvements of the supervisory mechanisms. Moreover, both the Commission on Human Rights and the General Assembly have consistently supported the measures taken. Finally, even though in practice there are shortcomings in the implementation,

no State party has questioned the Committee's authority to adopt recommendations and to monitor States parties' compliance with the views.

109. In 1990, the Human Rights Committee decided to adopt measures aimed at improving compliance with its views, among which was the decision to appoint a Special Rapporteur for the Follow-up of Views.[179] The Special Rapporteur's duties included, inter alia, recommending to the Committee action on all letters from individuals on non-compliance; communicating with States parties on such letters; seeking information on follow-up and submitting to the Committee recommendations for further measures aimed at rendering the follow-up procedure more effective. After an evaluation in 1994 of the results of its activities, the Committee decided to give more publicity to its follow-up activities.[180] It considered that publicity would be the most appropriate means for making the procedure more effective. Publicity would, according to the Committee, not only be in the interest of the victims, but could also serve to enhance the authority of the Committee's views and provide an incentive for States parties to implement them.[181] In consultations with representatives of States parties, the Special Rapporteur[182] makes inquiries and provides, if necessary, explanations. Such consultations are held, for example, when States parties challenge the Committee's views, or when there is no lack of effective response to the views. Because of the large number of views against Jamaica in which violations are found, the Special Rapporteur visited that country in June 1995.[183] Since 1996, the Committee has requested that at least one follow-up mission per year be budgeted by the Office of the High Commissioner for Human Rights. However, that request has not been granted.[184]

110. In many cases, non-compliance with views is due to the non-existence of adequate national legislation which provides for the implementation of the views of the Human Rights Committee. The Committee has repeatedly urged States parties to consider the adoption of specific enabling legislation and, pending this, to make ex gratia payments by way of compensation. Despite the Committee's attempts, many views have not been implemented. On two occasions, victims of violations submitted a second complaint to the Committee, complaining, among other things, of non-compliance with the views.

111. Although the Human Rights Committee indicated that it is difficult to categorize the replies of States parties, it considered that roughly 30 per cent of the replies could be considered satisfactory in that they displayed the State party's willingness to implement the views or to offer the applicant an appropriate remedy. In many cases, however, replies indicated that the victim had failed to file a claim for compensation within the statutory deadlines and that, therefore, no compensation could be paid. Other replies were unsatisfactory because they either did not address the Committee's recommendations at all, or merely related to one aspect of them. In other replies, the Committee's findings were explicitly challenged, either on factual or legal grounds, constituted much belated submissions on the merits, promised an investigation of the matter, or indicated that the State party would not give effect to the Committee's views. In many instances, the author of a communication informed the Committee of non-compliance with the views, and, in some instances, that the State party had implemented the views.[185]

112. At its twenty-eighth session (29 April-17 May 2002) the Committee Against Torture amended its rules of procedure relating to the examination of individual communications. It introduced rule 114, which provides that:

(a) The Committee may designate one or more rapporteur(s) for follow-up on decisions adopted under article 22 of the Convention, for the purpose of ascertaining the measures taken by States parties to give effect to the Committee's findings;

(b) The Rapporteur(s) may make such contacts and take such action as appropriate for the due performance of the follow-up mandate and report accordingly to the Committee. The Rapporteur(s) may make such recommendations for further action by the Committee as may be necessary for follow-up;

(c) The Rapporteur(s) shall regularly report to the Committee on follow-up activities;

(d) The Rapporteur(s), in discharge of the follow-up mandate, may, with the approval of the Committee, engage in necessary visits to the State party concerned.[186]

113. The Committee Against Torture decided that:

> "the Rapporteur for follow-up decisions on complaints submitted under article 22 shall have the mandate, inter alia, to monitor compliance with the Committee's decisions, inter alia by sending notes verbales to States parties inquiring about measures adopted pursuant to the Committee's decisions; to recommend to the Committee appropriate action upon the receipt of responses from States parties, in situations of non-response, and upon the receipt henceforth of all letters from complainants concerning non-implementation of the Committee's decisions; to meet with representatives of the permanent missions of States parties to encourage compliance and to determine whether advisory services or technical assistance by the Office of the High Commissioner for Human Rights would be appropriate or desirable; to conduct with the approval of the Committee, follow-up visits to States parties; to prepare periodic reports to the Committee on his/her activities".[187]

At its twenty-eighth session, the Committee appointed a rapporteur, as well as an alternate rapporteur. The rapporteur has been in office for only a year, no information is yet available on the activities undertaken.

114. CERD provides in article 14(7)(b) that the Committee on the Elimination of Racial Discrimination shall forward its suggestions and recommendations, if any, to the petitioner and the State party concerned. It does not provide for the follow-up of the views. In its rules of procedure, it is stated that the State party concerned shall be invited to inform the Committee in due course of the action it takes in conformity with the Committee's suggestions and recommendations.[188] The Committee has not taken any specific measures to improve the follow-up of its recommendations.

115. Article 46 of ECHR states that States parties undertake to abide by the final judgement of the Court in any case to which they are parties. The Committee of Ministers supervises the execution of judgements. According to article 68 of ACHR, States parties undertake to comply with the judgement of the Court in any case to which they are parties. That part of a judgement that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgements against the State. The Court's case-law shows that the Court considers itself competent to supervise the enforcement of its judgements. In view of the fundamental difference in the status of

the Courts' judgements and treaty bodies' views, the follow-up activities of the Council of Europe's Committee of Ministers and the Inter-American Court of Human Rights are not dealt with.

VII. Accountability of States parties for the conduct of non-State actors

116. Article 2 of CEDAW-OP states that communications can be submitted by or on behalf of individuals claiming to be victims of a violation of any of the rights set forth in the Convention *by that State party*. It goes without saying that States parties are accountable for actions by its organs, such as domestic courts, municipalities, the police and other State agents. The issue addressed in the present section concerns the accountability of States parties for the conduct of non-State actors.

117. The Velasquez Rodriguez-judgement of the Inter-American Court of Human Rights is the landmark case on this issue and is therefore discussed in detail. In this judgement, the Court clearly determined the extent of the responsibility of States when State organs act outside the limits of their authority, as well as for acts of private parties. It set out the doctrine of "due diligence", which has subsequently been referred to in decisions of other international organs as well as in, for example, the Declaration on the Elimination of Violence Against Women.[189]

118. The Inter-American Court of Human Rights first reaffirmed that, whenever a State organ, official or public entity violates one of the rights guaranteed in ACHR, this constitutes a failure of the duty to respect these rights and freedoms. It stated that that was also the case when the organ or official had contravened provisions of internal law or overstepped the limits of his authority. The Court reaffirmed that, under international law, a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law.[190]

119. The Court then examined to what extent States could be held responsible for illegal acts which violate human rights and which are initially not directly imputable to a State, for example, because it is the act of a private person or because the person responsible has not been identified. It stated that such acts can lead to the State being held internationally responsible, "not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention."[191] It observed that what is decisive is whether a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the Government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible. The Court noted that its task is to determine whether the violation is the result of a State's failure to fulfil its duty to respect and guarantee the rights, as required by article 1(1) of ACHR.

120. The Court observed that it is the State's legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure that the victim receives adequate compensation.[192] It explained that the duty to prevent includes "all those means of a legal, political, administrative and cultural nature that promote the

protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages". The State is obligated to investigate every situation involving a violation of the rights protected by the Convention.

121. According to the Court, if the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. It noted that the same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.

122. The Court made clear that the duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. It stressed that the investigation must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. It further stated that an investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the Government. According to the Court, this is the case regardless of what agent is eventually found responsible for the violation. It explained that where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the Government, thereby making the State responsible on the international plane.[193]

123. The Human Rights Committee has, on a few occasions, dealt with the question of accountability for acts by non-State actors. When a State party objected to admissibility on the ground that the act complained of had not been committed by a State organ, but by an industrial insurance board, which the State party could not influence, the Committee observed that a State party is not relieved of its obligations under CCPR when some of its functions are delegated to other autonomous organs.[194] The Committee recently reaffirmed this view. In a case that concerned the treatment of persons held in a privately run detention centre, it stated that:

> "the contracting out to the private commercial sector of core State activities which involve the use of force and the detention of persons does not absolve a State party of its obligations under the Covenant, notably under articles 7 and 10 which are invoked in the instant communication. Consequently, the Committee finds that the State party is accountable under the Covenant and the Optional Protocol of the treatment of inmates in the Port Philip Prison facility run by Group 4."[195]

124. When a State party allows a private organization to carry out certain functions, it can also be held accountable for violations. In the case of *Gauthier v. Canada*, the State party had allowed a private organization to control access to the parliamentary press facilities, without intervention. The Human Rights Committee found that the activities of the organization constituted a violation of article 19(2), which deals with the right to freedom of expression, and held the State party accountable for that violation.[196]

125. The Human Rights Committee also examined a case in which the State party concerned objected to admissibility on the ground that the case related to alleged discrimination within a private agreement, over which the State party had no influence. The Committee observed that, under articles 2 and 26 of CCPR, the State party was under an obligation to ensure that all individuals within its territory and subject to its jurisdiction were free from discrimination, and that, consequently, the courts of States parties were under an obligation to protect individuals against discrimination, whether that occurred within the public sphere or among private parties in the quasi-public sector of, for example, employment. The Committee further noted that the case concerned a collective agreement which was regulated by law and would not enter into force except on confirmation by the responsible minister. The Committee also noted that the collective agreement concerned the staff of an institution of public law implementing public policy. It therefore concluded that the communication was not inadmissible under article 1 of CCPR-OP.[197]

126. In a case in which an author's ex-wife denied him access to his son, despite court orders and fines, the Human Rights Committee found that the State party should take other measures to ensure compliance. It noted that, "although the courts repeatedly fined the author's wife for failure to respect their preliminary orders regulating the author's access to his son, these fines were neither fully enforced nor replaced with other measures aimed at ensuring the author's rights". In the circumstances of the case the Committee found that the author's rights under article 17, in conjunction with article 2(1) and (2), had not received effective protection. It stated that the State party was under an obligation to provide the author with an effective remedy, which should include measures to ensure prompt implementation of the Court's orders regarding contact between the author and his son.[198]

127. In a number of cases, authors complained about acts or omissions by their counsel. According to the Human Rights Committee, the State party cannot be held accountable for alleged errors made by privately retained counsel, unless it would have been manifest to the judge or the judicial authorities that the lawyer's behaviour was incompatible with the interests of justice.[199]

128. In this connection, it is worth taking into account the general comments of the Committee on Economic, Social and Cultural Rights, which include important information on the obligations of States parties to the Covenant on Economic, Social and Cultural Rights. In a number of its general comments on substantive rights, the Committee specifies the duties of States parties in respect of non-State actors. For example, in its general comment on the right to health, it observed that:

> "Obligations to protect include, inter alia, the duties of States to adopt legislation or to take other measures ensuring equal access to health care and health-related services provided by third parties; to ensure that privatization of the health sector does not constitute a threat to the availability, accessibility, acceptability and quality of health facilities, goods and services; to control the marketing of medical equipment and medicines by third parties; and to ensure that medical practitioners and other health professionals meet appropriate standards of education, skill and ethical codes of conduct. States are also obliged to ensure that harmful social or traditional practices do not interfere with access to pre- and post-natal care and family-planning; to prevent third parties from coercing women to undergo traditional practices, e.g. female genital mutilation; and to take measures to protect all vulnerable or

> marginalized groups of society, in particular women, children, adolescents and older persons, in the light of gender-based expressions of violence. States should also ensure that third parties do not limit people's access to health-related information and services."[200]

It has included similar paragraphs in its general comments on the right to food, the right to education and the right to water.

129. CERD includes a number of references to States parties' obligations to eliminate racial discrimination by private parties. Article 2(1)(d) explicitly obliges States parties to bring to an end racial discrimination by any person, group or organization. Perhaps because of this explicit language, States parties have not objected against cases in which discrimination by private parties was the subject of the communication. Most cases in which discrimination by private parties was at stake were dealt with in the context of article 6, which obliges States to ensure effective protection and remedies. A case against the Netherlands concerned an individual who was the victim of threats of racial violence by other individuals. The Committee on the Elimination of Racial Discrimination stated that, especially when such threats are made in public by a group, those acts should be investigated with due diligence and expedition. It concluded in this case that the victim had not been offered effective protection and remedies within the meaning of article 6 of CERD.[201] In other cases, the Committee found a violation of article 6, because the action taken by States parties in response to allegations of racial discrimination had been insufficient. It has dealt with issues such as alleged discrimination in the loan market,[202] insulting language by individuals[203] and access to a place or service intended for use by the general public.[204]

130. In a case that was declared inadmissible because it had been submitted more than six months after the final decision at the national level, the Committee on the Elimination of Racial Discrimination nevertheless made a comment worth noting here. The case concerned the refusal of a housing agency that allowed persons who offered accommodation to discriminate on the ground of race. The Committee urged the State party "to take effective measures to ensure that housing agencies refrain[ed] from engaging in discriminatory practices and [did] not accept submissions from private landlords which would discriminate on racial grounds".[205]

131. In its general recommendation on discrimination against Roma, the Committee observed that States parties must take measures to "ensure protection of the security and integrity of Roma, without any discrimination, by adopting measures for preventing racially motivated acts of violence against them; to ensure prompt action by the police, the prosecutors and the judiciary for investigating and punishing such acts; and to ensure that perpetrators, be they public officials or other persons, do not enjoy any degree of impunity".[206]

132. With respect to the Convention Against Torture, it must be noted that the definition in articles 1(1) and 16 of CAT stipulates that the act must have been committed "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". The Committee Against Torture cannot deal with allegations of torture or other cruel, inhuman or degrading treatment or punishment committed by private individuals, unless such treatment was consented to or acquiesced by a public official. For example, the obligation of non-refoulement is not applicable when an individual might risk pain or suffering inflicted by a private person or organization, without the consent or

acquiescence of the State.[207] So far, the Committee has not expressed itself on the issue of "consent or acquiescence" of a public official, as might some day happen in connection with severe forms of (domestic) violence against women.

133. The Strasbourg organs have received quite a number of complaints directed against the most widely varied categories of individuals and organizations, such as judges and lawyers in their personal capacity, employers, private radio and television stations and banks. For the rejection of such complaints, the Commission generally relied on article 19, under which it has to ensure the observance of the engagements which the Contracting States have undertaken, and also article 25 (now article 32).[208] States parties cannot absolve themselves from responsibility by delegating its obligations to private bodies or individuals. For example, under the ECHR, States have an obligation to grant free legal assistance under certain circumstances. In Belgium, this task was fulfilled by the "Ordres des avocats". According to the Court, such a solution cannot relieve the Belgian State of the responsibilities it would have incurred under the Convention, had it chosen to operate the system itself.[209]

134. According to the Court, under article 1 of ECHR, each Contracting State shall secure for everyone within its jurisdiction the rights and freedoms defined in the Convention; if a violation of one of those rights and freedoms is the result of non-observance of that obligation in the enactment of domestic legislation, the responsibility of the State for that violation is engaged.[210]

135. In the Osman case, the Court recognized that article 2 of ECHR (right to life) might imply, in certain well-defined circumstances, a positive obligation on the authorities to take preventive operational measures to protect an individual whose life was at risk from the criminal acts of another individual. It observed that such an obligation must be interpreted in a way that does not impose an impossible or disproportionate burden on the authorities. It said that not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materializing and that another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in articles 5 and 8 of ECHR (right to liberty and security of person and respect for private life, respectively). According to the Court, it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. It did not accept the Government's view that the failure to perceive the risk to life in the circumstances known at the time or to take preventive measures to avoid that risk must be tantamount to gross negligence or wilful disregard of the duty to protect life. It stated that, having regard to the nature of the right protected by article 2, it is sufficient for an applicant to show that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge.[211]

136. A similar obligation rests on States parties in connection with article 3 of ECHR (prohibition of torture and other cruel, inhuman or degrading treatment or

punishment). The European Court of Human Rights has stated that the obligation on States parties to secure for everyone within their jurisdiction the rights and freedoms defined in ECHR, taken in conjunction with article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals. It had before it a case concerning the beating of a child by his stepfather. The severity of the beating was considered to fall within the scope of article 3. Under English law, it was a defence to a charge of assault on a child that the treatment in question amounted to "reasonable chastisement". The burden of proof was on the prosecution to establish beyond reasonable doubt that the assault went beyond the limits of lawful punishment. The Court noted that, despite the fact that the applicant had been subjected to treatment of sufficient severity to fall within the scope of article 3, the jury had acquitted his stepfather, who had administered the treatment. It concluded that the law did not provide adequate protection to the applicant against treatment or punishment contrary to article 3. It observed that there should be State protection, in the form of effective deterrence, against such serious breaches of personal integrity.[212] These measures should provide effective protection, in particular of children and other vulnerable persons, and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge.[213]

137. Accountability of States for actions by private individuals has also been established in connection with article 8. In the first case in which the European Court of Human Rights established a positive obligation in connection with the prevention of interference by individuals, it ruled that, although the object of article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference. According to the Court, in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private or family life, which may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves.[214] In a case concerning sexual abuse in the private sphere, the Court stated that sexual abuse was unquestionably an abhorrent type of wrongdoing, with debilitating effects on its victims. It stated that children and other vulnerable individuals were entitled to State protection, in the form of effective deterrence, from such grave types of interference with essential aspects of their private lives. Criminal legislation making sexual abuse punishable and subject to a severe penalty was considered to constitute effective protection. According to the Court, article 8 does not necessarily require that States fulfil their positive obligation to secure respect for private life by the provision of unlimited civil remedies in circumstances where criminal law sanctions are in operation.[215]

138. Other cases have dealt with infringements by individuals on other individuals' right to freedom of assembly and association and the right to freedom of expression. The Court has established that States are under an obligation to protect individuals from violations of rights by other individuals.[216] Such obligations can rest on the legislator as well as on the executive branch of government. An example of accountability in the latter case concerns the failure of the police to prevent the disturbance of a demonstration. The Court stressed that, while it is the duty of States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully, they cannot guarantee this absolutely and they have a wide

discretion in the choice of the means to be used. It observed that in this area the obligation they enter into under article 11 of ECHR is an obligation as to measures to be taken and not as to results to be achieved.[217]

Notes

[1] The text of each of these provisions is included in annex I.

[2] In accordance with rule 84 of its rules of procedure, authors are requested to provide information on the extent to which the same matter is being examined under another procedure of international investigation or settlement. The rules do not indicate what the consequences are of simultaneous examination of a communication under two procedures. It would be possible for CERD to declare such a communication inadmissible under rule 91(d) of its rules of procedure as an abuse of the right to submission. So far, it has not done so.

[3] CERD Comm. No. 13/1998, *Koptova v. Slovak Republic*, opinion of 8 August 2000, A/55/18, Annex III.B, par. 6.3.

[4] These States are Austria, Croatia, Denmark, France, Germany, Iceland, Ireland, Italy, Luxembourg, Malta, Norway, Poland, Romania, Slovenia, Spain, Sri Lanka, Sweden and Uganda. The European States made this reservation following a recommendation by the Committee of Ministers of the Council of Europe, see *Yearbook of the European Convention on Human Rights, XIII* (1970), pp. 74-76. Since the entry into force of the 11th Protocol to the ECHR, for purposes of ascertaining the existence of parallel or, as the case may be, successive proceedings before the Human Rights Committee and the Strasbourg organs, the new European Court has succeeded to the former European Commission by taking over its functions. It is therefore not necessary for States parties to make a new reservation to article 5(2)(a) CCPR-OP, as has been suggested by an author. See Comm. No. 989/2001, *Kollar v. Austria*, inadmissibility decision of 30 July 2003, CCPR/C/78/D/989/2001, par. 8.2.

[5] See Manfred Nowak, *U.N. Covenant on Civil and Political Rights. CCPR Commentary*, Kehl [etc.]: Engel, 1993, p. 695.

[6] See rule 92(2) of the HRC's rules of procedure, CCPR/C/3/Rev.6.

[7] HRC Comm. No. 75/1980, *Fanali v. Italy*, views of 31 March 1983, A/38/40, Annex XIII, par. 5.2.

[8] Ibidem, par. 7.2. See also HRC Comm. No. 191/1985, *Blom v. Sweden*, views of 4 April 1988, A/43/40, Annex VII, sect. E, par. 7.2, in which the HRC observed that consideration by the European Commission on Human Rights of applications submitted by other students at the same school relating to other or similar facts did not constitute an examination of the same matter.

[9] HRC Comm. No. 85/1981, *Romero v. Uruguay*, views of 29 March 1984, A/39/40, Annex IX, par. 5 and 8.1.

[10] HRC Comm. No. 74/1980, *Angel Estrella v. Uruguay*, views of 29 March 1983, A/38/40, Annex XII, par. 4.3.

[11] Inter-American Commission, Report No. 5/96, case No. 10.970, *Mejía v. Peru*, report of 1 March 1996, section V.A.1.

[12] European Commission Appl. No. 11603/85, *Council of Civil Service Unions et al. v. United Kingdom*, 20 January 1987.

[13] European Commission Appl. No. 16358/90, *Cereceda Martin et al. v. Spain*, inadmissibility decision of 12 October 1992, Decisions and Reports No. 73, p. 134.

[14] European Commission Appl. No. 20060/92, *A.G.V.R. v. the Netherlands*, decision declaring a petition partly admissible (unpublished).

[15] European Commission Appl. No. 11439/85, *Steinlechner v. Austria*, inadmissibility decision of 5 October 1987.

[16] HRC Comm. No. 168/1984, *V.Ø. v. Norway*, inadmissibility decision of 17 July 1985, A/40/40, Annex XIX, par. 4.4.

[17] HRC Comm. No. 965/2000, *Karakurt v. Austria*, views of 4 April 2002, A/57/40, Vol. II (2002), Annex IX, sect. II, par. 7.4. See also HRC Comm. No. 998/2001, *Althammer et al. v. Austria*, views of 8 August 2003, CCPR/C/78/D/998/2001, in which this was confirmed.

[18] HRC Comm. No. 989/2001, *Kollar v. Austria*, inadmissibility decision of 30 July 2003, CCPR/C/78/D/989/2001, par. 8.6.

[19] HRC Comm. No. 11/1977, *Grille Motta v. Uruguay*, views of 29 July 1980, A/35/40, Annex X, par. 5.

[20] European Commission Appl. No. 16970/90, *Jacobsson v. Sweden*, admissibility decision of 16 October 1995.

[21] HRC Comm. No. 6/1977, *Millan Sequeira v. Uruguay*, views of 29 July 1980, A/35/40, Annex IX, par. 9.

[22] Inter-American Commission on Human Rights Report No. 96/98, Case No. 11.827, *Blaine v. Jamaica*, inadmissibility decision of 17 December 1998, par. 42-43. See also Inter-American Commission Report No. 97/98, Case No. 11.825, *Lewis v. Jamaica*, inadmissibility decision of 17 December 1998, par. 42-43.

[23] HRC Comm. No. 146/1983; 148/1983-154/1983, *Baboeram et al. v. Suriname*, views of 4 April 1985, A/40/40, Annex X, par. 9.1.

[24] HRC Comm. No. 328/1988, *Zelaya Blanco v. Nicaragua*, views of 20 July 1994, A/49/40, Vol. II, Annex IX, sect. C, par. 5.1.

[25] HRC Comm. No. 172/1984, *Broeks v. the Netherlands*, views of 9 April 1987, A/42/40, Annex VIII, sect. B, par. 6.2.

[26] HRC Comm. No. 1/1976, *A et al. v. S*, inadmissibility decision of 26 January 1978, CCPR/C/OP/1, p. 17.

[27] HRC Comm. No. 688/1996, *Arredondo v. Peru*, views of 28 July 2000, A/55/40, Vol. II, Annex IX, sect. E, par. 10.2.

[28] See for example HRC Comm. No. 824/1988, *Nicolov v. Bulgaria*, inadmissibility decision of 24 March 2000, A/55/40, Vol. II, Annex X, sect. H, par. 8.2.

[29] HRC Comm. No. 158/1983, *O.F. v. Norway*, inadmissibility decision of 26 October 1984, A/40/40, Annex XII, par. 5.2.

[30] This provision is comparable to article 4(2)(a) CEDAW-OP, since the entry into force of Protocol 11 to the ECHR it is numbered article 35(2)(b) ECHR.

[31] HRC Comm. No. 716/1996, *Pauger v. Austria*, views of 25 March 1999, A/54/40, Vol. II, Annex XI, sect. Y, par. 6.4.

[32] HRC Comm. No. 808/1998, *Rogl v. Germany*, inadmissibility decision of 25 October 2000, A/56/40, Vol. II, Annex XI, sect. D, par. 9.7.

[33] HRC Comm. No. 744/1997, *Linderholm v. Croatia*, inadmissibility decision of 23 July 1999, A/54/40, Vol. II, Annex XII, sect. O, par. 4.2.

[34] HRC Comm. No. 584/1994, *Valentijn v. France*, inadmissibility decision of 22 July 1996, A/51/40, Vol. II, Annex IX, sect. D, par. 5.2.

[35] HRC Comm. No. 1086/2002, *Weiss v. Austria*, views of 3 April 2003, CCPR/C/77/D/1086/2002, par. 8.3.

[36] HRC Comm. No. 441/1990, *Casanovas v. France,* views of 19 July 1994, A/49/40, Vol. II, Annex IX, sect. U, par. 5.1.

[37] HRC Comm. No. 808/1998, *Rogl v. Germany*, inadmissibility decision of 25 October 2000, A/56/40, Vol. II, Annex XI, sect. D, par. 9.4.

[38] See for example European Commission Appl. No. 11996/86, *P.B. and A.O. v. Sweden,* and European Commission Appl. No. 15993/90, *C.D.C. and A.S. v. the United Kingdom*.

[39] Appl. No. 11592/85, *Juby v. the United Kingdom*.

[40] European Commission Appl. No. 13365/87, *Ajinaja v. United Kingdom,* inadmissibility decision of 8 March 1988.

[41] European Commission Appl. No. 23956/94, *McKenny v. United Kingdom*, inadmissibility decision of 28 November 1994.

[42] European Commission Appl. No. 21078/92, *Lundblad v. Sweden*, inadmissibility decision of 2 September 1994.

[43] European Commission Appl. No. 18640/91, *U.R.P. v. Austria*, inadmissibility decision of 2 March 1994.

[44] ECtHR Appl. No. 57836/00, *Mellors v. United Kingdom,* inadmissibility decision of 19 June 2001.

[45] On this point article 4(2) CEDAW-OP is comparable to articles 35(2)(b) ECHR and 47(d) ACHR, while article 22(5)(a) CAT is comparable to article 5(2)(a) CCPR-OP.

[46] See for example HRC Comm. No. 415/1990, *Pauger v. Austria*, views of 26 March 1992, A/47/40, Annex IX, sect. R, and HRC Comm. No. 716/1996, *Pauger v. Austria*, views of 25 March 1999, A/54/40, Vol. II, Annex XI, sect. Y.

[47] Nowak, p. 699.

[48] European Commission Appl. No. 16358/90, *Cereceda Martin et al. v. Spain*, inadmissibility decision of 12 October 1992, Decisions and Reports No. 73, pp. 134-135.

[49] HRC Comm. No. 1/1976, *A et al. v. S*, decision to discontinue consideration of 26 January 1978.

[50] HRC Comm. No. 146/1983; 148/1983-154/1983, *Baboeram et al. v. Suriname*, views of 4 April 1985, A/40/40, Annex X, par. 9.1.

[51] HRC Comm. No. 540/1993, *Laureano v. Peru*, views of 25 March 1996, A/51/40, Vol. II, Annex VIII, sect. P, par. 7.1.

[52] CAT Comm. Nos. 130/1999 and 131/1999, *V.X.N. and H.N. v. Sweden*, views of 15 May 2000, A/55/44, Annex VIII.A.9, par. 13.1.

[53] Inter-American Commission Report No. 30/00, Case No. 12.095, *Barreto Riofano v. Peru*, report of 23 February 2000, par. 24.

[54] Inter-American Commission Report No. 33/98, Case No. 10.545, *Ayala Torres y Otros v. Mexico,* report of 5 May 1998, par. 43.

[55] Inter-American Commission Report No. 30/00, Case No. 12.095, *Barreto Riofano v. Peru*, report of 23 February 2000, par. 26.

[56] European Commission Appl. No. 21915/93, *Lukanov v. Bulgaria*, decision declaring an application partly admissible, 12 January 1995.

[57] There is no case-law on this issue under CAT and CERD.

[58] See Nowak, p. 679, who holds the view that pursuant to article 1 CCPR-OP the date of entry into force of the CCPR-OP is relevant only for the submission of the communication but not for violations it alleges. See also HRC Comm. Nos. 422-424/1990, *Aduayom et al. v. Togo,* A/51/40, Vol. II, Annex VIII, sect. C, par. 7.3, where it was noted in the views that "Some of the members

feel that the jurisprudence of the Committee on this issue may be questionable and may have to be reconsidered in an appropriate (future) case."

[59] Report No. 24/98, Annual Report of the Inter-American Commission of Human Rights, paragraph 13/18.

[60] HRC Comm. No. 24/1977, *Lovelace v. Canada*, views of 30 July 1981, A/36/40, Annex XVIII, par. 13.1.

[61] See for example HRC Comm. No. 6/1977, *Millan Sequeira v. Uruguay*, views of 29 July 1980, A/35/40, Annex IX, par. 16.

[62] HRC Comm. No. 491/1992, *J.L. v. Australia*, inadmissibility decision of 28 July 1992, A/47/40, Annex X, sect. EE, par. 4.2.

[63] HRC Comm. No. 505/1992, *Ackla v. Togo*, views of 25 March 1996, A/51/40, Vol. II, Annex VIII, sect. I, par. 7.

[64] HRC Comm. No. 521/1992, *Kulomin v. Hungary*, views of 22 March 1996, A/51/40, Vol. II, Annex VIII, sect. L, par. 11.2.

[65] HRC Comm. No. 520/1992, *E. and A.K. v. Hungary*, inadmissibility decision of 7 April 1994, A/49/40, Vol. II, Annex X, sect. T, par. 6.4.

[66] HRC Comm. No. 628/1995, *Park v. Republic of Korea*, views of 20 October 1998, A/54/40, Vol. II, Annex XI, sect. K, par. 6.2.

[67] HRC Comm. No. 574/1994, *Kim v. Republic of Korea*, A/54/40, Vol. II, Annex XI, sect. A, par. 6.2.

[68] HRC Comm. No. 774/1997, *Brok and Brokova v. Czech Republic*, views of 31 October 2001, A/57/40, Vol. II, Annex IX, sect. N, par. 6.3-6.4.

[69] HRC Comm. No. 566/1993, *Somers v. Hungary*, views of 23 July 1996, A/51/40, Vol. II, Annex VIII, sect. T, par. 6.2-6.4.

[70] HRC Comm. No. 983/2001, *Love et al. v. Australia*, views of 25 March 2003, CCPR/C/77/D/983/2001, par. 7.3.

[71] HRC Comm. No. 872/1999, *Kurowski v. Poland*, inadmissibility decision of 18 March 2003, CCPR/C/77/D/872/1999, par. 6.2-6.4.

[72] HRC Comm. No. 950/2000, *Sarma v. Sri Lanka*, views of 16 July 2003, CCPR/C/78/D/950/2000, par. 6.2.

[73] Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, adopted in Belém do Pará, Brasil, on 9 June 1994. Under article 12 of this Convention, individuals may submit complaints to the Inter-American Commission on Human Rights.

[74] Inter-American Commission Report No. 73/01, Case No. 12.350, *MZ v. Bolivia*, report of 10 October 2001.

[75] European Commission Appl. No. 323/57, *X v. Denmark*, inadmissibility decision of 19 December 1957, European Commission of Human Rights, Documents and Decisions, 1955-1956-1957, p. 247.

[76] HRC Comm. No. 275/1988, *S.E. v. Argentina*, inadmissibility decision of 26 March 1990, A/45/40, Vol. II, Annex X sect. J, par. 5.3, and in Comm. No. 343-345/1988, *R.A.V.N. et al. v. Argentina*, inadmissibility decision of 26 March 1990, A/45/40, Vol. II, Annex X sect. R, par. 5.3.

[77] HRC Comm. No. 972/2001, *Kazantzis v. Cyprus*, inadmissibility decision of 7 August 2003, CCPR/C/78/D/972/2001, par. 6.6.

[78] Inter-American Commission, Report No. 3/02, Case No. 11.498, *Grande v. Argentina*, report of 27 February 2002.

[79] European Commission Appl. No. 913/60, *X v. Austria*, inadmissibility decision of 19 December 1961, Collection 8, pp. 43-45.

[80] ECtHR, Appl. No. 71549/01, *Cvijetic v. Croatia*, decision declaring an application partly admissible, 3 April 2003.

[81] ECtHR, Appl. No. 214/56, *De Becker v. Belgium*, Series A, Vol. 4, judgement of 27 March 1962.

[82] ECtHR, Appl. No. 71614/01, *Crnojevic v. Croatia*, admissibility decision of 29 April 2003.

[83] ECtHR, Appl. No. 37571/97, *Veeber v. Estonia*, judgement of 7 November 2002.

[84] E/CN.4/2000/62, annex.

[85] See *Official Records of the General Assembly, Fifty-sixth Session* (A/56/40), Vol. I, chapter V, section G, and *Fifty-seventh Session* (A/57/40), Vol. I, chapter V, section F.

[86] See ibid., *Fifty-seventh Session (*A/57/40), Vol. I, par. 210.

[87] HRC Comm. No. 859/1999, *Jiménez Vaca v. Colombia*, views of 25 March 2002 (see A/57/40, Vol. II, Annex IX, sect. W, par. 9).

[88] IACtHR, *Velasquez Rodriguez v. Honduras*, Compensatory damages, judgement of 21 July 1989, Series C No. 7, par. 26.

[89] In quite some cases, however, the Court found that the finding of a violation constituted in itself sufficient compensation for any non-pecuniary damage suffered by the applicant.

[90] For example, ECtHR, Appl. No. 13057/87, *Demicoli v. Malta,* judgement of 27 August 1991, Series A, Vol. 210, par. 45.

[91] For an example see the individual opinion by Committee Member Mr. Hipólito Solari Yrigoyen (dissenting) to HRC Comm. No. 838/1998, *Hendricks v. Guyana*, views of 28 October 2002, CCPR/C/76/D/838/1998.

[92] See for example HRC Comm. No. 716/1999, *Pauger v. Austria,* views of 25 March 1999, A/54/40, Vol. II, Annex XI, sect. Y and HRC Comm. No. 1114/2002, *Kavanagh v. Ireland,* inadmissibility decision of 25 October 2002, CCPR/C/76/D/1114/2002.

[93] HRC Comm. No. 90/1981, *Magana ex-Philibert v. Zaire*, views of 21 July 1983, A/38/40, Annex XIX, par. 8.

[94] HRC Comm. No. 25/1978, *Massiotti v. Uruguay*, views of 26 July 1982, A/37/40, Annex XVIII, par. 13.

[95] Inter-American Commission Report No. 105/99, case 10.194, *Narciso Palacios v. Argentina*, report of 29 September 1999, section VIII.

[96] HRC Comm. No. 845/1999, *Kennedy v. Trinidad and Tobago*, views of 26 March 2002, A/57/40, Vol. II (2002), Annex IX, sect. T, par. 7.10.

[97] Inter-American Commission Report No. 58/02, Case No. 12.275, *Aitken v. Jamaica,* report of 21 October 2002, section VII.

[98] HRC Comm. No. 946/2000, *L.P. v. Czech Republic*, views of 25 July 2002, A/57/40, Vol. II, Annex IX, sect. HH, par. 7.4-8. Some members doubted whether the State party could do more than it had already done. See the individual opinion appended to the views.

[99] HRC Comm. No. 322/1988, *Rodriguez v. Uruguay*, views of 19 July 1994, A/49/40, Vol. II, Annex IX, sect. B, par. 12.4.

[100] HRC Comm. No. 322/1988, *Rodriguez v. Uruguay*, views of 19 July 1994, A/49/40, Vol. II, Annex IX, sect. B, par. 14.

[101] HRC Comm. No. 540/1993, *Laureano v. Peru*, views of 25 March 1996, A/51/40, Vol. II, Annex VIII, sect. P, par. 10.

[102] HRC Comm. No. 612/1995, *Arhuacos v. Colombia*, views of 29 July 1997, A/52/40, Vol. II, Annex VI, sect. Q, par. 8.2.

[103] HRC Comm. No. 821/1998, *Chongwe v. Zambia*, views of 25 October 2000, A/56/40, Vol. II, Annex X, sect. K, par. 7.

[104] CERD Comm. No. 25/2002, *Sadic v. Denmark*, inadmissibility decision of March 2003, CERD/C/62/D/25/2002, par. 6.8.

[105] CERD Comm. 17/1999, *B.J. v. Denmark*, opinion of 17 March 2000, A/55/18, Annex III.A, par. 6.2-7.

[106] CERD Comm. No. 11/1998, *Lacko v. Slovakia*, opinion of 9 August 2001, A/56/18, Annex 3 B, par. 11.

[107] CERD Comm. No. 16/1999, *Ahmad v. Denmark*, opinion of 13 March 2000, A/55/18, Annex III.A, par. 9.

[108] CERD Comm. No. 13/1998, *Koptova v. Slovak Republic*, opinion of 8 August 2000, A/55/18, Annex III.B, par. 10.3.

[109] CAT Comm. No. 161/2000, *Dzemajl et al. v. Yugoslavia*, views of 21 November 2002, CAT/C/29/D/161/2000, par. 11.

[110] For example in Inter-American Commission Report No. 23/02, Case No. 11.517, *Bento da Silva v. Brazil*, report of 28 February 2002, section VIII.

[111] For example in Inter-American Commission Report No. 8/92, Case No. 10.227 and 10.333, report of 4 February 1992.

[112] IACtHR, *Constitutional Court Case*, judgement of 31 January 2001, Series C, No. 71, par. 130.

[113] For example ECtHR, Appl. No. 21987/93, *Aksoy v. Turkey*, judgement of 18 December 1996, Reports 1996-VI.

[114] ECtHR, Appl. No. 27602/95, *Ulku Ekinci v. Turkey*, judgement of 16 July 2002, par. 179.

[115] HRC Comm. No. 505/1992, *Ackla v. Togo*, views of 25 March 1996, A/51/40, Vol. II, Annex VIII, sect. I, par. 12.

[116] HRC Comm. No. 516/1992, *Simunek et al. v. the Czech Republic*, views of 19 July 1995, A/50/50, Vol. II, Annex X, sect. K, par. 12.2.

[117] HRC Comm. No. 779/1997, *Äärelä and Näkkäläjärvi v. Finland*, views of 24 October 2001, A/57/40, Vol. II, Annex IX, sect. O, par. 8.2.

[118] For example, HRC Comm. No. 250/1987, *Reid v. Jamaica*, views of 20 July 1990, A/45/40 Vol. II, Annex IX, sect. J, par. 12.2.

[119] For example, HRC Comm. No. 561/1993, *Williams v. Jamaica*, views of 8 April 1997, A/52/40, Vol. II, Annex VI, sect. M, par. 11.

[120] HRC Comm. Nos. 464/1991 and 482/1991, *Peart and Peart v. Jamaica*, views of 19 July 1995, A/50/40, Vol. II, Annex X, sect. E, par. 13.

[121] HRC Comm. No. 699/1996, *Maleki v. Italy*, views of 15 July 1999, A/54/40, Vol. II, Annex XI, sect. V, par. 11.

[122] See for example HRC Comm. No. 440/1990, *El-Megreisi v. Libyan Arab Jamahiriya*, views of 23 March 1994, A/49/40, Vol. II (1994), Annex IX, sect. T, par. 7.

[123] HRC Comm. No. 610/1995, *Henry v. Jamaica*, views of 20 October 1998, A/54/40, Vol. II, Annex XI, sect. F, par. 9.

[124] HRC Comm. No. 641/1995, *Gedumbe v. Democratic Republic of the Congo*, views of 9 July 2002, A/57/40, Vol. II, Annex IX, sect. B, par. 6.2.

[125] HRC Comm. No. 906/2000, *Vargas-Machuca v. Peru*, views of 22 July 2002, A/57/40, Vol. II, Annex IX, sect. AA, par. 9.

[126] CERD Comm. No. 1/1984, *Yilmaz-Dogan v. the Netherlands*, opinion of 10 August 1988, A/43/18, Annex IV, par. 10.

[127] Inter-American Commission Report No. 20/99, Case No. 11.317, *Robles Espinoza and sons v. Peru*, report of 23 February 1999, section X.

[128] See for example Comm. No. 505/1992, *Ackla v. Togo*, views of 25 March 1996, A/51/40, Vol. II, Annex VIII, sect. I, par. 12; Comm. No. 747/1997, *Des Fours Walderode and Kammerlander v. Czech Republic*, views of 30 October 2001, A/57/40, Vol. II, Annex IX, sect. K, par. 9.2.

[129] HRC Comm. No. 84/1981, *Dermit v. Uruguay*, views of 21 October 1982, A/38/40, Annex IX, par. 11. The Inter-American Commission applies the same rule, see for example Inter-American Commission Report No. 8/94, Case No. 10.915.

[130] HRC Comm. No. 612/1995, *Arhuacos v. Colombia*, views of 29 July 1997, A/52/40, Vol. II, Annex VI, sect. Q, par. 10.

[131] HRC Comm. No. 780/1997, *Laptsevich v. Belarus*, views of 20 March 2000, A/55/40, Vol. II, Annex IX, sect. P, par. 10.

[132] Inter-American Commission Report No. 52/97, Case No. 11.218, *Sequeira Mangas v. Nicaragua*, Report of 18 February 1998, section IX.

[133] HRC Comm. No. 780/1997, *Laptsevich v. Belarus*, views of 20 March 2000, A/55/40, Vol. II, Annex IX, sect. P, par. 10.

[134] HRC Comm. No. 314/1988, *Bwalya v. Zambia*, views of 14 July 1993, CCPR/C/48/D/314/1988, par. 8.

[135] HRC Comm. No. 727/1996, *Paraga v. Croatia*, views of 4 April 2001, A/56/40, Vol. II, Annex X, sect. E, par. 11.

[136] HRC Comm. No. 628/1995, *Park v. Republic of Korea*, views of 20 October 1998, A/54/40, Vol. II, Annex XI, sect. K, par. 12.

[137] HRC Comm. No. 400/1990, *Monaco de Gallicchio v. Argentina*, views of 3 April 1995, A/50/40, Vol. II (1995), Annex X, sect. B, par. 11.2.

[138] HRC Comm. No. 786/1997, *Vos v. The Netherlands*, views of 26 July 1999, A/54/40, Vol. II, Annex XI, sect. HH, par. 9.

[139] Comm. Nos. 422/1990, 423/1990, 424/1990, *Aduayom et al. v. Togo*, views of 12 July 1996, A/51/40, Vol. II, Annex VIII, sect. C, par. 9.

[140] CERD Comm. No. 10/1997, *Habassi v. Denmark*, Opinion of 17 March 1999, A/54/18, Annex III, sect. A, par. 11.1-11.2.

[141] CERD Comm. No. 4/1991, *L.K. v. the Netherlands*, opinion of 16 March 1993, A/48/18, Annex IV, par. 6.9.

[142] CAT Comm. No. 161/2000, *Dzemajl et al. v. Yugoslavia*, views of 21 November 2002, CAT/C/29/D/161/2000, par. 11.

[143] HRC Comm. No. 609/1995, *Williams v. Jamaica*, views of 4 November 1997, A/53/40, Vol. II, Annex XI, sect. I, par. 8.

[144] HRC Comm. No. 610/1995, *Henry v. Jamaica*, views of 20 October 1998, A/54/40, Vol. II, Annex XI, sect. F, par. 9.

[145] For example, HRC Comm. No. 73/1980, *Teti Izquierdo v. Uruguay*, views of 1 April 1982, A/37/40, Annex XVII, par. 10.

[146] IACtHR *Cantoral Benavides Case*, reparations judgement of 3 December 2001, Series C, No. 88, par. 99.

[147] IACtHR, *Aloeboetoe et al.*, reparations judgement of 10 September 1993, Series C, No. 15, par. 116.

[148] HRC Comm. No. 35/1978, *Aumeeruddy-Cziffra et al. v. Mauritius*, views of 9 April 1981, A/36/40, Annex XIII, par. 11.

[149] HRC Comm. No. 757/1997, *Pezoldova v. Czech Republic*, views of 25 October 2002, CCPR/C/76/D/757/1997, par. 12.2.

[150] HRC Comm. No. 759/1997, *Osbourne v. Jamaica*, views of 15 March 2000, A/55/40, Vol. II, Annex IX, sect. L, par. 11.

[151] HRC Comm. No. 488/1992, *Toonen v. Australia*, views of 31 March 1994, A/49/40, Annex IX, sect. EE, par. 10.

[152] HRC Comm. No. 410/1990, *Parkanyi v. Hungary*, views of 27 July 1992, A/47/40, Annex IX, sect. Q, par. 10.

[153] Inter-American Commission Report No. 55/02, Case No. 11.765, *Lallion v. Grenada*, report adopted on 21 October 2002, section VII.

[154] Inter-American Commission Report No. 58/02, Case No. 12.275, *Aitken v. Jamaica*, report of 21 October 2002, section VII.

[155] Inter-American Commission Report No. 75/02, Case No. 11.140, *Dann v. USA*, report of 27 December 2002, section VII.

[156] HRC Comm. Nos. 359/1989 and 385/1989/Rev.1, *Ballantyne and Davidson v. Canada*; *McIntyre v. Canada*, views of 31 March 1993, CCPR/C/47/D/359/1989, par. 13.

[157] HRC Comm. No. 455/1991, *Singer v. Canada*, views of 26 July 1994, A/49/40, Vol. II, Annex IX, sect. Y, par. 14.

[158] Inter-American Commission Report No. 137/99, Case 11,863, *Aylwin Azocar et al. v. Chile*, Report of 27 December 1999, section VIII.

[159] HRC Comm. No. 523/1992, *Neptune v. Trinidad and Tobago*, views of 16 July 1996, A/51/40, Vol. II, Annex VIII, sect. M, par. 11.

[160] HRC Comm. No. 250/1987, *Reid v. Jamaica*, views of 20 July 1990, A/45/40 Vol. II, Annex IX sect. J, par. 13.

[161] CERD Comm. No. 4/1991, *L.K. v. the Netherlands*, opinion of 16 March 1993, A/48/18, Annex IV, par. 6.8.

[162] Inter-American Commission Report No. 34/00, Case No. 11.291, *Carandiru v. Brazil*, Report of 13 April 2000, section VII.

[163] Inter-American Commission Report No. 78/02, Case No. 11.335, *Malary v. Haiti*, Report of 27 December 2002, section VII.

[164] CAT General comment No. 1, adopted on 21 November 1997, A/53/44, Annex XI, par. 6-7.

[165] See for example CAT Comm. No. 21/1995, *Alan v. Switzerland*, views of 8 May 1996, A/51/44, Annex V, par. 12.

[166] HRC Comm. No. 900/1999, *C. v. Australia*, views of 28 October 2002, CCPR/C/76/D/900/1999, par. 10.

[167] HRC Comm. No. 469/1991, *Ng v. Canada*, views of 5 November 1993, A/49/40, Vol. II, Annex IX, sect. CC, par. 17-18. This was recently confirmed in HRC Comm. No. 829/1998, *Judge v. Canada*, views of 5 August 2003, CCPR/C/78/D/829/1998, par. 12.

[168] HRC Comm. No. 1086/2002, *Weiss v. Austria*, views of 3 April 2003, CCPR/C/77/D/1086/2002, par. 11.1.

[169] IACtHR, *Street Children Case, Reparations*, judgement of 26 May 2001, Series C, No. 77, par. 123.

[170] IACtHR, *Awas Tingni Case*, judgement summary and order issued on 31 August 2001, Series C, No. 79, par. 6.

[171] The French law in question provided that alternative service for conscientious objectors was twice as long as military service. According to the Human Rights Committee, the difference in treatment involved in the case was based on reasonable and objective criteria. In the circumstances, it found that a violation of article 26 had occurred, since the author had been discriminated against on the basis of his conviction of conscience.

[172] HRC Comm. No. 666/1995, *Foin v. France*, views of 3 November 1999, A/55/40, Vol. II, Annex IX, sect. C, par. 12.

[173] IACtHR *"The Last Temptation of Christ" Case*, judgement of 5 February 2001, Series C, No. 73, par. 99.

[174] See for example CAT Comm. No. 8/1991, *Halimi-Nedzibi v. Austria*, views of 18 November 1993, A/49/44, Annex V.A, par. 15.

[175] CAT Comm. No. 59/1996, *Blanco Abad v. Spain*, views of 14 May 1998, *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44), Annex X, sect. A, No. 3.

[176] See generally, Markus G. Schmidt, "Follow-up mechanisms before UN human rights treaty bodies and the UN mechanisms beyond", in Anne F. Bayefsky (ed.), *The UN human rights treaty system in the 21st century*, The Hague [etc.]: Kluwer Law International, 2000, p. 233-249.

[177] See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 40* (A/57/40), Vol. I, p. 115.

[178] See A/CONF.157/TBB/4, par. 11.

[179] A/45/40, Vol. II, Annex XI. See also rule 95 of the Human Rights Committee's rules of procedure.

[180] A/49/40, Vol. I, par. 463-468. See for a detailed report of follow-up activities A/57/40, Vol. I, par. 223-256. The annual report refers to a progress report discussed at the Human Rights Committee's 74th session (CCPR/C/74/R.7/Rev.1, dated 28 March 2002).

[181] A/51/40, Vol. I, par. 435-437.

[182] Other members, for example the Chairperson, sometimes established direct contacts with representatives.

[183] A report of that mission is included in A/50/40, Vol. I, paragraphs 557-562.

[184] A/57/40, Vol. I, par. 256.

[185] A/57/40, Vol. I, par. 225.

[186] CAT/C/3/Rev. 4, Rules of procedure of the Committee Against Torture, rule 114.

[187] A/57/44, Annex IX, *Terms of reference of the Rapporteur on follow-up of decisions on complaints submitted under article 22.*

[188] CERD/C/35/Rev.2, Rules of the procedure of the Committee on the Elimination of Racial Discrimination, rule 95(5).

[189] General Assembly resolution 48/104, *Declaration on the Elimination of Violence against Women*, adopted on 20 December 1993, see article 4(c).

[190] IACtHR, *Velasquez Rodriguez v. Honduras*, judgement of 29 July 1988, Series C No. 4, par. 169-170.

[191] IACtHR, *Velasquez Rodriguez v. Honduras*, judgement of 29 July 1988, Series C No. 4, par. 172.

[192] On this issue, see chapter 5 of the present paper.

[193] IACtHR, *Velasquez Rodriguez v. Honduras*, judgement of 29 July 1988, Series C No. 4, par. 173-177.

[194] Comm. No. 273/1988, *B.d.B. et al. v. the Netherlands*, inadmissibility decision of 30 March 1989, A/44/40, Annex XI sect. F, par. 6.5.

[195] HRC Comm. No. 1020/2001, *Cabal and Pasani Bertran v. Australia*, views of 7 August 2003, CCPR/C/78/D/1020/2001, par. 7.2.

[196] Comm. No. 633/1995, *Gauthier v. Canada*, views of 7 April 1999, A/54/40, Vol. II, Annex XI, sect. L, par. 13.6.

[197] HRC Comm. No. 608/1995, *Nahlik v. Austria*, inadmissibility decision of 22 July 1996, A/51/40, Vol. II, Annex IX, sect. E, par. 8.2.

[198] HRC Comm. No. 946/2000, *L.P. v. Czech Republic*, views of 25 July 2002, A/57/40, Vol. II, Annex IX, sect. HH, par. 7.4-8.

[199] HRC Comm. No. 571/1994, *Henry and Douglas v. Jamaica*, views of 25 July 1996, A/51/40, Vol. II, Annex VIII, sect. U, par. 6.5.

[200] CESCR General Comment No. 14, *The right to the highest attainable standard of health*, adopted on 11 May 2000. In: E/C.12/2000/4, par. 35.

[201] CERD Comm. No. 4/1991, *L.K. v. the Netherlands*, opinion of 16 March 1993, A/48/18, Annex IV, par. 6.6-6.7.

[202] CERD Comm. No. 10/1997, *Habassi v. Denmark*, opinion of 17 March 1999, A/54/18, Annex III, sect. A.

[203] CERD Comm. No. 16/1999, *Ahmad v. Denmark*, opinion of 13 March 2000, A/55/18, Annex III.A.

[204] CERD Comm. No. 20/2000, *M.B. v. Denmark*, opinion of 13 March 2002, A/57/18, Annex II.A.

[205] CERD Comm. No. 18/2000, *F.A. v. Norway*, inadmissibility decision of 21 March 2001, A/56/18, Annex III.A, par. 8.

[206] CERD General Recommendation No. 27, *Discrimination against Roma*, adopted on 16 August 2000, A/55/18, Annex V.C, par. 12.

[207] CAT Comm. Nos. 130/1999 and 131/1999, *V.X.N. and H.N. v. Sweden*, views of 15 May 2000, A/55/44, Annex VIII.A.9, par. 13.8.

[208] Dijk, P. van, Hoof, G. J. H. van, *Theory and practice of the European Convention on Human Rights*, pp. 119-120.

[209] ECtHR, Appl. No. 8919/80, *Van der Mussele v. Belgium*, judgement of 23 November 1983, Series A, No. 70, par. 29.

[210] ECtHR, Appl. Nos. 7601/76; 7806/77, *Young, James and Webster v. United Kingdom*, judgement of 13 August 1981, Series A, Vol. 44, par. 49.

[211] ECtHR, Appl. No. 23452/94, *Osman v. United Kingdom*, judgement of 28 October 1998, Reports 1998-VIII, par. 115-116.

[212] ECtHR, Appl. No. 25599/94, *A. v. United Kingdom*, judgement of 23 September 1998, Reports of Judgments and Decisions 1998-VI, par. 22-24.

[213] ECtHR, Appl. No. 29392/95, *Z and others v. United Kingdom*, judgement of 10 May 2001, par. 73.

[214] ECtHR, Appl. No. 8978/80, *X and Y v. The Netherlands*, judgement of 26 March 1985, Series A, Vol. 91, par. 23.

[215] ECtHR, Appl. No. 22083/93; 22095/93, *Stubbings and others v. United Kingdom*, judgement of 22 October 1996, Reports 1996-IV, par. 64-66.

[216] ECtHR, 7601/76; 7806/77, *Young, James and Webster v. United Kingdom*, judgement of 13 August 1981, Series A, Vol. 44 (article 11); ECtHR, Appl. No. 39293/98, *Fuentes Bobo v. Spain*, judgement of 29 February 2000, par. 38.

[217] ECtHR, Appl. No. 10126/82, *Platform Ärzte für das Leben v. Austria*, judgement of 21 June 1988, Series A, Vol. 139, par. 32-34.

Annex

Comparable provisions

Issue	*CEDAW-OP*	*CCPR-OP*	*CERD*	*CAT*	*ECHR*	*IACHR*
Paragraphs 2 and 3: **Examination of the same matter under another procedure**	Article 4(2)(a) The Committee shall declare a communication inadmissible where: The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement.	Article 5(2)(a) The Committee shall not consider any communication from an individual unless it has ascertained that: The same matter is not being examined under another procedure of international investigation or settlement;	–	Article 22(5)(a) The Committee shall not consider any communications from an individual under this Article unless it has ascertained that: The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;	Article 35(2)(b) The Court shall not deal with any application submitted under Article 34 that: is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.	Article 46(c) 1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements: that the subject of the petition or communication is not pending before another international procedure for settlement Article 47(d) The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if: the petition or communication is substantially the same as one previously studied by the Commission or another international organization.

Issue	*CEDAW-OP*	*CCPR-OP*	*CERD*	*CAT*	*ECHR*	*IACHR*
Paragraph 4: ***Ratione temporis*-rule**	Article 4(2)(e) The Committee shall declare a communication inadmissible where: The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.	Article 1 (…) No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol. Article 3 The Committee shall consider inadmissible any communication under the present Protocol which (…) it considers (…) to be incompatible with the provisions of the Covenant.	Article 14(1) (…) No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.	Article 22(1) (…) No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Article 22(2) The Committee shall consider inadmissible any communication under this Article which (…) it considers (…) to be incompatible with the provisions of this Convention.	Article 35(3) The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto (…)	Article 47(c) The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if: (…) the statements of the petitioner or the State indicate that the petition or communication is manifestly groundless or obviously out of order; (…) Article 62 1. A State Party may, upon depositing its instrument of ratification or accession to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention. (…)

Issue	*CEDAW-OP*	*CCPR-OP*	*CERD*	*CAT*	*ECHR*	*IACHR*
						3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.
Paragraph 5: **Remedies recommended**	Article 7(3) After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.	Article 5(4) The Committee shall forward its views to the State Party concerned and to the individual.	Article 14(7)(b) The Committee shall forward its suggestions and recommendations if any, to the State Party concerned and to the petitioner.	Article 22(7) The Committee shall forward its views to the State Party concerned and to the individual.	Article 41 If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.	Article 50(3) (IACnHR) In transmitting the report, the Commission may make such proposals and recommendations as it sees fit. Article 51(2) (IACnHR, second stage) Where appropriate, the Commission shall make pertinent recommendations and shall prescribe a period within which the State is to take the measures that are incumbent upon it to

Issue	*CEDAW-OP*	*CCPR-OP*	*CERD*	*CAT*	*ECHR*	*IACHR*
						remedy the situation examined. Article 63(1) (IACtHR) If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.
Paragraph 6: **Follow-up of views**	Article 7(4) & 7(5) 4. The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views	–	–	–	Article 46 1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties. 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall	Article 51(3) When the prescribed period has expired, the Commission shall decide by the vote of an absolute majority of its members whether the State has taken adequate measures and whether to publish its report. Article 68 1. The States Parties to the Convention

Issue	*CEDAW-OP*	*CCPR-OP*	*CERD*	*CAT*	*ECHR*	*IACHR*
	and recommendations of the Committee. 5. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under article 18 of the Convention.				supervise its execution.	undertake to comply with the judgment of the Court in any case to which they are parties. 2. That part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the State.
Paragraph 7: **Accountability for non-State actors**	Article 2 Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. (…)	Article 1 A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. (…)	Article 14(1) A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. (…)	Article 22(1) A State Party to this Convention may at any time declare under this Article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. (…)	Article 34 The Court may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. (…)	Article 44 Any person or group of persons, or any non-governmental entity legally recognized in one or more member States of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.