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**Comparative summary of existing communications and inquiry procedures
and practices under international human rights instruments and under the
United Nations system**

Report of the Secretary-General

Summary

The present report is submitted in response to Commission on Human Rights resolution 2004/29. It updates a previous report of the Secretary-General (E/CN.6/1997/4), which has been made available to the working group. In so doing, it supplements the previous report with: information on the communications procedure and the inquiry procedure under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the inter-State communications procedures under the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC) and CEDAW; as well as information on complaints procedures established in the framework of the United Nations Educational, Scientific and Cultural Organization (UNESCO) - according to decision 104 EX/3.3 of the UNESCO Executive Council - and in the framework of the International Labour Organization (ILO) - articles 24, 25 and 26 of the ILO Constitution, and the procedures and practices of the Committee on Freedom of Association and the Fact-Finding and Conciliation Commission of ILO.

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Introduction

1. The present report is submitted to the working group in response to Commission on Human Rights resolution 2004/29. It should be read in conjunction with the report of the Secretary-General (E/CN.6/1997/4), which has been made available to the participants in the working group. That report considers those treaty-based communications procedures under United Nations human rights treaties existing in 1997 that provided for the competence of the supervisory body to receive and consider communications alleging violations of rights protected under the respective instruments. The treaty-based communications procedures covered in the report were: the International Covenant on Civil and Political Rights (ICCPR) through its Optional Protocol (OP); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) through its article 14; the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) through its article 22; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC) through its article 77. The 1997 report also considered the inquiry procedure under article 20 of CAT. Given the specific wording of the mandate to consider communications and inquiry procedures and practices under the Charter of the United Nations, the 1997 report also considered the communications procedure of the Commission on the Status of Women and the "1503 procedure" of the Commission on Human Rights established in accordance with Economic and Social Council resolution 1503 (XLVIII).
2. The present report supplements the information of the 1997 report of the Secretary-General with information on communications and inquiry procedures and practices adopted since 1997, namely the Optional Protocol to CEDAW. The present report also supplements the 1997 report with information on inter-State communications procedures.
3. Given the mandate to consider existing communications and inquiry procedures and practices under the United Nations system, the present report also considers those procedures and practices established in the framework of the United Nations Educational, Scientific and Cultural Organization (UNESCO) - according to decision 104 EX/3.3 of the UNESCO Executive Council - and in the framework of the International Labour Organization (ILO) - articles 24, 25 and 26 of the ILO Constitution, and the procedures and practices of the Committee on Freedom of Association and the Fact-Finding and Conciliation Commission of the ILO.
4. For ease of reference, the present report follows the same structure, as far as possible, as the 1997 report. This should allow participants in the working group to update the 1997 report with the information in the present report by simple cross-referencing.

I. TREATY-BASED PROCEDURES

A. Treaty-based communications procedures

5. Table 1 below provides information on the current status of ratification/acceptance (as of 18 August 2004) of all optional human rights treaty-based communications procedures compared to ratification/acceptance of the treaty itself. This rest of this section updates the 1997 report with information on the communications procedure under the optional protocol (OP) to CEDAW.

Table 1
Current status of ratification/acceptance

ICCPR	CERD	CAT	MWC	CEDAW
Treaty - 152 OP - 104	Treaty - 169 Article 14 - 45	Treaty - 136 Article 22 - 56	Treaty - 26 Article 77 - 0	Treaty - 177 OP - 62

1. Admissibility criteria

6. The CEDAW OP and the rules of procedure (HRI/GEN/3/Rev. 1, chap. IV) set out admissibility criteria for communications under the treaty.

(a) Requirement of ratification or declaration of acceptance

7. All communication procedures are strictly optional and applicable only to States parties that have expressly accepted the procedure by way of ratification, accession or declaration. The CEDAW OP underlines the optional nature of the procedure by declaring that States parties to the OP recognize the competence of the Committee to receive and consider communications (art. 1). Further, OP (art. 3) and the rules of procedure (rule 56 (3) (a)) stress that: “No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol”. The OP required 10 ratifications or accessions for entry into force (art. 16 (1)).

(b) Anonymity

8. The CEDAW OP (art. 3) and the Committee’s rules of procedure (rule 56 (3)) establish that anonymous communications shall be inadmissible.

(c) Subject-matter of a communication (*ratione materiae*)

9. All communications procedures under review establish that communications are admissible only if they claim a violation by the State party of any of the rights set forth in the relevant instrument. The CEDAW OP states that the authors of complaints must claim “to be victims of a violation of any of the rights set forth in the Convention by that State Party” (art. 2).

(d) Jurisdiction (*ratione loci*)

10. This criterion establishes that a connection must exist between the claimant and the State party that is the object of the communication. The CEDAW OP states that authors of communications must be “under the jurisdiction of a State party” (art. 2).

(e) Abuse of the right to submit a communication

11. Communications procedures seek to avoid the abuse of the procedure. The CEDAW OP stipulates that the Committee shall declare a communication inadmissible where “it is

incompatible with the provisions of the Convention”; “it is manifestly ill-founded or not sufficiently substantiated” or “it is an abuse of the right to submit a communication” (art. 4 (2) (b)-(d)).

(f) Duplication of procedures

12. The CEDAW OP stipulates that 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” (art. 4 (2) (a)). The OP therefore precludes the examination of a case if it has been examined by another procedure of international investigation or settlement. This provision contrasts with the ICCPR OP (art. 5), which states that the Committee shall not consider any communication unless it has been ascertained that “the same matter is not being examined under another procedure of international investigation or settlement”. Thus, the ICCPR OP precludes only the simultaneous examination of a case and the Human Rights Committee may consider cases that have been examined elsewhere.

(g) Exhaustion of domestic remedies

13. As with the other existing communications procedures, the CEDAW OP requires that domestic remedies be exhausted to be admissible. This, however, is subject to the exception that the communication will be admissible “if the application of such remedies is unreasonably prolonged or unlikely to bring effective relief” (art. 4). If a concerned State party disputes the author’s contention that all available domestic remedies have been exhausted, the State party shall give details of the remedies available in the particular circumstances (rule 69 (6)).

(h) Written nature

14. The CEDAW OP (art. 3) and the Committee’s rules of procedure (rule 56 (3) (b)) state that communications shall be in writing. The Secretary-General must prepare lists of communications submitted and submit a brief summary of the communication to the Committee (rule 57 (2)).

(i) Admissibility (*ratione temporis*)

15. The temporal dimension of admissibility addresses the question of whether an author may bring communications concerning alleged violations before the entry into force of the procedure for the State party concerned, or concerning alleged violations which occurred prior to that date but continued after. The CEDAW OP stipulates that 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 the facts continued after that date” (art. 4 (2) (e)).

(j) Reservations to procedures

16. While none of the four procedures studied in the 1997 report contain provisions stating whether reservations to the procedure were permissible, the CEDAW OP expressly states that “no reservations to the present Protocol shall be permitted” (art. 17).

(k) Reference to a State party

17. The CEDAW Committee must respect confidentiality in bringing any communication to the attention of the State party concerned (OP, art. 6) and this should be done “as soon as possible after the communication has been received” (rule 69 (1)). This step is subject to two provisos: first, the Committee may decide that a communication is inadmissible without reference to the State party; second, the individual or individuals concerned must consent to the disclosure of their identify to the State party. The Secretary-General shall inform the author of the communication of the procedure to be followed (rule 58 (5)).

(l) Decisions on admissibility

18. The Committee may decide to consider the question of admissibility of a communication and the merits of a communication either separately or together (rule 66). Either a simple majority of the Committee or all five members of a working group established to consider admissibility shall decide whether a communication is admissible or inadmissible (rule 64 (1) and (2)).

19. Where the Committee or a working group of the Committee decides on the issue of admissibility prior to receiving the State’s written explanations or statements on the merits, the Secretary-General shall submit the decision and all other information to the State party and will also inform the author of the decision (rule 71 (1)).

20. Where the Committee decides that a communication is inadmissible, the Committee shall, as soon as possible, communicate its decision and reasons through the Secretary-General to the author and the State party (rule 70 (1)). An author or authors may submit a written request to the Committee to review its decision on inadmissibility, setting out information indicating that the reasons for inadmissibility no longer apply (rule 70 (2)).

2. Standing

21. Standing under a communications procedure determines who may submit a communication. If an author of a communication does not have standing under the instrument, the committee will reject the communication on formal grounds, without consideration of the merits. The CEDAW OP recognizes communications submitted by four categories of authors: individuals; groups of individuals; authors on behalf of individuals; authors on behalf of groups of individuals. All four categories of authors must come under the jurisdiction of the State party to the optional protocol (OP, art. 2).

22. Where an author submits a communication on behalf of individuals or groups of individuals, the CEDAW OP stipulates that those authors must have the consent of the individual or group of individuals, unless the author can justify acting on their behalf without their consent (ibid.). Authors acting on behalf of individuals or groups of individuals can be “designated representatives” or “others on behalf of an alleged victim where the alleged victim consents” (rule 68 (1)). An author may acting on behalf of an individual or group of individuals without the consent of the potential victim or victims must present reasons justifying such action in writing (rule 68 (3)).

3. Proceedings on the merits

23. The second stage in the consideration of the communications procedure is the proceedings on the merits. As noted above, the CEDAW Committee has the option of deciding the issues of admissibility and the merits simultaneously, and this is indeed the presumption.

24. The State party must, within six months of having the communication confidentially transmitted to it, submit written explanations or statements clarifying the matter and the remedy, if any, that the State might have provided (OP, art. 6 (2)). The written statement relates to both the admissibility of the communication and its merits (rule 69 (3)). A State party may submit a request in writing that the Committee reject the communication as inadmissible, setting out the grounds for such inadmissibility, provided that the State submits the request within two months of the Committee bringing the communication to the attention of the concerned State party (rule 69 (5)).

25. The Committee, working group of the Committee or rapporteur shall transmit information submitted by each party to the other party. The Committee, working group or rapporteur must afford each party an opportunity to comment on those submissions, within fixed time limits (rule 69 (9)).

26. The Committee must consider, in closed meetings, communications in the light of all information made available to it by or on behalf of individuals or groups of individuals or the State party. That information must be transmitted to all parties (OP, art. 7 (1) and (2)).

4. Working groups and special rapporteurs

27. The CEDAW Committee may establish working groups to assist the Committee in expediting its mandate under the optional protocol. Each working group should comprise no more than five members of the Committee (rule 62 (1)).

28. The Committee may also designate one or more members to act as rapporteurs to make recommendations to the Committee and to assist it in any manner in which the Committee may decide (*ibid.*).

5. Views and follow-up

29. The third stage in the consideration of a communication is the adoption by the treaty body of its decision or views on a communication. After examination of the communication, the CEDAW Committee transmits its views on the communication to the parties, together with its recommendations (OP, art. 7 (3)). The Committee should formulate those views “in light of all written information made available to it by the author or authors and the State party concerned” provided that the information has been transmitted to the other parties (rule 72 (1)). The Committee, in determining its views, may also rely on “any documentation from organizations in the United Nations system or other bodies” provided that the Committee affords the parties an opportunity to comment on the documentation or information within fixed time limits (rule 72 (2)).

30. The Committee adopts its views by simple majority (rule 72 (5)). Any member of the Committee that has participated in the decision may request that a summary of her or his individual opinion be appended to the Committee's views (rule 72 (6)).

31. The last stage in the communications procedure consists of the follow-up phase. The State party must submit to the CEDAW Committee within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee (OP, art. 7 (4)). The Committee may also invite the State party to submit further information about any measures that it has taken in response to its views or recommendations, including in the State party's subsequent reports under the reporting procedure (OP, art. 7 (5)). The Committee may invite the state to submit such further information; however, only after the six month period given for an initial response to views (rule 73 (2)).

32. The Committee shall designate for follow-up on views a rapporteur or working group to ascertain the measures taken by the States parties as follow-up (rule 73 (4)). The rapporteur or working group may make such contacts and take such action as may be appropriate and shall make such recommendations as necessary for further action by the Committee (rule 73 (5)). The rapporteur shall report to the Committee on follow-up activities on a regular basis and the Committee shall include information on follow-up in its annual report (rules 73 (6) and (7)).

6. Interim measures

33. Unlike the communication procedures included in the 1997 report of the Secretary-General, the CEDAW OP expressly includes a specific provision on interim measures. Consequently, the Committee may request the State party to take "such interim measure as may be necessary to avoid possible irreparable damage" to the alleged victim or victims. The Committee's exercise of its discretion does not, however, imply a determination on admissibility or on the merits of the communication (OP, art. 5 (1) and (2)). A working group or rapporteur may also make requests to the State party to take interim measures (rule 63 (2)).

7. Confidentiality

34. The question of confidentiality in the framework of communications procedures arises at a number of stages of the process. Confidentiality may concern both confidentiality *inter partes*, and confidentiality in relation to the public at large.

(a) Anonymity of the communication

35. As discussed above under admissibility criteria, all communications procedures under review require that a communication must not be anonymous. However, this requirement has limitations and the Committee does require the consent of the individual or individuals concerned to the disclosure of their identity to the State party when the Committee transmits the communication to the State party concerned (OP, art. 6 (1)).

(b) Examination of communications in closed meetings

36. The CEDAW Committee, its working groups and the rapporteurs must hold closed meetings when examining communications (OP, art. 7 (2) and rule 74 (1)).

37. The Committee may issue communiqués for the use of the information media and the general public regarding its activities, including in relation to its activities in the closed meetings (rule 75).

(c) Confidentiality of documents

38. Under the CEDAW Committee's rules of procedure, all working documents prepared by the Secretariat, working group or rapporteur prepared prior to the registration of the communications, and the list of summaries of communications, shall be confidential unless the Committee decides otherwise (rule 74 (2)). Similarly, the Committee, working group or rapporteur shall not make public any communication, submission or information relating to a communication prior to the date on which its views are issued (rule 74 (3)).

39. However, nothing shall affect the right of the author or authors or the State party concerned to make public any submission or information bearing on the proceedings unless the Committee, working group or rapporteur requests the author of a communication or the State party concerned to keep confidential the whole or part of any submission or information relating to the proceedings (rule 74 (6) and (7)).

(d) Final decisions of the Committee

40. After examining a communication, the CEDAW Committee transmits its views on the communication, together with its recommendations, if any, to the parties concerned and these decisions shall be made public unless the Committee decides that the names of the victims or alleged victims or part of the submissions should not be made public (OP, art. 7 (3) and rule 74 (5), (6) and (8)). The Secretary-General is responsible for the distribution of the final decision to the author or authors and the State party (rule 74 (9)). The Committee must then include, in its annual report, a summary of the communications examined and, where appropriate, a summary of the explanations and statements of the State parties concerned and of its own suggestions and recommendations (rule 74 (10)).

(e) Identity of the author

41. The author or authors of a communication or the individuals who are alleged to be the victim or victims of a violation of the rights set forth in the Convention may request that the names and identifying details of the alleged victim or victims (or any of them) may not be published (rule 74 (4)).

8. Participation of representatives

42. As with other communications procedures under optional protocols to human rights treaties, the procedure under the CEDAW OP is exclusively of a written nature.

9. Information considered

43. In general, the CEDAW Committee refers only to the written information provided by the concerned parties in determining admissibility and the merits of the communication (OP, art. 7)).¹ However, the CEDAW Committee or its working group may, at any time in the course of the examination of the communication, obtain through the Secretary-General any

documentation from organizations in the United Nations system or other bodies that may assist in the disposal of the communication. The Committee may use such information provided that it affords each party an opportunity to comment on such information within fixed time limits (rule 72 (1)).

10. Registers

44. As with the rules of procedures of other treaty monitoring bodies, the Secretary-General shall maintain a permanent register of all communications received under the CEDAW OP (rule 57 (1)). The Secretary-General shall also prepare lists of communications submitted to the Committee, together with a brief summary of their contents (rule 57 (2)).

11. Publicity

45. The CEDAW Committee, as with other treaty monitoring bodies, must include in its annual report a summary of its activities under the optional protocol (OP, art. 12). The CEDAW Committee's rules of procedure reflect the desirability of additional publicity for the procedure and any decisions taken under that procedure, by permitting the issuance of communiqués regarding the Committee's activities for the use of the information media and the general public (rule 75).

12. Caseload

46. Table 2 below sets out the caseload of each of the Committees with communications procedures (as of 29 October 2004).

Table 2

Caseload of Committees

Treaty bodies	HRC	CERD	CAT	CEDAW
Total number of cases registered	1 322	34	257	4
Concluded by views/opinion/decisions	470	12	91	0
Declared inadmissible	371	11	26	1
Discontinued or withdrawn/suspended	172	0	43	0
Declared admissible, but not yet concluded	7	2	6	0
Pending at pre-admissibility stage	292	6	54	3
Others (on file awaiting further clarification by the author)	N/A	N/A	N/A	0

13. Funding of the work of the treaty bodies

47. Funding of the work of the treaty bodies under review, namely the Human Rights Committee, the Committee Against Torture, the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination Against Women, is provided from the regular budget of the United Nations. Article 17 (9) of CEDAW states that: "The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention".

14. Composition of the treaty bodies

48. The CEDAW Committee comprises 23 experts. The criteria for their selection require the experts to be “of high moral standing and competence in the field covered by the Convention”. The States parties to the Convention elect the experts from among their nationals and the experts serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems (CEDAW, art. 17 (1)).

49. A breakdown by profession of the current members of the various committees is as follows: the Human Rights Committee currently consists of 16 experts with a legal background, one expert with a political science background and one expert from a public administration background; CAT consists of five experts with a legal background, three experts from a public administration background, one expert with a political science background and one expert with a medical background; CERD consists of seven experts from a legal background, nine experts with a public administration background, and two experts from other professional backgrounds; the MWC Committee consists of six experts from a public administration background, one expert from a legal background and three experts from a variety of other backgrounds; the CEDAW Committee consists of 11 experts with a background in public administration, six experts with a background in fields related to women’s rights, philosophy and sociology, and seven experts with a legal background.

B. Treaty-based inquiry procedures

50. The 1997 report of the Secretary-General sets out the treaty-based inquiry procedure of the Convention against Torture. Since that report, States have adopted the second inquiry procedure contained in the CEDAW OP (arts. 8 and 9).

51. Under the CEDAW OP, the Committee initiates the inquiry itself “if the Committee receives reliable information indicating grave or systematic violations by a State Party of the rights set forth in the Convention” (OP, art. 8). The Secretary-General shall bring to the Committee’s attention information that is or appears to be submitted in relation to the inquiry procedure (rule 77). The open-ended formulation of the inquiry procedure allows individuals, groups, non-governmental organizations and other entities to submit information to the Committee.

52. A precondition for the Committee’s ability to receive information which could lead to the conduct of an inquiry is that the State Party in question, at the time of ratification of, or accession to the CEDAW optional protocol, has not made a declaration that it does not recognize the competence of the Committee to undertake inquiries (OP, art. 10 (1)). Such declaration may be withdrawn at any time (art. 10 (2)).

53. The Committee may first undertake a preliminary consideration of the information to determine its reliability and the Committee shall determine whether the information received contains reliable information indicating grave or systematic violations of rights set forth in the CEDAW Convention. In doing so, the Committee may obtain additional reliable information to substantiate the facts of the situation and may request a working group to assist it (OP, art. 8 (2), and rule 82).

54. If the Committee is satisfied that the information is reliable and indicates grave or systematic violations of rights in the Convention, the Committee invites the State Party to cooperate in the examination of the information and to submit observations (OP, art. 8 (1), and rule 82)) on the information within fixed time limits (rule 83 (1)). The Committee takes into account the observations of the State party as well as any other additional information from representatives of the State party concerned, governmental organizations, the United Nations system, non-governmental organizations and individuals as well as information contained in United Nations documents (rule 83 (3) and (5)). The Committee decides on the form and manner in which it obtains any additional information (rule 83 (4)).

55. Taking into account the observations of the State party concerned, the Committee then designates one or more members to conduct an inquiry and to report urgently to the Committee (OP, art. 8 (2)). The Committee conducts the inquiry confidentially and in accordance with modalities that it determines (rule 84 (2)). The member or members conducting the inquiry may determine their own methods of work (rule 84 (3)).

56. If the Committee embarks on an examination, it must seek the cooperation of the State party at all stages of the inquiry (OP, art. 8 (5)).

57. Where warranted, the Committee may conduct a visit to the territory concerned; however, the State party must consent to such a visit (OP, art. 8 (2)). Visits may, with the consent of the State party, include hearings to enable the Committee members to determine facts or issues relevant to the inquiry (rule 87 (1)). The Committee members undertaking the inquiry and the State party concerned, establish the conditions and guarantees concerning any hearings (rule 87 (2)). Any person appearing before the Committee members undertaking the inquiry must make a solemn declaration as to the veracity of the testimony and the confidentiality of the procedure (rule 87 (3)).

58. After examination, the Committee transmits the findings of the members undertaking the inquiry, through the Secretary-General, to the State party concerned, together with any comments or recommendations (rule 89 (1)). The State party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee (OP, art. 8 (4)).

59. The Committee may invite the State party to include in its report to the Committee details of any measures taken in response to an inquiry (art. 9 (1)). The Committee may also, if necessary, invite the State party to inform it of the measures taken in response to the inquiry after a period of six months of receiving any findings, comments or recommendations from the Committee (art. 9 (2)). The Committee shall include in its annual report a summary of the inquiry procedure (art. 12). In this regard, the Committee may consult with the concerned State party prior to including the summary in its annual report (rule 80 (2)).

60. The inquiry procedure is confidential at all stages: the meetings held by the Committee are closed (rules 80 and 81); and all documents relating the proceedings and the proceedings themselves are confidential except for the summary of the inquiry in the Committee's annual report (rule 80 (1)).

C. Inter-State procedures

61. CAT (art. 21) and MWC (art. 76) set out a procedure for the relevant Committee itself to consider complaints from one State party which considers that another State party is not giving effect to the provisions of the Convention. The procedure requires domestic remedies to be exhausted first and applies only to States parties that have made a declaration accepting the competence of the relevant Committee in this regard.

62. ICERD (arts. 11-13) and ICCPR (arts. 41-43) set out a procedure for the resolution of disputes between States parties over a State's fulfilment of its obligations under the relevant treaty through the establishment of an ad hoc Conciliation Commission. This procedure requires domestic remedies to be exhausted beforehand. The procedure normally applies to all States parties to ICERD, but applies only to States parties to ICCPR that have made a declaration accepting the competence of the Committee in this regard.

63. CAT (art. 30), CEDAW (art. 29) and MWC (art. 92) provide for disputes between States parties concerning interpretation or application of the Convention to be resolved in the first instance by negotiations or, failing that, by arbitration. One of the States involved may refer the dispute to the International Court of Justice if the parties fail to agree arbitration terms within six months. States parties may exclude themselves from this procedure by making a declaration at the time of ratification or accession, in which case, in accordance with the principle of reciprocity, they are barred from bringing cases against other States parties.

64. As of 29 October 2004, these procedures had never been used.

II. UNITED NATIONS SYSTEM

A. United Nations Educational, Scientific and Cultural Organization

65. UNESCO Executive Board decision 104 EX/3.3 of 1978 established a procedure for handling complaints concerning alleged violations of human rights in UNESCO's fields of competence, namely education, science, culture and information.

66. The procedure is confidential.

67. The procedure is neither judicial nor quasi-judicial but instead seeks friendly settlement with the State concerned.

68. The Committee on Conventions and Recommendations of UNESCO's Executive Board has the authority to consider communications concerning cases and questions of violations of human rights within UNESCO's fields of competence (Executive Board decision 104 EX/3.3, para. 14). The Board is composed of 58 Member States of UNESCO. The Committee currently consists of 30 members elected from the Board; they do not serve as experts in their personal capacity (see www.unesco.org). The Committee should not play the role of an international judicial body (decision 104 EX/3.3, para. 7).

69. Individuals, groups of individuals and non-governmental organizations may submit communications to UNESCO whether the authors themselves are victims of alleged violations or whether they deem to have reliable knowledge of the alleged violations (decision 104 EX/3.3,

para. 14 (a) (ii)). The communication must concern violations of human rights within UNESCO's competence in the fields of education, science, culture and information and must not be motivated exclusively by other considerations (decision 104 EX/3.3, para. 14 (a) (iii)). According to UNESCO, these rights are essentially: the right to education, the right to share in scientific advancement, the right to participate freely in cultural life and to right to receive, seek and impart information through any media regardless of frontiers, and freedom of opinion and expression (as recognized in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights). UNESCO also identifies related rights including: the right to freedom of thought, conscience and religion; the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production; and the right to freedom of assembly and association for the purpose of activities connected with education, science, culture and information.

70. The Committee must consider 10 criteria to determine the admissibility of the communication. If one of them is not met, the Committee takes no further action on the communication. These criteria are: the communication must not be anonymous; the communication must originate from individuals, groups of individuals or non-governmental organization as outlined above; the communication must concern a violation of human rights within UNESCO's fields of competence; the communication must be compatible with the principles of UNESCO, the Charter of the United Nations and the International Bill of Human Rights; the communication must not be manifestly ill-founded and must appear to contain all relevant evidence; the communication must be neither offensive nor an abuse of the right to submit communications; the communication must not be based exclusively on information disseminated through the mass media; the communication must be submitted within a reasonable time limit following the facts in the communication or within a reasonable time limit after the facts have become known; the communication must indicate whether an attempt has been made to exhaust available domestic remedies and the results of such an attempt; and, the Committee shall not consider communications related to matters already settled by the States concerned in accordance with the human rights principles set forth in the International Bill of Human Rights (decision 104 EX/3.3, para. 14 (a)).

71. If the Committee declares a communication admissible, the Director-General notifies the author and the Government of its decision (*ibid.*, para. 14 (i)). The Committee then considers the merits of the communication at its next session. The Committee may, upon examination of the merits, ask the author or the Government concerned for additional information for the next session. The Committee may use relevant information at the disposal of the Director-General and may keep the communication submitted to it on its agenda while seeking this information (*ibid.*, para. 14 (f) and (h)). The Committee may dismiss any communication not warranting further action. At the end of each session, the Secretariat shall inform the author and the Government concerned of the decision of the Committee. The Committee shall act upon communications warranting further consideration with a view to helping to bring about a friendly solution; the Committee does not act as an international tribunal (*ibid.*, para. 4 (k)).

72. The Committee works at all times in the strictest confidentiality and submits confidential reports to the Executive Board containing appropriate information relevant to the communications examined (*ibid.*, paras. 14 (c) and 15). These reports also contain recommendations which the Committee may wish to make either generally or regarding the

disposition of a communication (ibid., para. 15). The Executive Board then considers the reports of the Committee in private session unless questions of massive, systematic or flagrant violations of human rights arise, in which case the Executive Board and the General Conference of UNESCO may consider the report in public meetings (ibid., paras. 17 and 18). However, the Executive Board has never considered the report in public meetings in practice.

73. From 1978 to 2004, the Committee registered 1,061 communications and it examined 521 communications; 228 communications have been held inadmissible, 325 cases have been settled, 13 cases have been discontinued and 23 cases are pending. The largest part of the communications has dealt with alleged violations of the freedom of expression.

74. It is also relevant to note that the UNESCO procedure is not treaty-based but rights-oriented; is not a judicial or quasi-judicial procedure but instead focuses on establishing and maintaining a dialogue with the State concerned; is almost entirely confidential; and the Committee comprises representatives of States and not independent experts.

B. International Labour Organization

75. The ILO supervisory procedures are essentially based on regular reporting and monitoring by the Committee of Experts on the Application of Conventions and Recommendations. The Conference Committee on the Application of Standards - a body comprising government, employer and worker representatives - discusses the report of the Committee of Experts. In addition, ILO mechanisms include three communications procedures concerning the implementation of the ILO Constitution, conventions and basic principles. These are: representations under articles 24, 25 and 26 (4) of the ILO Constitution; complaints under articles 26-29 and 31-34 of the ILO Constitution; and complaints concerning freedom of association that allege violations of the ILO's basic principles on freedom of association.

1. Representations under articles 24, 25 and 26 (4) of the ILO Constitution

76. An industrial association of employers or workers may make a representation to the International Labour Office that any member State has failed to secure the effective observance within its jurisdiction of any Convention of which it is a party (ILO Constitution, art. 24). The representation should be submitted to the Director-General of ILO. It must be in writing, it must emanate from an industrial association of employers or workers, it must refer specifically to article 24 of the ILO Constitution and the ratified ILO Convention, it must concern an ILO member, it must indicate in what respect the member State has failed to secure effective observance of the Convention (ILO Standing Orders: representations, arts. 24 and 25 of the Constitution, art. 2).

77. If the ILO Governing Body² declares a representation receivable, it shall establish a Committee composed of members of the Governing Body chosen in equal numbers from the Government, Employers' and Workers' groups (ILO Standing Orders: representations, arts. 24 and 26 of the Constitution, art. 3). The Governing Body through the Committee, may communicate this representation to the Government concerned and may invite it to make a statement on the subject as it thinks fit (ILO Constitution, art. 24). The Committee may also

request further information from the filing association or the concerned government and the Committee may hear oral evidence (ILO Standing Orders: representations, arts. 24 and 26 of the Constitution, arts. 4 and 5).

78. Upon examination of the information, the Committee presents a report to the Governing Body, which includes its recommendations as to the decisions to be taken by the Governing Body (*ibid.*: representations, arts. 24 and 26 of the Constitution, art. 6). The Governing Body holds its meetings concerning questions relating to a representation in private (*ibid.*: representations, arts. 24 and 26 of the Constitution, art. 7 (3)). The Governing Body may publish a representation and the Government's reply (*ibid.*: representations, arts. 24 and 26 of the Constitution, art. 8; the "publication" referred to here is a formal measure implying a decision to ensure wide dissemination - in practice, all the reports on representations are made public). The International Labour Office notifies the decisions of the Governing Body to the government and to the association concerned (*ibid.*: representations, arts. 24 and 26 of the Constitution, art. 29).

79. There have been just over 80 representations filed in the ILO's history. Until the 1970s, it was a rarely used procedure, but in the last 30 years it has been used more often.

2. Complaints under article 26 of the ILO Constitution

80. Any member State of ILO has the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both States have ratified (ILO Constitution, art. 26). Complaints may also be initiated by delegates to the International Labour Conference, or by the Governing Body itself. If it thinks fit, the Governing Body may communicate with the Government and may invite it to make a statement (*ibid.*, arts. 26 (2) and 24).

81. If the Governing Body does not think it necessary to communicate the complaint to the Government concerned or if it does communicate the complaint but the Government provides no statement in reply or provides an unsatisfactory statement, the Governing Body may appoint a Commission of Inquiry to consider the complaint (*ibid.*, art. 26 (3)). There are no Standing Orders (similar to rules of procedure) for the procedure of Commissions of Inquiry. The Governing Body has in each case left the matter to the Commission of Inquiry itself, subject only to the Constitution's and its own general guidance. However, the procedure followed tends to be consistent from one investigation to the next. The reports of the respective Commissions of Inquiry describe the procedure followed for the examination of complaints, including the procedure for receiving communications from the parties and other interested persons or organizations and holding hearings (see www.ilo.org). That report also contains the Commission's findings on all questions of fact and recommendations on steps necessary to meet the complaint, including time frames within which the Government should take action (ILO Constitution, art. 28).

82. The Director-General forwards the report to the Governing Body and to each of the concerned Governments and the Director-General also publishes the report. The concerned Government has three months to inform the Director-General of whether it accepts the recommendations. If a Government does not accept the recommendations, it may propose to refer the complaint to the International Court of Justice (ICJ) - which has never occurred. The decision of the ICJ is final (*ibid.*, arts. 29 and 31).

83. If the Government does not implement the recommendations of a Commission of Inquiry or ICJ, the Governing Body may recommend action to the International Labour Conference necessary to ensure compliance (ibid., art. 33). A Government that has been found in violation of a convention and that has taken steps to comply with the recommendations of the Commission of Inquiry or the ICJ may request the Governing Body to constitute a Commission of Inquiry to verify its contention (although in practice this has never happened) (ibid., art. 34).

84. In the ILO's history since 1919, only 11 complaints have been instituted under article 26 of the Constitution.

3. Complaints concerning freedom of association - the Committee on Freedom of Association

85. Governments, as well as certain workers' and employers' organizations may submit complaints against a Government for consideration to the Committee on Freedom of Association. Complaints must allege a violation of the freedom of association, on the basis of the principles of the Constitution, which have been codified in various ILO Conventions. This procedure was instituted following a request of the Economic and Social Council in 1950 (see www.ilo.org, "Procedure for the examination of complaints alleging infringements of trade union rights"). However, there is no requirement that the State allegedly violating the freedom of association have ratified the relevant ILO Conventions. This is due to the fact that the basic authority for the procedure comes from the ILO Constitution.

86. The Committee on Freedom of Association comprises nine regular members representing in equal proportion the government, employer and worker groups of the Governing Body. Each member participates in a personal capacity.

87. Complaints must be submitted to the Director-General of ILO, in writing and be duly signed by a representative of the Government or organization. Once received, the Director-General may allow the complainant to file additional evidence. The complaint is communicated to the Government concerned, which has the opportunity to comment. The Committee on Freedom of Association makes its decision on the documentation received from the parties concerned, although oral representations are permissible.

88. If the Committee decides that there has been no violation, the process will end there without further examination. If the Committee finds that there has been a violation, the Committee will make recommendations to both the Government and the filing organization. The Committee may request the concerned government to continue reporting to it, or it may refer the case to the Governing Body.

89. By October 2004, there had been 2,391 complaints examined by the Committee with 140 complaints pending.

4. Complaints concerning freedom of association - the Fact-Finding and Conciliation Commission

90. The Governing Body may refer any complaint of infringement of freedom of association by States to the Fact-Finding and Conciliation Commission (FFC Commission), irrespective of

whether the concerned State has ratified the relevant ILO Conventions including freedom of association.³ If a State has not ratified the relevant conventions, the referral of the case requires the consent of the country concerned (a requirement that delayed the first use of the procedure after it was established, and resulted in the development of the Committee on Freedom of Association, which was originally considered a “filtering” mechanism for complaints to the FFC Commission). If the complaint concerns a State that is not an ILO member, ECOSOC can refer the complaint to the FFC Commission. A complaint may also be referred to the FFC Commission by the Government concerned.

91. The FFC Commission is made up of nine independent experts appointed by the Governing Body and has become a forum for the examination of the more serious cases of violation of the freedom of association. The Governing Body has only rarely convened the FFC Commission.

92. An FFC Commission may establish its own procedures which in practice tend to be similar to those of the Commissions of Inquiry established under article 26 of the ILO Constitution. FFC Commissions generally base their investigations on documentary evidence furnished by the parties to the procedure, witnesses and visits to the concerned States. The parties to the procedure may also be represented before Commissions.

93. The FFC Commission is essentially only a fact-finding body, although it is authorized to discuss situations with concerned Governments with a view to achieving a friendly settlement. FFC Commissions can make conclusions and recommendations to Governments and other concerned parties. The Commission’s recommendations have no legal force and no specific enforcement measures. FFC Commissions do not monitor their own recommendations as the Governing Body establishes Commissions for particular cases only. Other ILO bodies, such as the ILO’s regular supervisory procedures and the Committee on Freedom of Association, can, however, promote compliance.

Notes

¹ As well, the rules of procedure state: “The Committee shall consider and shall formulate its views on the communication in the light of all written information made available to it by the author or authors of the communication and the State party concerned, provided that this information has been transmitted to the other party concerned” (rule 72 (1)).

² The ILO Government body consists of 56 persons: 28 representing Governments; 14 representing employers; and, 14 representing workers (ILO Constitution, art. 7).

³ The information in this section is source from the ILO web site:
<http://www.ilo.org/public/english/standards/norm/enforced/foa/ffcc.htm>.
