NATIONAL IMPLEMENTATION OF FINDINGS BY UNITED NATIONS HUMAN RIGHTS TREATY BODIES

A Comparative Study

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Abbreviations

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CAT Committee	Committee against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CERD Committee	Committee on the Elimination of Racial Discrimination
CRC	Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
Doc.	Document
Ds	Departementsserien (Department Publication Series)
ECOSOC	Economic and Social Council
EU	European Union
GA	General Assembly
GAOR	
HREOC	Human Rights and Equal Opportunities Commission (Australia)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant of Economic, Social and Cultural Rights
ILA	International Law Association
MWC	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
NGO	Non-governmental organisation
OHCHR	Office of the United Nations High Commissioner for Human Rights
Res.	Resolution
Skr.	Regeringens skrivelse (Written Communication of the Swedish Government)

SopS	Suomen säädöskokoelman sopimussarja (Finnish Treaty Series)
UN	United Nations
U.N.T.S.	United Nations Treaty Series

Tiivistelmä

Tutkimuksessa tarkastellaan YK:n keskeisten ihmisoikeussopimusten valvontaelinten tulkintakannanottojen (*treaty body findings*) kansallisen toimeenpanon tilaa kuudessa kehittyneessä teollisuusmaassa ja sen pohjalta ko. toimeenpanon kehittämismahdollisuuksia lähinnä Suomen näkökulmasta. Tarkoituksena ei siis ole käsitellä ihmisoikeussopimusten kansallista toimeenpanoa koko laajuudessaan vaan ainoastaan osaa siitä. Miten voitaisiin vahvistaa kansallisten toimijoiden työtä sopimuselinten tulkintakannanottojen ja erityisesti maakohtaisten johtopäätösten täytäntöönpanossa? Yleisenä näkökulmana tutkimuksessa korostetaan, että vaikka sopimuselinten kommentit ja suositukset eivät ole itsessään juridisesti sitovia, on niillä tärkeä rooli valtioita oikeudellisesti sitovien sopimusten menestyksellisessä toimeenpanossa: valvontaelinten työn pääasiallisena tavoitteena on rohkaista ja edesauttaa ihmisoikeussopimusten laajaa kansallista täytäntöönpanoa.

Tässä yhteydessä on syytä painottaa, että vaikka YK:n ihmisoikeussopimusten valvontajärjestelmien toiminnassa ja sopimusvalvontaelinten tulkintakannanottojen laadussa on toivomisen varaa, ei tämän toteaminen poista sitä perustavaa laatua olevaa tosiseikkaa, että juuri valtio, ei kansainvälinen järjestelmä, on vastuussa ihmisoikeussopimusten toimeenpanosta. Valvontajärjestelmien toiminnan parantaminen ja tehostaminen on toki tärkeä tavoite, mutta loppujen lopuksi ihmisoikeuksien toteutuminen riippuu kansallisten toimijoiden tekemisistä. Tutkimuksessa on siten pyritty hakemaan ratkaisuja, jotka vahvistaisivat kansallisten toimijoiden panosta tulkintakannanottojen ja erityisesti maakohtaisten johtopäätösten toimeenpanossa. Ratkaisuja haettaessa on huomioitu se, että sopimusvalvontaelinten toiminnan kohdeyleisönä ei ole pelkästään valtionhallinto vaan myös tuomioistuimet, juristit, kansalaisjärjestöt, media yms. Suositusten tulisi siis tähdätä myös erilaisten kansallisten toimijoiden vuoropuhelun vahvistamiseen, joka mitä todennäköisimmin parantaisi myös kansallisten ja kansainvälisten toimijoiden välistä yhteistyötä ja vuorovaikutusta, tehostaen siten valvontajärjestelmienkin toimintaa.

Tutkimus kohdistuu YK:n kuuden keskeisen ihmisoikeussopimuksen valvontaelinten antamien maakohtaisten johtopäätösten (*concluding observations*), päätösten (*views*) ja yleisten kannanottojen (*general comments*) kansalliseen toimeenpanoon Suomessa, Ruotsissa, Australiassa, Kanadassa, Tsekin tasavallassa ja Espanjassa. Kyseiset sopimukset ovat vuoden 1966 yleissopimukset yhtäältä taloudellisista, sosiaalisista ja sivistyksellisistä

oikeuksista (ICESCR) ja toisaalta kansalaisoikeuksista ja poliittisista oikeuksista (ICCPR) sekä yleissopimukset rotusyrjinnän vastustamisesta (CERD), naisten oikeuksista (CEDAW), kidutuksen ja muun epäinhimillisen kohtelun vastustamisesta (CAT) ja lapsen oikeuksista (CRC). Kutakin sopimusta valvomaan on asetettu erillinen riippumaton asiantuntijaelin (*treaty body*)[1], joka käsittelee kaikkien sopimusvaltioiden määräaikaiskertomuksia sekä neljän sopimuksen osalta myös yksilövalituksia (ICCPR, CERD, CEDAW ja CAT).

Tutkimusaineistona on itse sopimustekstien ja sopimusvalvontaelinten tulkintakäytännön ohella sopimusvalvontajärjestelmää ja sen kehittämismahdollisuuksia käsittelevä kirjallisuus. Suomea, Australiaa, Kanadaa, Tsekkiä ja Espanjaa koskevan materiaalin lähdeaineistona on näitä maita koskevan sopimuselinten käytännön ohella toiminut ensiksikin vuodelta 2000 oleva professori *Christof Heynsin* johdolla laadittu ns. *Impact Study,* jonka 20 kohdemaan joukkoon yllämainitut maat kuuluvat. Heynsin tutkimuksessa kansalliset vastuuhenkilöt huolehtivat mm. eri toimijoiden haastattelujen avulla laajan, monipuolisen ja vertailukelpoisen aineiston kokoamisesta YK:n ihmisoikeussopimusten käytännön vaikutuksesta kohdemaissa. Toiseksi, Suomea, Australiaa ja Kanadaa koskevaa informaatiota sisältyy International Law Association –järjestön kansainvälisiin ihmisoikeuksiin keskittyvän komitean valmistelemaan väliraporttiin, jossa selvitettiin YK:n sopimuselinten työn vaikutusta kansallisissa tuomioistuimissa. Ruotsi valittiin tutkimukseen mukaan sen Suomea suuresti muistuttavien olosuhteiden vuoksi, ja sitä koskevaa tietoa on kerätty YK-dokumenttien lisäksi Ruotsin hallituksen ja ministeriöiden julkaisemasta materiaalista.

Tutkimus jakautuu neljään päälukuun: kysymyksenasettelun ja tutkimusaineiston selvittävään johdantoon (1), erillisiin päälukuihin kohdemaiden institutionaalisesta rakenteesta ml. ihmisoikeussopimusten täytäntöönpanoon ja raportointiin liittyvät mekanismit (2) ja tulkintakannanottojen kansallisesta toimeenpanosta (3) sekä päätöslukuun (4), jossa esitetään ja perustellaan tutkimuksen johtopäätökset ja suositukset.

Tutkimuksen keskeiset toimeenpanoa koskevat johtopäätökset on jaoteltu neljään ryhmään seuraavasti:

[1] Taloudellisia, sosiaalisia ja sivistyksellisiä oikeuksia käsittelevä komitea (TSS-komitea), ihmisoikeuskomitea, rotusyrjinnän poistamista käsittelevä komitea, naisten syrjinnän poistamista käsittelevä komitea, kidutuksen vastainen komitea, ja lasten oikeuksien komitea.

(1) Sopimusvalvontaelinten tulkintakannanottojen kääntäminen ja levittäminen

Tulkintakannanotot, erityisesti maakohtaiset johtopäätökset, tulee kääntää kansallisille kielille sekä levittää nopeasti ja tehokkaasti sekä hallinnon sisällä että kansalaisyhteiskunnassa. Sopimuselinten suositusten tuntemus on ehdoton edellytys niiden kansalliselle täytäntöönpanolle ja sen tehokkaalle valvonnalle. Internet tarjoaa tässä suhteessa paljon mahdollisuuksia ja kohdemaiden hallitukset ovatkin panostaneet sekä määräaikaiskertomusten että maakohtaisten johtopäätösten (ja tarvittaessa niiden käännösten) julkaisemiseen omilla internetsivuillaan. Tutkimuksessa kuitenkin suositellaan paperikopioiden levityksen jatkamista ja tehostamista etenkin ihmisoikeusasioita hoitavien tahojen keskuudessa (maakohtaiset johtopäätökset, ko. maata koskevat yksilövalituspäätökset, yleiset kannanotot) sekä suuren yleisön informoimista myös perinteisten tiedotusvälineiden avulla (maakohtaiset johtopäätökset, ko. maata koskevat yksilövalituspäätökset).

Parhaina hallinnollisina käytäntöinä (*best practices*) tutkimuksessa tuodaan esiin a) Australian liittovaltiohallituksen käytäntö tuoda (*table*) määräaikaiskertomukset, yksilövalitukset, yksilövalituksiin annetut lopulliset asiaratkaisut ja hallituksen niitä koskevat vastineet liittovaltion parlamenttiin ja b) Kanadassa käytössä oleva tapa pitää nk. ”post-mortem” –kokous määräaikaiskertomuksen käsittelyä seuraavan viikon aikana. Kokoukseen osallistuvat sekä kertomuksen valmisteluun osallistuneet liitovaltion viranomaiset että raportin käsittelyyn osallistuneen valtuuskunnan jäsenet ja siinä keskustellaan johtopäätösten sisällöstä ja niiden toimeenpanosta.

(2) Ministeriöiden välisen yhteistyö- ja valvontamekanismin luominen

Hallitusten tulee ottaa maakohtaiset johtopäätökset huomioon a) muokatessaan kansallista lainsäädäntöä ja käytäntöjä YK:n ihmisoikeussopimusten vaatimusten mukaisiksi (aktiivinen toimeenpano) ja b) laatiessaan määräaikaiskertomuksia YK:n sopimuselimille (valvontafunktio). Yksikään tutkimuksessa mukana olevista maista ei ole perustanut ministeriöiden välistä yhteistyöelinta tai –rakennetta, joka osallistuisi sekä kertomusten laadintaan että sopimuselinten johtopäätösten toimeenpanon tehokkaaseen seurantaan. Lähimmäksi pääsee toistaiseksi Tsekin tasavalta, jossa on vuodesta 1998 toiminut neuvoa-antava ja monesta alaosastosta koostuva elin, jonka mandaatti kattaa sekä

raportointifunktion että ihmisoikeussopimusten käytännön toimeenpanoon kuuluvat asiat (*Council for Human Rights of the Czech Government*). Ministeriöiden välinen koordinointi ja yhteistyö johtopäätösten toimeenpanossa on erittäin tärkeää, koska ihmisoikeussopimukset ovat rakenteeltaan monialaisia ja koskevat siten aina useamman ministeriön vastuualuetta. Pysyvän yhteistyö- ja valvontamekanismin luominen olisi paras tapa tehostaa tätä prosessia. Samassa yhteydessä tulisi kansalaisjärjestöille taata rooli mekanismin toiminnassa, jotta hallituksen ja kansalaisyhteiskunnan vuoropuhelu ja yhteistyö entisestään vahvistuisi.

Ministeriöiden välisen yhteistyöelimen tai –rakenteen luomista voi lähestyä monelta kantilta. Yksi mahdollisuus on kehitellä sitä jonkin tietyn ihmisoikeussopimuksen täytäntöönpanoon liittyen. Lasten oikeuksien komitea on tässä suhteessa ollut aktiivinen ja on osaltaan varmasti vaikuttanut siihen, että ensin Ruotsi ja sitten Suomi ovat askel askeleelta lähestyneet tätä tavoitetta. Toinen vaihtoehto (joka ei sulje pois ensimmäistä) on perustaa sellainen ministeriöiden välinen mekanismi, jonka toiminta kattaisi kaikki Suomea sitovat (YK:n) ihmisoikeussopimukset. Tässä yhteydessä on syytä mainita Ruotsissa äskettäin laadittu kansallinen toimintaohjelma (*En nationell handlingsplan för de mänskliga rättigheterna, A National Human Rights Action Plan*), joka mm. nostaa sopimusvalvontaelinten johtopäätösten kansallista profiilia korostamalla niiden toimeenpanoa osana hallituksen ihmisoikeusstrategiaa sekä perustaa ministeriöiden välisen työryhmän vahvistamaan ihmisoikeussopimusten toimeenpanon koordinointia ja valvontaa. Kyseinen toimintaohjelma ja työryhmä voisivat hyvinkin olla pysyvän ministeriöiden välisen yhteistyöelimen tai –rakenteen esiaste, etenkin jos tulevaisuudessa työryhmän mandaattiin liitettäisiin myös keskitetty raportointi. Tämän tyyppistä vaihtoehtoa kannattanee Suomenkin vakavasti harkita.

(3) Tulkintakannanotot lainsäädäntöprosessissa

Suomalainen lainsäädäntöprosessi nostettiin tutkimuksessa esille ns. parhaana käytäntönä (*best practice*), koska sekä hallituksen esityksissä että eduskunnan perustuslakivaliokunnan lausunnoissa on kansainvälisesti katsoen usein kiinnitetty huomiota YK:n ihmisoikeussopimuselinten kantoihin.

(4) Tulkintakannanotot tuomioistuimissa

Sopimuselinten tulkintakannanottoja tulee käyttää apuna juristien ja tuomarien koulutuksessa ja niiden saatavuutta etenkin tuomioistuimissa tulee parantaa jakelua tehostamalla.

1. INTRODUCTION

The United Nations (UN) human rights treaty system encompasses seven treaties: International Convention on the Elimination of All Forms of Racial Discrimination[2], International Covenant on Economic, Social and Cultural Rights[3], International Covenant on Civil and Political Rights[4], Convention on the Elimination of All Forms of Discrimination against Women[5], Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[6], Convention on the Rights of the Child[7] and, lastly, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families which has recently entered into force.[8] Each of these conventions is associated with an independent expert body (treaty body) that monitors the implementation by states parties of their treaty obligations.[9] These treaty bodies are: Committee on the Elimination of Racial Discrimination (CERD Committee), Committee on Economic, Social and Cultural Rights,[10] Human Rights Committee, Committee on the Elimination of Discrimination against Women (CEDAW Committee), Committee against Torture (CAT Committee), and Committee on the Rights of the Child (CRC Committee). Also the UN Migrant Workers Convention provides for a treaty body to be known as the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, but it has not yet started working. During the course of the exercise of their functions the six established Committees have produced different kinds of documents (findings, output) of which the most relevant for the purposes of this study are: concluding observations/comments, views (where applicable) and general comments/recommendations. Their main characteristics are as follows:

[2] 21 December 1965, 660 U.N.T.S. 195, SopS 37/1970 (entered into force 4 January 1969) [CERD].
[3] 16 December 1966, 993 U.N.T.S. 3, SopS 6/1976 (entered into force 3 January 1976) [ICESCR].
[4] 16 December 1966, 999 U.N.T.S. 171, SopS 7-8/1976 (entered into force 23 March 1976) [ICCPR].
[5] 18 December 1979, 1249 U.N.T.S. 13, SopS 67-68/1986 (entered into force 3 September 1981) [CEDAW].
[6] 10 December 1984, 1465 U.N.T.S. 85 SopS 59-60/1989 (entered into force 26 June 1987) [CAT].
[7] 20 November 1989, 1577 U.N.T.S. 3, SopS 59-60/1991 (entered into force 2 September 1990) [CRC].
[8] Adopted by United Nations General Assembly Res. 45/158 of 18 December 1990 (entered into force 1 July 2003) [MWC, Migrant Workers Convention].
[9] For more information on the treaty bodies' composition, mandate and functions, see the relevant provisions of the treaties themselves and works of experts, *e.g.* Philip Alston & James Crawford, eds., *The Future of the UN Human Rights Treaty System* (Cambridge: Cambridge University Press, 2000).
[10] In contrast to the other treaty bodies, Committee on Economic, Social and Cultural Rights is not created by the treaty itself (which provides for the Economic and Social Council (ECOSOC) to be the supervisory body), but by a resolution adopted by ECOSOC (Res. 1985/17 of 28 May 1985).

a) Concluding observations

CERD, ICESCR, ICCPR, CEDAW, CAT and CRC each place upon states parties a legally binding obligation to submit periodic reports (country reports) on how they have implemented the convention guarantees and on the progress made in the enjoyment of treaty rights and freedoms.[11] The main function of treaty bodies is to review these reports. At the end of the consideration of each country report the Committees adopt 'concluding observations' (or 'concluding comments' in the case of CEDAW) in which they evaluate the state party's compliance with the treaty and make suggestions and recommendations as to how it could improve its performance.[12] In other words, these observations 'show the relevance of the Convention's provisions to the situation in a particular country.'[13] They do not, however, contain any new legal obligations to the state party concerned to improve its human rights record, since the Committees have no power under the treaties to issue such orders.[14] To the extent concluding observations address the legal obligations of a state party, these obligations flow from the treaty provisions. One of the purposes of the reporting cycle is to establish (what is commonly called) a 'constructive dialogue' between each state party and the relevant treaty body, which should lead to progressive improvements in compliance.[15] Concluding observations play a crucial part in this process.

[11] See Article 9 of the CERD, Article 16 of the ICESCR, Article 40 of the ICCPR, Article 18 of the CEDAW, Article 19 of the CAT and Article 44 of the CRC. The length of the reporting period varies from one treaty to another.

[12] The formulation of concluding observations is a practice that started only some ten years ago. The Human Rights Committee issued its first concluding observations in 1992 and the other five Committees soon followed suit. See online: Office of the High Commissioner for Human Rights, Treaty Body Database <http://www.unhchr.ch/tbs/doc.nsf>. The adoption of concluding observations displaced the earlier practice of individual members making critical or constructive comments that may have been recorded in summaries of the dialogue between the state party and the respective Committee, published in the Committee's annual report. See *e.g.* Anne F. Bayefsky, *The UN Human Rights Treaty System: Universality at the Crossroads* (Ardsley, NY: Transnational Publishers, 2001) at 61.

[13] Committee on International Human Rights Law and Practice of the International Law Association, 'Interim Report on the Impact of the Work of the United Nations Human Rights Treaty Bodies on National Courts and Tribunals', online: The International Law Association <http://www.ila-hq.org/html/layout_committee.htm>, para. 15 [ILA Interim Report].

[14] See *e.g.* Henry J. Steiner, 'Individual Claims in a World of Massive Violations: What Role for the Human Rights Committee' in Alston & Crawford, *supra* note 9, 15 at 50-51. Steiner makes this observation in relation to the powers of the Human Rights Committee, but it applies to the other Committees as well.

[15] See *e.g.* James Crawford, 'The UN Human Rights Treaty System: A System in Crisis?' in Alston & Crawford, *supra* note 9, 1. The usual format of the concluding observations is to start with positive aspects in the implementation of the Convention in question and then proceed to the main part, that is, concerns and recommendations.

b) Views

In the case of CERD, ICCPR, CEDAW and CAT individuals may submit so-called individual communications to complain of violations of their rights under these treaties, provided that the state party has accepted the competence of the relevant treaty body to consider such complaints.[16] The task of the treaty body is to determine, first, whether a complaint is admissible and, if need be, whether or not the state party has violated its treaty obligations.[17] The treaty bodies' decisions on the merits are referred to as 'final views'[18] or 'suggestions and recommendations'[19] by the relevant instruments—a word choice that 'reflects the absence of a treaty provision on the legally binding nature' of such decisions.[20] It is clear, however, that the views have legal significance for the parties involved.[21] Furthermore, views contribute to an important body of developing jurisprudence that is relevant to other states as well.[22] In this respect, the complaints procedure established under the Optional Protocol to the ICCPR is generally considered the most authoritative. It has

[16] See Article 14 of the CERD, the Optional Protocol to the ICCPR (16 December 1966, 999 U.N.T.S. 302, SopS 7-8/1976, entered into force 23 March 1976), the Optional Protocol to the CEDAW (10 December 1999, GA Res. A/54/4 adopted on 6 October 1999, SopS 20-21/2001, entered into force 22 December 2000) and Article 22 of CAT. Also under the UN Migrant Workers Convention a state party may recognise 'the competence of the Committee [on the Protection of the Rights of All Migrant Workers and Members of Their Families] to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim that their individual rights as established by the present Convention have been violated by that State Party.' See Article 77 of the Convention. In addition to the possibility to submit individual communications to the committees, CERD, ICCPR and CAT provide each for an inter-state complaints procedure (Articles 11 to 13 of the CERD, Articles 41 to 43 of the ICCPR (opt in), and Article 21 of the CAT (opt in)). However, states parties to these conventions have never availed themselves of this possibility.

[17] 'Not every registered communication submitted under the Optional Protocol leads to the adoption of views. In cases declared inadmissible the final outcome is the Committee's decision on inadmissibility. A third possibility is that the Committee decides to discontinue a case, for instance, when it has lost contact with the author and there is no public interest in finalizing the procedures even in the absence of an input by the author.' Martin Scheinin, 'The Work of the Human Rights Committee under the International Covenant on Civil and Political Rights and its Optional Protocol' in Raija Hanski & Martin Scheinin, *Leading Cases of the Human Rights Committee* (Turku/Åbo: Institute for Human Rights, Åbo Akademi University, 2003) 1 at 23 ['Work'].

[18] Article 5, paragraph 4, of the ICCPR and Article 22, paragraph 7, of the CAT. In the Optional Protocol to the CEDAW, the expression 'views on the communication, together with its recommendations, if any' is employed (Article 7, paragraph 3).

[19] CERD Article 14, paragraph 7 (b).

[20] This quote is taken from Scheinin, *supra* note 17 at 21-22, where he elaborates on the legal effect of views of the Human Rights Committee. This statement is equally valid in respect of the CERD, CEDAW and CAT Committees.

[21] For instance, the Human Rights Committee has taken the position that the absence of a provision in the Optional Protocol describing its views as 'binding' cannot mean that a state may freely choose whether or not to comply with them. Views of the Committee carry a normative obligation for states parties to provide the stated remedies, an obligation that stems from provisions of the ICCPR and the Protocol. See Steiner, *supra* note 14 at 30. See also ILA Interim Report, *supra* note 13, para. 29. For more discussion about the legal nature and effect of views, see Chapter 3.3 below.

[22] See *e.g.* ILA Interim Report, *ibid.* para. 15.

been argued that the jurisprudence of the Human Rights Committee 'comes closest to being a truly universal human rights jurisprudence.'[23]

c) General comments

The third category, 'general comments',[24] was 'pioneered and developed'[25] by the treaty bodies themselves on the basis of their power to transmit to states such general comments as they may consider appropriate.[26] These documents build upon the experience of the treaty bodies in examining country reports and, where applicable, individual complaints.[27] Some general comments deal with matters concerning the implementation of the conventions,[28] but the majority can be characterised as interpretations of particular treaty provisions that provide detailed content to the generally-worded articles of the treaties and contribute to the development and understanding of international human rights standards.[29] General comments do not carry any formal authority to bind states parties, but the status of the Committees under the relevant treaties gives them a special claim for attention.[30]

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[23] Markus G. Schmidt, 'Does the United Nations Human Rights Programme Make a Difference', 91 Am.Soc'y Intl'l Law Proc. 461 at 463. The Human Rights Committee issued its first views in 1977, the CERD Committee in 1988, and the CAT Committee in 1993. See online: Office of the High Commissioner for Human Rights, Treaty Body Database <http://www.unhchr.ch/tbs/doc.nsf>. Due to its relatively recent entry into force, the individual complaints procedure associated with the CEDAW has not yet produced any jurisprudence. See *ibid.* and online: Division for the Advancement of Women, Convention on the Elimination of All Forms of Discrimination against Women <http://www.un.org/womenwatch/daw/cedaw/>.

[24] The term 'general comments' covers here the term 'general recommendations' employed by the CERD Committee and the CEDAW Committee.

[25] Crawford, *supra* note 15 at 3.

[26] An expression 'such general comments as it may consider appropriate' is used in Article 40, paragraph 4, of the ICCPR and in Article 19, paragraph 3, of the CAT. 'While the CAT Committee, in contrast to the Human Rights Committee (HRC) does not have an explicit power publicly to address *all* States parties with "general comments", it has been argued that such a competence would be implied in the task of monitoring and encouraging improved implementation of the Convention.' Roland Bank, 'Country-oriented Procedures under the Convention against Torture: Towards a New Dynamism' in Alston & Crawford, *supra* note 9, 145 at 153 [emphasis added]. Other conventions employ the expression 'suggestions and general recommendations' (see Article 9, paragraph 2, of the CERD; Article 21, paragraph 1, of the CEDAW; Article 45, paragraph d, of the CRC), except for the ICESCR that does not contain any provisions on this issue.

[27] See *e.g.* Martin Scheinin, 'Mechanisms and Procedures for Implementation' in Raija Hanski & Markku Suksi, eds., *An Introduction to the International Protection of Human Rights: A Textbook,* 2nd rev. ed. (Turku/Åbo: Institute for Human Rights, Åbo Akademi University, 2000) 429 at 448 ['Implementation']. The CERD Committee has issued 29 general recommendations since 1972, the Human Rights Committee has issued 30 general comments since 1981, the Committee on Economic, Social and Cultural Rights has issued 15 general comments since 1989, the CEDAW Committee has issued 24 general recommendations since 1986, the CAT Committee issued in 1996 its only general comment so far, and the Committee on the Rights of the Child has done it three times since 2001. See Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.6 (12 May 2003).

[28] For instance, some of them establish guidelines for the contents of periodic reports.

[29] See Scheinin, *supra* note 27 at 448, and ILA Interim Report, *supra* note 13 at 3 (para. 15).

[30] See Steiner, *supra* note 14 at 52. Steiner's article deals with the Human Rights Committee, but his observations on this point can be applied to the other committees' general comments as well.

It is the national implementation of these three types of findings that will be dealt with in the following chapters, not the national implementation of the six principal UN human rights treaties in general. The whole question of national implementation is part of a larger issue of the domestic impact of human rights treaties that has in recent years gained much academic attention.[31] In this context the specific impact of treaty body output has been of subsidiary interest.[32] There are differing opinions as to the impact and effectiveness of the UN human rights treaty system as a whole, but it has become clear that even when the treaties themselves are reasonably well-known in states parties and have made a difference domestically, the same cannot be said of the treaty bodies and their findings.[33] One may here quote Scott Leckie who has noted that the treaty bodies can only be expected to have 'a limited impact upon the actual enjoyment of human rights' in countries over which they have 'occasional supervisory jurisdiction.'[34] This should not, however, be taken as a denial of their relevance: Leckie continues that the treaty bodies can still have an effect since they provide 'an impetus for the fuller realisation of domestic human rights objectives.'[35] In particular, as noted by Professor Martin Scheinin, 'the existence and operation of an international court or other monitoring body is essential if the provisions of the human rights treaty in question are to acquire relevance, legal validity and concrete application in the domestic sphere.'[36] The work of the treaty bodies 'has become increasingly important in the interpretation and application of the human rights treaties by the committees themselves, governments, courts and tribunals, lawyers, non-governmental organizations, and others.'[37] Concluding observations, views and general comments are means by which the treaty bodies

[31] See especially Christof Heyns & Frans Viljoen, *The Impact of the United Nations Human Rights Treaties on the Domestic Level* (The Hague: Kluwer Law International, 2002), Oona A. Hathaway, 'Do Human Rights Treaties Make a Difference', 111 Yale L.J. 1935, and several works of Anne F. Bayefsky.
[32] See *e.g.* Iwasawa who opines that insufficient attention has been paid to the impact of the acts of monitoring bodies outside the framework of the European system for the protection of human rights. Yuji Iwasawa, 'The Domestic Impact of International Human Rights Standards: The Japanese Experience' in Alston & Crawford, *supra* note 9, 245 at 245-246.
[33] See findings in Heyns & Viljoen, *supra* note 31, and ILA Interim Report, *supra* note 13 at 3 (para. 15).
[34] Scott Leckie, 'The Committee on Economic, Social and Cultural Rights: Catalyst for Change in a System Needing Reform' in Alston & Crawford, *supra* note 9, 129 at 130. (Leckie refers to the Committee on Economic, Social and Cultural Rights only, but his statement can be applied other treaty bodies as well.) Compare Iwasawa who writes that in addition to the human rights treaties themselves, 'judgments of courts of human rights, or more informal acts of monitoring bodies, such as decisions, reports, general comments, comments or views' have had 'a significant impact' on the domestic law of states.' Iwasawa, *supra* note 32 at 245.
[35] Leckie, *ibid.*
[36] Martin Scheinin, 'Domestic Implementation of International Human Rights Treaties: Nordic and Baltic Experiences' in Alston & Crawford, *supra* note 9, 229 at 240 ['Domestic Implementation'].
[37] ILA Interim Report, *supra* note 13 at 3 (para. 13).

can seek to fulfill their basic objective: 'to encourage and facilitate national implementation of and compliance with international human rights standards.'[38]

These remarks bring us to the second delimitation of the scope of this study. The focus will be on the national implementation of UN treaty body findings under the *existing* treaty body regime. This means that the positive effect on national implementation of a number of reform proposals will not be discussed.[39] The current operation of the treaty bodies is certainly not perfect, but it would be misleading to attribute problems and deficiencies in the national implementation of treaty body findings primarily to the functioning of the international system. This study takes as its premise the view that implementation of and compliance with international human rights treaties are ultimately national issues. This view is clearly based on the treaties themselves, all of which stress the need to take domestic measures of implementation.[40] Increasing the effectiveness of the UN treaty body system and the quality of treaty body output is obviously an important goal, but, quoting Anne

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[38] Anne Gallagher, 'Making Human Rights Treaty Obligations a Reality: Working with New Actors and Partners' in Alston & Crawford, *supra* note 9, 201 at 227.

[39] Already during several years one specific reform discussion within the UN has concerned the monitoring mechanisms established under the six major UN human rights conventions. How do these mechanisms function and how should they be developed? The discussion has been conducted both in academia and between governments, and the treaty bodies themselves have contributed to the debate, both in the form of developing their own working methods within the current normative framework and by participating in the discussion on long-term reforms.

[40] Article 2, paragraph 1, of the CERD provides: 'States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races…' Article 2, paragraph 1, of the CEDAW is very similar to that of the CERD ('States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women…'), but the CEDAW also contains Articles 3 and 24 that further stress the need for domestic measures. Article 3 requires that 'States Parties shall take in all fields, in particular the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.' Under Article 24 'States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.'

As to the two Covenants, Article 2, paragraph 2, of the ICCPR states explicitly: 'Where not already provided for by existing legislative or other measures each State Party … undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.' Under Article 2, paragraph 1, of the ICESCR each States Party 'undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.'

Article 4 of the CRC reads: 'States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.'

Finally, Article 2, paragraph 1, of the CAT provides: 'Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.'

Gallagher, '[a]t the end of the day, individual rights and freedoms will be protected or violated because of what exists or what is lacking within a given state or society, and not because of what is said or done within the United Nations *Palais des Nations* in Geneva. The ability of a state to discharge its responsibilities in the area of human rights effectively will depend predominantly on the strength of its domestic institutions.'[41] Treaty body findings are tools that States should use and implement in order to improve their compliance with international human rights standards (even if they are not, as such, legally binding). In the following chapters the focus will be on the national implementation of UN treaty body findings by domestic institutions in Finland and five other countries that are, in alphabetical order, Australia, Canada, the Czech Republic, Spain and Sweden.

What, then, counts as 'national implementation' and why choose Australia, Canada, the Czech Republic, Spain and Sweden to accompany Finland?

First, for the purposes of this study 'national implementation' can be said to consist of:

(i) translation and dissemination of treaty body output as a precondition for its effective use at the national level;
(ii) establishment of a national mechanism for the implementation of treaty body findings and for the follow-up of progress in this respect;
(iii) use of treaty body output in the legislative process; and
(iv) use and implementation by the judiciary of treaty body findings.

One can assume that views and general comments, being the Committees' primary vehicles of legal analysis of their respective conventions, will be of greater interest to national courts and tribunals than concluding observations which are of a more policy-oriented nature.[42] Scheinin has characterised treaty body jurisprudence as 'a specific form of institutionalised

[41] Gallagher, *supra* note 38 at 201. See also Heyns & Viljoen, *supra* note 31 at 6, 40.
[42] According to the ILA Interim Report, '[n]ational courts and tribunals have drawn predominantly on two sources of the practice of the treaty bodies: the decisions and views of the treaty bodies under individual complaints procedures (in particular those of the Human Rights Committee, which produced the largest body of decisions and views), and the *General comments* or *General recommendations* of the committees. In recent years, though, greater use has been made of other types of output produced by or for the treaty bodies.' *Ibid.* para. 16 [emphasis original]. As to the nature of concluding observations, Henry Steiner has observed that '[o]nly rarely do the recommendations in the concluding observations [of the Human Rights Committee]—and then principally for states with strong records of compliance—raise difficult issues for interpretation or deal with questions of conflicts among rights. That is, the Committee cannot be said to be expounding the ICCPR in significant ways through its concluding observations. Moreover, it relies on consensus in drafting the observations, a process promoting compromise and more guarded criticism.' Steiner, *supra* note 21 at 51. These remarks describe accurately the other Committees' concluding observations as well.

practice of interpretation that is capable of convincing the domestic judge that human rights law is law,'[43] but argues also that concluding observations 'can be sources of inspiration for a creative judge at the national level.'[44] Obviously, the judiciary is not alone responsible for the national implementation of treaty body findings. The executive and legislative branches of government have both an essential role to play in relation to all three categories of findings and, in particular, concluding observations.

Second, the starting point for the selection of countries was that they should be similar to Finland in the sense of being developed and democratic nations that have participated in the UN human rights treaty system for a lengthy period of time. This will guarantee that the comparison and analysis is undertaken among countries that have more or less comparable possibilities (financial and human resources) to implement various treaty body findings domestically. Whether or not such implementation has actually taken place and how is precisely the subject matter of this study. The focus on wealthy nations also has the advantage of diminishing any need to consider the impact of the deficiencies of the UN treaty body system on the success of national implementation, for they are not in need of similar support from the international system as the developing ones.[45] Even when developing, non-democratic or conflict-ridden countries were excluded, there remained a number of states that fulfilled the requirements set out above. Further criteria were thus needed to narrow down the number of candidates to five which is a level appropriate for the scope of this research project. Therefore, only such countries were eligible for a closer analysis that had been subject to all three kinds of treaty body findings described above: concluding observations, views and general comments. Since all states parties to the six UN human rights treaties are automatically subject to both general comments and (provided that they have submitted any periodical reports) concluding observations, the acceptance of complaints procedures and the existence of actual treaty body jurisprudence in relation to a specific country became essential for the purposes of this study, in particular since Finland has accepted all four complaints procedures, has been on the receiving end of the Committees' views and has had to consider how to react to and implement them.

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[43] Scheinin, 'Domestic Implementation', *supra* note 36 at 241.
[44] *Ibid.* at 233.
[45] The performance of and the problems experienced by developing countries in coping with the requirements imposed by the UN human rights treaty body regime were discussed in a research report written by the present author together with Professor Martin Scheinin to the Ministry for Foreign Affairs. See Heli Niemi & Martin Scheinin, *Reform of the United Nations Human Rights Treaty Body System Seen from the Developing Country Perspective* (2002), online: Institute for Human Rights, Åbo Akademi <http://www.abo.fi/instut/imr/>.

In light of statistical surveys of individual complaints dealt with by the Human Rights Committee under the Optional Protocol to the ICCPR,[46] by the Committee against Torture under the procedure governed by Article 22 of the CAT,[47] and by the Committee on the Elimination of Racial Discrimination under the procedure governed by Article 14 of the CERD,[48] one can conclude that Australia, Canada, the Czech Republic, Spain and Sweden are good candidates, although not the only possible ones. In short, Australia, Canada, the Czech Republic, Finland, Spain and Sweden have all ratified the six principal UN human rights conventions,[49] the four European states have accepted all four complaints procedures and Australia and Canada are parties to three of them.[50]

TABLE 1 – Acceptance and entry into force of treaties (month, year)[51]

	CERD	**ICESCR**	**ICCPR**	**CEDAW**	**CAT**	**CRC**
Australia	Oct. 1975	March 1976	Nov. 1980	Aug. 1983	Sept. 1989	Jan. 1991
Canada	Nov. 1970	Aug. 1976	Aug. 1976	Jan. 1982	July 1987	Jan. 1992
Czech Republic[52]	Jan. 1993	Jan. 1993	Jan. 1993	Jan. 1993	Jan. 1993	Jan. 1993

[46] Online: Office of the High Commissioner for Human Rights, Treaty Body Database <http://www.unhchr.ch/html/menu2//8/stat2.htm>.
[47] *Ibid.* at <http://www.unhchr.ch/html/menu2//8/stat3.htm>.
[48] *Ibid.* at <http://www.unhchr.ch/html/menu2//8/stat4.htm>.
[49] See Table 1 below.
[50] See Table 2 below. Canada remains outside the CERD mechanism and Australia has not accepted the Optional Protocol to the CEDAW. It may be noted that none of the six states has opted out of the inquiry procedure established by Article 20 of the CAT (the possibility to opt out upon signature, ratification or accession is provided by Article 28, paragraph 1, of the CAT). Nevertheless, the procedure is not relevant in the context of this study as it has never been used in relation to Australia, Canada, the Czech Republic, Finland, Spain or Sweden. The procedure can be initiated if the Committee against Torture receives 'well-founded' information that torture is systematically practiced in a state party. Once a state has accepted the procedure it can no longer opt out of it. For more information, see Bank, *supra* note 26 at 166-172. It may be mentioned that the Optional Protocol to the CEDAW also establishes an optional inquiry procedure under which the CEDAW Committee can take action if it receives reliable information that there are 'grave or systematic violations' of the Convention (see Articles 8 and 10 of the Protocol). The procedure has not yet been resorted to.
[51] Regarding Australia, Canada, the Czech Republic, Finland and Spain, see Heyns & Viljoen, *supra* note 31 at 50, 117, 269, 576-577 and online: United Nations Human Rights Treaties <http://www.bayefsky.com/bystate.php>. In respect of the ratification of treaties by Sweden, see online: Mänskliga rättigheter (Human Rights Website of the Swedish Government) <http://www.manskligarattigheter.gov.se> and <http://www.bayefsky.com/bystate.php>.
[52] On 19 January 1993 the Czech Republic became a member of the UN and succeeded to all human rights instruments binding on the former Czechoslovak State. See Core document forming part of the reports of States Parties – Czech Republic, UN Doc. HRI/CORE/1/Add.71/Rev.2 (2003), para. 3. Czechoslovakia had ratified CERD in December 1966, ICESCR and ICCPR in December 1975, CEDAW in February 1982, and CAT in July 1988, and the Czech and Slovak Federal Republic became party to the CRC in February 1991.

Finland	Aug. 1970	Jan. 1976	March 1976	Oct. 1986	Sept. 1989	July 1991
Spain	Jan. 1969	July 1977	July 1977	Feb. 1984	Nov. 1987	Jan. 1991
Sweden	Jan. 1972	Jan. 1976	March 1976	Sept. 1981	June 1987	Sept. 1990

TABLE 2 – Acceptance and entry into force of complaints procedures (month, year)[53]

	CERD Art. 14	**ICCPR OPI**	**CEDAW-OP**	**CAT Art. 22**
Australia	Jan. 1993	Dec. 1991	—	Jan. 1993
Canada	—	Aug. 1976	Jan. 2003	Nov. 1987
Czech Republic[54]	Oct. 2000	Jan./Feb. 1993	May 2001	Sept. 1996
Finland	Nov. 1994	March 1976	March 2001	Sept. 1989
Spain	Jan. 1998	April 1985	Oct. 2001	Nov. 1987
Sweden	Jan. 1972	March 1976	July 2003	June 1987

Of the five countries accompanying Finland, Sweden is a natural choice given the considerable similarities between the two countries that make the comparison particularly interesting. On the other hand, Australia, Canada, the Czech Republic and Spain bring legal and political variation to the group. The two Northern European states are thus accompanied by one Central European country, one from Southern Europe and two Commonwealth States from overseas. Importantly, Australia, Canada, the Czech Republic, Finland and Spain are included in a study led by Professor Christof Heyns on the domestic impact of the UN

See online: United Nations Human Rights Treaties <http://www.bayefsky.com/docs.php/area/ratif/state/46>. In a letter dated 16 February 1993, the Czech Republic notified the UN Secretary-General of its intention to be bound by the international multilateral treaties to which the Czech and Slovak Federal Republic was a party on the day of its dissolution (1 January 1993). See UN Doc. HRI/CORE/1/Add.71/Rev.2, *ibid.* in para. 3.

[53] For Article 14 of the CERD, see Office of the High Commissioner for Human Rights, Treaty <http://www.unhchr.ch/html/menu2/8/stat4.htm>, and for Article 22 of the CAT, see *ibid.* <http://www.unhchr.ch/html/menu2/8/stat3.htm>. For the Optional Protocol to the ICCPR and the Optional Protocol to the CEDAW, see the sources listed in note 51.

[54] Czechoslovakia had ratified the Optional Protocol to the ICCPR in March 1991. See online: United Nations Human Rights Treaties <http://www.bayefsky.com/docs.php/area/ratif/state/46>.

human rights treaties that contains first-hand and top-quality material on, *inter alia,* national implementation of UN treaty body findings in a number of countries, making it an indispensable source for this comparative project.[55] Another useful source is the 'Interim Report on the Impact of the Work of the United Nations Human Rights Treaty Bodies on National Courts and Tribunals' prepared the Committee on International Human Rights Law and Practice of the International Law Association.[56] It contains information on the use by national courts and tribunals of UN treaty body output in a number of countries, including Australia, Canada and Finland. Furthermore, a meeting on the impact of the work of UN human rights treaty bodies on national courts and tribunals held in Turku on 26-27 September 2003[57] provided the present author with additional material and information relating to the situation in Australia, the Czech Republic, Finland and Spain.

The aim of this study is to further operationalise these projects by looking more closely at the situation in the six selected countries, comparing them with each other, and by examining what kind of policy conclusions can be drawn from the findings. The ultimate goal is to evaluate the current Finnish situation regarding the national implementation of treaty body output in light of the information gathered from the other five countries (and other relevant considerations) and to make suggestions and recommendations for improvement. In this context it is appropriate to emphasise that this paper will not be an

[55] See Heyns & Viljoen, *supra* note 31. Institute for Human Rights at the Åbo Akademi University participated in Professor Heyns's project, being responsible for the study on Finland. The study covers twelve countries: Australia, Brazil, Canada, Colombia, the Czech Republic, Egypt, Estonia, Finland, India, Iran, Jamaica, Japan, Mexico, Philippines, Romania, Russia, Senegal, South Africa, Spain and Zambia. This study was carried out in collaboration with carefully selected country correspondents who were responsible for the collection of information by means of interviews with relevant people (governmental and non-governmental players in the field of human rights) and a review of the available documentation (UN documentation, such as country reports and concluding observations on the country in question, official documents, newspaper articles, court decisions, academic writings, NGO publications, etc.). This 'Heyns study' is one of the reports produced to the immediate use of the UN in the context of the ongoing reform discussions (see *supra* note 39).

[56] *Supra* note 13. The report is based on a draft prepared by one of the Co-Rapporteurs of the Committee, Professor Andrew Byrnes, as well as on information and material provided by members of the Committee and others. It was presented in the ILA Conference in New Delhi in April 2002. The principal purposes of the ILA Interim Report are 'to document the extent to which the work of the treaty bodies has begun to have impact on the work of national courts and tribunals, to identify the factors that contribute to the use by courts and tribunals of this material, and to encourage further utilisation of the international sources by courts, tribunals and advocates by disseminating information about they are already being used.' *Ibid*. at 1. The Committee also expresses a hope that the study will stimulate further documentation of the use made by national courts and tribunals of international material (*ibid.* at 2). The ILA Committee intends to develop this interim report into a more comprehensive study for the 2004 Conference of the ILA in which it will document the impact of the work of the treaty bodies in other contexts as well such as the work of the legislature and other domestic institutions (*ibid*. at 2, 27-28).

[57] The meeting was organised by the ILA Committee on International Human Rights Law and Practice and the Institute for Human Rights at Åbo Akademi University and financed by the Finnish Ministry for Foreign Affairs.

exhaustive study of the many instances in which national courts and other domestic institutions have implemented treaty body findings or otherwise referred to or drawn on the work of treaty bodies. It will focus on institutional issues and mechanisms, that is, 'the bigger picture'.

2. Basic Facts on the Selected Countries

2.1 Institutional Framework

There are several differences between the six selected countries that become relevant when comparing the national implementation of UN treaty body findings. On one hand, Finland, Sweden and the Czech Republic have in common a unitary structure and a civil law system.[58] Spain is a civil law country as well, but has a more decentralised structure.[59] Moreover, following the approaching entry of the Czech Republic into the European Union in May 2004,[60] all four countries will be subject to the EU's supranational legal order. On the other hand, Australia and Canada are federal states with an English common law tradition (with the exception of the province of Quebec in Canada).[61] This calls above all for a consideration of factors that relate to different structures of government (unitary/federal state) and, possibly, different legal systems (civil/common law system).[62]

One can start with the assumption that national implementation of treaty body findings is more complicated in federal states due to the division, or sharing, of powers between different levels of government. This is a circumstance that has been of concern to the UN treaty bodies.[63] Canada is a good example because the federal and provincial governments

[58] Of course, their political and administrative structures or legal systems are not identical. For instance, Finland's legal system is strongly influenced by Swedish, German and Roman law and, in the field of administrative law, by French doctrines (Heyns & Viljoen, *supra* note 31 at 267) whereas the legal tradition of the Czech Republic is based on Austro-Hungarian codes (*ibid*. at 199).

[59] Article 2 of the Spanish Constitution of 1978 recognises and guarantees the right to autonomy of the nationalities and regions which make up most of the country. There are 17 autonomous communities. See *ibid.* at 574. In Finland there is only one autonomous region: the Swedish-speaking Åland Islands.

[60] Spain joined the EU in 1986 and Finland and Sweden in 1995. It may be noted that the communist past of the Czech Republic, which once set it apart from Western Europe also in the field of human rights law and policy, no longer is a factor that would make a comparison meaningless.

[61] Quebec follows the civil law tradition.

[62] It may be noted that the EU membership has brought influences of the common law tradition to bear on civil law countries. For instance, the importance of judicial case law is growing. See *e.g.* Heyns & Viljoen, *supra* note 31 at 267 (section on Finland).

[63] See *e.g.* Concluding Observations of the Committee on the Elimination of Racial Discrimination on Canada, UN Doc. A/49/18,paras.298-331, para. 323, and UN Doc. A/57/18,paras.315-343, para. 326; and Concluding

each have exclusive jurisdiction and responsibility over different legal matters. It follows that if both federal and provincial levels of government have jurisdiction over the subject matter covered by a human rights treaty, jurisdiction is divided between the federal and provincial governments.[64] It is not impossible that a province might obstruct the process of treaty implementation within areas under its competence, if it disagrees with the contents of the treaty or on how it is to be interpreted. Nevertheless, this does not change the fact that it is the state as a whole that is responsible for human rights violations resulting from any discrepancy between international and provincial standards. On the other hand, a unitary state can also have a decentralised structure that complicates the implementation process. For instance, the CRC Committee has expressed concern about the effects of the delegation of powers from the central level to local communities (e.g. municipal self-government in Finland) on the equal enjoyment of rights guaranteed in the CRC.[65]

Yet another relevant factor for the national implementation of treaty body findings is the status of international law and, in particular, the status of the six principal UN human rights treaties in the domestic legal order of Australia, Canada, the Czech Republic, Finland, Spain and Sweden. Are UN human rights treaties part of their domestic law? This question matters, for only if the treaties have such a status can individuals directly invoke their provisions before domestic courts and other authorities who are expected to apply the treaties 'as an integral part of the law of the land.'[66] This may well have an impact on the national implementation of treaty body output: when courts and other national authorities are expected to apply the treaties, it may lead them to take the work of the treaty bodies more seriously. It is relevant to point out, however, that the UN human rights treaties themselves do not require that their provisions be *formally* made part of domestic law. For instance, the Human Rights Committee has recognised that Article 2 of the ICCPR 'generally leaves it to the States parties concerned to choose their method of implementation

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Observations of the Committee on Economic, Social and Cultural Rights on Canada, UN Doc. E/C.12/1/Add.31 (1998), para. 12.

[64] See Heyns & Viljoen, *supra* note 31 at 116. It may be noted that in both Australia and Canada ratification of treaties is a federal prerogative. In practice, however, the federal government consults with the states/provinces before the ratification takes place and informs the parliament of treaties that have been signed and are pending ratification (*ibid*. at 50, 117). The practice of the Canadian government is to obtain the agreement from the provinces with respect to the ratification of treaties that involve matters within provincial jurisdiction (*ibid.* at 116, 117).

[65] For the comments of the CRC Committee on Finland, see *e.g.* UN Doc. CRC/C/15/Add.132 (2000).

[66] Scheinin, 'Work', *supra* note 17 at 23.

in their territories.'[67] Scheinin specifies that even if the Covenant 'does not mandate the formal incorporation of its *provisions* into the national legal system, it does include an obligation for each State Party "to respect and ensure" the *rights* recognized in the Covenant … [and] requires that any person whose rights under the Covenant have been violated has an effective and enforceable *remedy* under domestic law.'[68]

As things stand, the six UN human rights treaties are officially part of domestic law in the Czech Republic, Finland and Spain. In the Czech Republic and Spain this is due to constitutional provisions stipulating that international treaties become automatically part of the law of the land following the ratification or accession and entry into force (monism).[69] Moreover, the Czech Constitution provides that international treaties shall have *precedence* over domestic law, that is, should an international treaty conflict with domestic law, the treaty prevails.[70] In Finland the UN human rights treaties have been specifically incorporated into domestic law by an Act of Parliament, a procedure required by the Finnish Constitution.[71] A system where ratification of a treaty must be followed by a specific act of incorporation[72] before the treaty becomes part of domestic law is categorised under dualism, but it has been suggested that a more appropriate term in the Finnish context might be 'de facto monism'.[73] Such an expression would highlight the difference between Finland and the three other dualistic countries selected for this study, which have decided *not* to incorporate the UN human rights treaties as such into their domestic law. This is not to say that treaty

[67] General Comment No. 3 (13) of the Human Rights Committee on the implementation at the national level (Article 2), adopted on 29 July 1981, para. 1. A new draft general comment on Article 2 is available on the OHCHR website, but it will not differ from its predecessor on this point. See Draft General Comment on Article 2: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.3 (5 May 2003).

[68] Scheinin, 'Work', *supra* note 17 at 24 [emphasis original]. See Article 2, paragraphs 1 and 3 of the ICCPR. See also General Comment No. 9 (19) of the Committee on Economic, Social and Cultural Rights on the domestic application of the Covenant (1998), para. 5.

[69] See Heyns & Viljoen, *supra* note 31 at 8, 200, 576. The approval of the legislature is required for the ratification of human rights treaties in both countries (*ibid.* at 8, 577, 201).

[70] UN Doc. HRI/CORE/1/Add.71/Rev.2, *supra* note 52 in para. 40.

[71] Section 95 of the Constitution of Finland of 11 June 1999 (731/1999). This incorporation has been carried out through a treaty-specific Act of Parliament (ICCPR, CEDAW, CAT; CRC) or a presidential decree (CERD and ICESCR), the latter practice being discontinued. See Heyns & Viljoen, *ibid.* at 268.

[72] With a specific act of incorporation I refer to 'the enactment of treaty-specific legislation giving the provisions of a named treaty the status of domestic law.' Scheinin, 'Domestic Implementation', *supra* note 36 at 230, note 5.

[73] Martin Scheinin, 'Incorporation and Implementation of Human Rights in Finland' in Martin Scheinin, ed., *International Human Rights Norms in the Nordic and Baltic Countries* (The Hague: Martinus Nijhoff Publishers, 1996) 257 at 258 ['Incorporation']. According to Scheinin, the expression 'de facto monism' is originally used by Karapuu and Rosas (Heikki Karapuu & Allan Rosas, 'Economic, Social and Cultural Rights in Finland' in Allan Rosas, ed., *International Human Rights Norms in Domestic Law; Finnish and Polish Perspectives* (Helsinki: Finnish Lawyers' Publishing Company, 1990) at 201).

rights would be absent in domestic law.[74] The UN Committees have been concerned that due to the lack of domestic legal status treaty provisions have not been given full effect, in particular because they cannot be invoked before the domestic courts, and have encouraged formal adoption or incorporation of their respective treaties in national law.[75] It should be noted, however, that monism or formal incorporation is not a guarantee for full effect of international treaties in the domestic legal order either. This appears to particularly true in respect of the ICESCR.[76]

Finally, a short overview of how the implementation of human rights treaties is arranged in these six countries will provide a useful background for the more specific question of the implementation of treaty body output. The role of the legislature in enacting and amending legislation and the role of national courts and tribunals as the main control structure for the protection of human rights do not require much clarification, but what about the executive? Which governmental bodies carry the main responsibility for the implementation of UN human rights treaties at the national level?

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[74] In Australia there exists federal legislation that is 'substantially based' on the CERD (the Racial Discrimination Act of 1975) and the CEDAW (the federal Sex Discrimination Act of 1984). See *e.g.* Heyns & Viljoen, *supra* note 31 at 49. In Canada the comprehensive and justiciable Canadian Charter of Rights and Freedoms (1982), which is entrenched in the Constitution, is modelled after the provisions of the ICCPR (see *ibid.* at 116, 123). As to Sweden: 'Treaties are usually transformed into Swedish law by the enactment of equivalent provisions in an existing or a new Swedish statute. In rare cases, a treaty can be incorporated by means of a general law, stating that the treaty shall apply in Sweden as Swedish law. One example is the European Convention for the Protection of Human Rights and Fundamental Freedoms which entered into force as Swedish law in 1995.' Core document forming part of the reports of States Parties – Sweden, UN Doc. HRI/CORE/1/Add.4/Rev.1 (2002), para. 77. These examples on the transformation of treaties in Australia, Canada and Sweden (and exceptional incorporation in the last-mentioned country) are not exhaustive.

[75] See generally General Comment No. 9 (19) of the Committee on Economic, Social and Cultural Rights on the domestic application of the Covenant (1998), para. 8. In respect of Australia, Canada and Sweden see *e.g.* Concluding Observations of the Committee on Economic, Social and Cultural Rights on Australia, UN Doc. E/C.12/1/Add.50 (2000) and on Sweden, UN Doc. E/C.12/1/Add.70 (2001); Concluding Observations of the Committee on the Rights of the Child on Sweden, UN Doc. CRC/C/15/Add.2 (1993), and on Canada, UN Doc. CRC/C/15/Add.37 (1995), para. 23; Concluding Observations of the Human Rights Committee on Australia, UN Doc. A755/40,paras.498-528, and on Sweden, UN Doc. CCPR/C/79/Add.58 (1995), UN Doc. CCPR/CO/74/SWE (2002); and Concluding Observations of the Committee against Torture on Sweden, UN Doc. CAT/C/CR/28/6 (6 June 2002).

[76] For instance, the Committee on Economic, Social and Cultural Rights has regretted that the ICESCR has not been given full effect in the Czech legal order and that most of the rights contained in the Covenant are not justiciable and has urged the Czech Republic to take appropriate steps to remedy the situation. See Concluding Observations of the Committee on Economic, Social and Cultural Rights on the Czech Republic, UN Doc. E/C.12/1/Add.76 (2002), paras. 8, 25. As to Finland, the Committee has been concerned of the fact that although the provisions of the Covenant may be directly invoked before the courts or referred to by the courts, there was no data suggesting that this had ever happened. Concluding Observations of the Committee on Economic Social and Cultural Rights on Finland, UN Doc. E/C.12/1/Add.8 (1996), para. 10, and UN Doc. E/C.12/1/Add.52 (2000), para. 12.

In *Finland* the institutional arrangement for the implementation of human rights treaties is of 'a decentralised character'.[77] Quoting from the Heyns study:

> The Foreign Ministry has a certain general responsibility, but governmental quality control of new legislation is exercised by the Ministry of Justice. The Chancellor of Justice supervises the legality of all government (cabinet) decisions, in addition to receiving complaints from individuals—the latter function being similar to that of the Parliamentary Ombudsman. Both the chancellor and the ombudsman have a constitutional duty to pay specific attention to the observance of constitutional rights and international human rights. During parliamentary proceedings, the Standing Committee on Constitutional Law has a constitutional duty to give authoritative opinions on both on the constitutionality and on the human rights conformity of government bills and other matters submitted to it.[78]

In addition to the Parliamentary Ombudsman, there are a few other ombudsmen that exercise a control function in areas covered by the UN human rights treaties.[79]

In *Sweden* the institutional arrangement for the implementation of human rights treaties seems to have a decentralised character as well, but the situation is not identical to that in Finland. It appears that the Ministry for Foreign Affairs and the Ministry of Justice both have a certain general responsibility.[80] For instance, all draft bills containing new legislation are sent by the responsible ministry to the Ministry for Foreign Affairs that reviews their conformity with the European Convention on Human Rights, the ICCPR and other relevant human rights treaties.[81] The Ministry of Justice, on the other hand, is responsible for co-ordination and development of measures that would improve the implementation of human rights within national administration.[82] Moreover, various ombudsman institutions exercise an important control function in addition to the courts.[83] In contrast to Finland, there exists no authority 'vested with the power to take a stand in matters solely from the viewpoint of

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[77] Heyns & Viljoen, *supra* note 31 at 268.
[78] *Ibid.* See sections 108, 109 and 74 of the Constitution of Finland.
[79] The Equality Ombudsman, the Minority Ombudsman and the Data Protection Ombudsman.
[80] See 'En nationell handlingsplan for de mänskliga rättigheterna' (Skr. 2001/02:83) and Human Rights in Sweden – A Baseline Study (Ministry Publication Series 2001:10). The latter publication is an English summary of the study 'Mänskliga rättigheter i Sverige - en kartläggning' (Ds 2001:10) which was the first step towards establishing a National Human Rights Action Plan (i.e. Skr. 2001/02:83 mentioned above).
[81] UN Doc. HRI/CORE/1/Add.4/Rev.1, *supra* note 74, para. 80.
[82] See Skr. 2002/02:83, *supra* note 80, Annex 5, and online: Ministry of Justice (*Justitiedepartementet*) <http://justitie.regeringen.se/justitiesfragor/medborgarinflytande/mr/index.htm>.
[83] These ombudsmen are: the Equal Opportunities Ombudsman, the Ethnic Discrimination Ombudsman, the Ombudsman against Discrimination because of Sexual Orientation, the Disability Ombudsman, the Children's Ombudsman and the Parliamentary Ombudsman. The Parliamentary Ombudsman in answerable to the Swedish parliament and the other five to the government. See Human Rights in Sweden—A Baseline Study, *supra* note 80 at 7, 14, and Skr. 2001/02:83, *supra* note 80 at 27, 31-33. See also UN Doc. HRI/CORE/1/Add.4/Rev.1, *supra* note 74, paras. 84-87.

human rights as expressed in [these] … conventions.'[84] The reason for this is the fact that the six UN human rights treaties are not, as such, part of the national legal system.[85]

There are no clear institutional arrangements for the implementation of human rights treaties in *Spain*, despite the existence of state institutions that deal with human rights.[86] Such institutions at the national level include the Defender of the People (Ombudsman) who is 'a high commissioner of the Parliament appointed to defend the rights of individuals and authorised to supervise the activities of the administration and report on them to parliament,'[87] the Human Rights Office in the Ministry for Foreign Affairs,[88] and the Institute for Women's Issues which is attached to the Ministry of Labour and Social Affairs.[89] In this respect the situation resembles that in Finland and Sweden which also have created, within ministries, units that are specialised in issues relevant from the point of view of implementation of UN human rights treaties. For example, units that correspond to the Institute for Women's Issues are the Gender Equality Unit in the Ministry of Social Affairs and Health in Finland[90] and the Equal Opportunities Unit in Sweden which reports to the Minister of Gender Equality Affairs.[91]

In the *Czech Republic* the Council for Human Rights of the Czech Government (the Council for Human Rights) is responsible for the 'practical implementation' of various human rights

[84] UN Doc. HRI/CORE/1/Add.4/Rev.1, *ibid.*, para. 37.
[85] *Ibid.*
[86] See Heyns & Viljoen, *supra* note 31 at 576.
[87] *Ibid.* at 575. Similar institutions exist in the autonomous communities and the Defender of the People co-ordinates his/her activities with them (*ibid.*).
[88] The functions of the Office are to 'advise the Minister of Foreign Affairs in all matters related to human rights; to draft reports related to international human rights; to promote better co-ordination between the different departments on human rights issues; to organize the participation of Spain in international conferences and meetings related to human rights issues; to maintain relations with other governmental offices and NGOs that work in the field of human rights; to ensure the fulfilment of international treaties; and to promote studies and activities in the field of its competencies.' *Ibid.* note 6.
[89] *Ibid.* at 575 and Concluding Observations of the Committee on the Elimination of Discrimination against Women on Spain, UN Doc. A/54/38,paras. 236-277, para. 238. The Institute for Women's Issues is the agency charged with promoting government policies in the field of equality. The Institute is responsible for implementing policies to co-ordinate the work of different ministerial departments concerned with women and its objective is also to ensure maximum coherence of policies elaborated by the national government and the autonomous communities (*ibid.*).
[90] See online: Tasa-arvotoimisto (Office of the Ombudsman for Equality) <http://www.tasa-arvo.fi>.
[91] Even if each ministry is responsible for the follow-up and evaluation of equal opportunities promotion, which should be a part of regular policy-making and government, the Equal Opportunities Unit has a co-ordinating, advisory and accelerating role in relation to the ministries. See 'A National Human Rights Action Plan – A Summary' (Written Communication 2001/02:83) at 28 (an English summary of the National Human Rights Action Plan contained in Skr. 2001/02:83).

treaties.[92] This governmental advisory body monitors the internal fulfilment of the six UN human rights treaties as well as the European Convention on Human Rights and the Framework Convention for the Protection of National Minorities.[93] The Council for Human Rights has been functioning since the end of 1998, and it consists of various sections.[94] Other institutions with powers in the field of human rights include the Public Protector of Rights (Ombudsman),[95] Government Council for National Minorities,[96] and Government Committee for Persons with Disabilities.[97] Owing to the existence of the Council for Human Rights, the institutional arrangement for the implementation of human rights treaties in the Czech Republic is more centralised and co-ordinated than those in Finland, Sweden or Spain.

In *Australia* a small number of federal departments and agencies are expressly charged with the responsibility of implementing or overseeing the implementation of certain of the six UN human rights treaties, and the Attorney-General's Department has 'a broad supervisory mandate' within domestic law.[98] Importantly, the Human Rights and Equal Opportunities Commission (HREOC)—the national human rights institution in Australia—'operates as a watchdog and advocate for the recognition, protection and implementation of the human rights treaties at all levels of government and throughout the community as a whole. Specifically, the Commission is required by its establishing legislation to have regard to CERD, CCPR, CEDAW and CRC, but it also refers often to CESCR and CAT and many other international human rights instruments.'[99] In the end, however, de facto responsibility

[92] Heyns & Viljoen, *supra* note 31 at 200. The mandate of the Council also includes the monitoring of the observance and application of the Constitution, the Charter of Fundamental Human Rights and Freedoms, and other legal rules concerning the protection and respect of human rights. Core document forming part of the reports of States Parties – Czech Republic, UN Doc. HRI/CORE/1/Add.71/Rev.2, *supra* note 52 in para. 52.
[93] UN Doc. HRI/CORE/1/Add.71/Rev.2, *ibid.*
[94] Heyns & Viljoen, *supra* note 31 at 198. As of July 2003 the following sections exist: Section for Civil and Political Rights, Section against Manifestations of Racism, Section for Human Rights Education, Section for Economic, Social and Cultural Rights, Section for the Rights of the Child, Section for Equal Opportunities of Men and Women, Section for the Rights of Foreigners, and Section against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. UN Doc. HRI/CORE/1/Add.71/Rev.2, *ibid.* para. 53. It appears that its membership includes NGOs as well (Heyns & Viljoen, *ibid.* at 215).
[95] See UN Doc. HRI/CORE/1/Add.71/Rev.2, *ibid.* paras. 48-51. The bill on the establishment of the institution of an ombudsman was passed in 1999.
[96] See *ibid.* in paras. 54-55. This Council was established in the year 2001 and is an advisory body consisting of representatives of national minorities and of public authority bodies and chaired by a member of the government.
[97] See *ibid.* in para. 56.
[98] Heyns & Viljoen, *supra* note 31 at 49.
[99] *Ibid.*

for practical implementation of these treaties falls (implicitly) to various government departments at the federal, state and territory levels.[100]

The Department of Canadian Heritage (formerly the Department of Multiculturalism and Citizenship) plays a central role in the implementation of UN human rights treaties in *Canada*. It facilitates the co-ordination of implementation efforts between federal, provincial and territorial governments, is charged with the primary responsibility for international human rights education and implementation, and provides funding and technical advice to human rights and community organisations.[101] Furthermore, there is a national human rights institution—the Canadian Human Rights Commission—that engages in advisory and quasi-judicial activities which primarily relate to the implementation of the Canadian Charter of Rights and Freedoms.[102] As noted earlier in this chapter, both federal and provincial levels of government may have jurisdiction over the subject matter covered by a human rights treaty, which complicates the implementation process. Yet there does not exist any 'mechanism to ensure that provincial governments will comply with and implement the six human rights treaties or to permit the federal government to require provincial implementation.'[103] Nonetheless, a Federal-Provincial-Territorial Continuing Committee of Officials on Human Rights was established in 1975 to co-ordinate provincial and federal implementation of the UN human rights treaties.[104] Overall, then, the institutional arrangement for the implementation of human rights treaties seems to be more centralised and co-ordinated in Canada than in Australia.

2.2 Reporting Structures

The reporting procedure is an integral part of the six UN human rights treaties. State reporting is a process that is intended to 'generate a dialogue within civil society about the requirements of the treaty, the application of its standards to local conditions, the shortfalls in compliance, priorities for redress, and the design of a plan of action.'[105] Concluding observations play a key role in this process, but before going any further in the examination

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[100] *Ibid.* Other Australian institutions dealing with human rights are, *inter alia*, law reform agencies and ombudsman offices (*ibid.* at 48).
[101] *Ibid.* at 116. See also the mission of the Human Rights Program within the Department of Canadian Heritage, posted online: Department of Canadian Heritage <http://www.canadianheritage.gc.ca >.
[102] See *e.g.* online: Canadian Human Rights Commission <http://www.chrc-ccdp.ca>.
[103] Heyns & Viljoen, *supra* note 31 at 116.
[104] *Ibid.*
[105] Bayefsky, *supra* note 12 at 12.

of the actual implementation of concluding observations or other treaty body findings, a short overview of the main features of the reporting procedure in the six countries is in order. It will form a background for the governmental implementation of concluding observations in particular. Implementation of concluding observations is a process that does not happen in a vacuum but is, or should be, intimately connected to the reporting cycle as a whole. The starting point will be the situation in Finland with which other countries are compared.

The Finnish Ministry for Foreign Affairs prepares country reports in consultation with other ministries, various other officials and boards, NGOs and labour organisations.[106] Parliament has no role in this process,[107] and it also worth noting that due to their independent role the Parliamentary Ombudsman and the Chancellor of Justice do not participate in the undertaking, except in the sense that their annual reports are used as a source of relevant information.[108] The situation in *Sweden* in very similar: the Ministry for Foreign Affairs collaborates with the line ministry or ministries concerned when a report is to be submitted.[109] However, in some instances the line ministry prepares the report: for example, the Ministry of Industry, Employment and Communications does so in the case of the CEDAW, and the CRC unit placed in the Ministry of Health and Social Affairs bears the main responsibility for reporting to the CRC Committee.[110] As to *Spain*, the preparation of country reports is very decentralised: it is conducted within the responsible government department which consults other departments and, occasionally, NGOs.[111]

The situation regarding the preparation of country reports in the *Czech Republic* has changed rather recently. Previously, the practice seems to have been similar to that in Spain, that is, a line ministry took care of the drafting of a country report with input from other

[106] Heyns & Viljoen, *supra* note 31 at 283-284. See also online: Ministry for Foreign Affairs of Finland <http://formin.finland.fi> (contains a section where the Finnish reporting procedure is illustrated with the help of an example: preparation of the fifteenth periodic report under the CERD in 1999). The same account is included in 'Human Rights and Finnish Foreign Policy – Report by Minister for Foreign Affairs Erkki Tuomioja to the Foreign Affairs Committee of Parliament on the Human Rights Policy of the Finnish Government, November 29, 2000' (Helsinki: Publications of Ministry for Foreign Affairs 2/2001) at 81-83 [Human Rights and Finnish Foreign Policy 2001].
[107] Heyns & Viljoen, *ibid.* at 284.
[108] *Ibid.* at 283.
[109] Skr. 2001/02:83, *supra* note 80 at 74, and UN Doc. HRI/CORE/1/Add.4/Rev.1, *supra* note 74, para. 93.
[110] Human Rights in Sweden—A Baseline Study, *supra* note 80 at 20, and Skr. 2001/02:83, *supra* note 80 at 74.
[111] See Heyns & Viljoen, *supra* note 31 at 592-593.

relevant ministries and selected NGOs.[112] However, the new Council for Human Rights, which is responsible for the preparation of governmental decisions and proposals on human rights, now has the responsibility for the preparation of country reports as well.[113] For instance, the Section for Equal Opportunities of Men and Women of the said Council is responsible for all periodic reports on the implementation of the CEDAW.[114]

In *Canada* the Department of Canadian Heritage assumes responsibility for the preparation of country reports. It consults with relevant federal departments and institutions and with provincial and territorial governments the submissions of which are included in the reports.[115] The Canadian Human Rights Commission is also invited to review and contribute to the report, and its submissions on its advisory and quasi-judicial activities relating to the implementation of the Canadian Charter of Rights and Freedoms specifically and of the relevant Convention generally are included in the report.[116] As to *Australia*, reporting is of a more decentralised and unorganised character: '[t]here is no one central government body responsible for co-ordinating and/or compiling reports; nor is there any pro forma process to be followed by these bodies who do compile the reports.'[117] The Department of Foreign Affairs and Trade is responsible for reporting under the CERD and the ICESCR, the Attorney-General's Department for reports under the ICCPR, CAT and CRC, and the Office for the Status of Women in the Office of the Prime Minister and Cabinet prepares reports under the CEDAW.[118] Each agency has its own reporting processes which may vary from report to report within any one agency.[119] Information is requested from relevant departments at the federal, state and territory levels, and community consultations and targeted NGO consultation are undertaken.[120] HREOC is usually consulted, albeit it appears that this does not occur in respect of each and every report.[121]

In conclusion, Canada, Finland and the Czech Republic have the most centralised reporting systems with one ministry or governmental body leading the preparation of reports. On the

[112] *Ibid.* at 213-215.
[113] *Ibid.* at 213-214.
[114] *Ibid.* at 218.
[115] *Ibid.* at 135.
[116] *Ibid.*
[117] *Ibid.* at 72. Heyns & Viljoen criticise the 'low priority accorded to the reporting process by the federal government generally and the relevant responsible departments specifically' (*ibid.* at 87).
[118] *Ibid.*
[119] *Ibid.* It appears the the Attorney-General's Department has the most established procedure (see *ibid.*).
[120] *Ibid.*
[121] See *ibid.* at 72-74.

other hand, Australia, Sweden and Spain have opted for a more decentralised procedure in which the responsibility is shared between a few departments/ministries (Australia, Sweden) or relevant line ministries (Spain). NGOs are consulted in each country, albeit to a varying degree. In Australia and Canada, the national human rights institutions do not participate in the reporting effort to any significant extent. The same appears to be the case in respect of the Ombudsman institutions in Finland, Sweden, Spain and the Czech Republic. Parliaments are not consulted, but in Australia reports are tabled in the federal parliament after they have been submitted to the UN.[122]

3. National Implementation of Treaty Body Findings

3.1 First step in the implementation Process: translation and dissemination

The reporting procedure can be seen as a 'continuous cycle in which the consideration of a report in a public hearing before the Committee forms a high point, followed by the Committee's concluding observations.'[123] Indeed, as I have noted elsewhere, concluding observations are 'a vehicle through which the preparation of reports is transformed into policy-making and implementation,'[124] and governments should take them seriously. As a first step, governments should publicise the concluding observations and disseminate them 'internally' (that is, distribute copies of them within administration and to the legislature and judiciary, as well as arrange seminars and workshops) and to the general public (for instance, through NGOs and the electronic and print media). There will be no implementation of concluding observations unless government policy-makers and civil servants have knowledge of them. Moreover, knowledge of these observations will enable the media and civil society to better monitor their governments' response to the Committees' recommendations and to pressure their governments towards better compliance with the treaties. In fact, the treaty bodies usually recommend in their concluding observations that governments should disseminate widely both concluding observations and the report itself.[125]

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[122] *Ibid.* at 74.
[123] Scheinin, 'Work', *supra* note 17 at 10.
[124] Niemi & Scheinin, *supra* note 45 at 7.
[125] See *e.g.* Concluding Observations of the Human Rights Committee on: Australia, UN Doc. A/55/40,paras.498-528, para. 528; Canada, UN Doc. CCPR/C/79/Add.105 (1999), para. 21; Czech Republic, UN Doc. CCPR/CO/72/CZE (2001), para. 26; Finland, UN Doc. CCPR/C/79/Add.91 (1998), para. 22; Sweden, UN Doc. CCPR/CO/74/SWE (2002), para. 16; Concluding Observations of the Committee against Torture on: Czech Republic, UN Doc. A/56/44,paras.106-114, para. 114 (h); Spain, UN Doc. CAT/C/CR/29/3

Usually, the Committees place a short, formulaic appeal for dissemination in one the last paragraphs of their concluding observations. Two of the Committees have adopted a longer version in which they specify the purpose of the dissemination and the target audience. For instance, in its concluding comments on the third and fourth periodic reports of Finland, the CEDAW Committee requested 'the Government to disseminate widely in Finland the present concluding comments and to support their public discussion, in order to make politicians and government administrators, women's non-governmental organizations and the public at large aware of the steps required to ensure de jure and de facto equality for women.'[126] It also requested 'the Government to continue to disseminate widely, in particular to women's and human rights organizations, the Convention and its Optional Protocol, the Committee's general recommendations …'[127] Similarly, the CRC Committee has stated:

> 'Finally, in the light of article 44, paragraph 6, of the Convention, the Committee recommends that the … report, the list of issues raised by the Committee and the written replies submitted by the State party be made widely available to the public at large and the publication of the report be considered, along with the relevant summary records and the concluding observations adopted thereon by the Committee. Such a document should be widely distributed in order to generate debate and awareness of the Convention and its implementation and monitoring within the Government, the Parliament and the general public, including concerned non-governmental organizations.'[128]

It is worth noting that five of the conventions (CERD, ICESCR, ICCPR, CEDAW and CAT) do not contain any provision about the dissemination of treaties or treaty body

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(2002), para. 18; Sweden, UN Doc. CAT/C/CR/28/6 (2002), para. 9; Concluding Observations of the Committee on the Elimination of All Forms of Racial Discrimination on: Australia, UN Doc. A/49/18,paras.535-551, para. 550 and UN Doc. CERD/C/304/Add.10 (2000), para. 19; Canada, UN Doc. A/57/18,paras.315-343, para. 342; Czech Republic, UN Doc. CERD/C/304/Add.47 (1998), para. 25, and CERD/C/304/Add.109 (2001), para. 17; Finland, UN Doc. CERD/C/304/Add.7 (1996), para. 29, and subsequent concluding observations issued in 1999, 2001 and 2003; Sweden, UN Doc. CERD/C/304/Add.37 (1997), para. 21, and UN Doc. CERD/C/304/Add.103 (2001), para. 19; Concluding Observations of the Committee on Economic, Social and Cultural Rights on: Australia, UN Doc. E/C.12/1993/9 (1993), para.15, and UN Doc. E/C.12/1/Add.50 (2000), para.37; Canada, UN Doc. E/C.12/1/Add.31 (1998), para. 60; Finland, UN Doc. E/C.12/1/Add.8 (1996), para. 26, and UN Doc. E/C.12/1/Add.52 (2000), para. 34; Spain, UN Doc. E/C.12/1/Add.2 (1996), para. 19; Concluding Observations of the Committee on the Rights of the Child on Canada, UN Doc. CRC/C/15/Add.37 (1995), para. 27.

[126] Concluding Comments of the Committee on the Elimination of Discrimination against Women on Finland, UN Doc. A/56/38,paras.279-311, para. 311.

[127] *Ibid.* Almost identical recommendations can be found in Concluding Comments of the Committee on the Elimination of Discrimination against Women on: Czech Republic, UN Doc. A/53/38,paras.167-207, para. 207; Spain, UN Doc. A/54/38,paras. 236-277, para. 277; and Sweden, UN Doc. A/56/38,paras.319-360, para. 360.

[128] Concluding Observations of the Committee on the Rights of the Child on Finland, UN Doc. CRC/C/15/Add.132 (2000). For an identical or similar clause, see *e.g.* Australia, UN Doc. CRC/C/15/Add.79 (1997), para. 35; Canada, UN Doc. CRC/C/15/Add.215 (2003), para. 61; Czech Republic, UN Doc. CRC/C/15/Add.81 (1997), para. 42, and UN Doc. CRC/C/15/Add.201 (2003), para. 70;, para. 61; Spain, UN Doc. CRC/C/15/Add.185 (2002), para. 55; and Sweden, UN Doc. CRC/C/15/Add.101 (1999), para. 23.

findings. The CRC is exceptional, for it deals with this issue twice. Article 42 reads: 'States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children.' Later on, Article 44, paragraph 6, provides: 'States Parties shall make their reports widely available to the public in their own countries.' Furthermore, the Optional Protocol to the CEDAW includes Article 13 under which 'Each State Party undertakes to make widely known and to give publicity to the Convention and the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular, on matters involving the State Party.' In this context it should be mentioned that already in 1988 the CEDAW Committee issued a general recommendation in which it recommended that States parties '[e]stablish and/or strengthen effective national machinery, institutions and procedures, at a high level of government, and with adequate resources, commitment and authority' which would, *inter alia*, ensure the dissemination of the Convention and country reports in the language of the state concerned.[129] Had the institution of concluding observations existed at the time, it is very likely that the CEDAW Committee would have included them to the list of documents that should be widely disseminated.

In the previous quotations from the CEDAW Committee's concluding comments and from the Optional Protocol to the CEDAW the dissemination of views and general recommendations was also mentioned. Clearly, what was said at the beginning of this chapter about the need to disseminate concluding observations applies to these two other types of treaty body output as well. In fact, the Human Rights Committee has adopted a practice of requesting in the last paragraph of its views that the state party publish them.[130]

How, then, do Australia, Canada, the Czech Republic, Finland, Spain and Sweden fare in the area of translation and dissemination of treaty body findings?

a) Translation

Regarding the translation of treaty body findings, *Australia*, *Canada* and *Spain* are in a privileged position because English, French and Spanish are among the official languages of

[129] General Recommendation No. 6 (7) of the Committee on the Elimination of Discrimination against Women on effective national machinery and publicity (1988), paras. 1, 2.
[130] See *e.g.* para. 11 in *Alexander Zheludkov v. Ukraine* (Communication No. 726/1996), Views adopted 29 October 2002, UN Doc. CCPR/C/76/D/726/1996).

the UN. In the remaining three countries the need for translation is clear, even if many of their citizens can speak foreign languages fluently. The current practice in *Finland* is that concluding observations are translated into its two national languages, Finnish and Swedish.[131] Also in the *Czech Republic* translations into Czech are provided by state authorities and/or the UN Information Centre at Prague.[132] As to *Sweden*, NGOs have called for a more systematic translation of both country reports and concluding observations, and the Swedish government has recognised the need thereto in its National Human Rights Action Plan.[133] The government has further noted that the question of translation has been taken up by several treaty bodies in their examinations of Swedish reports and considers it a matter of 'particular urgency' that future country reports on the six UN human rights conventions together with concluding observations issued thereupon be translated into Swedish.[134]

In conclusion, Finland, Sweden and the Czech Republic have all taken the necessary task of translation seriously. Finland has the best record in this respect, since the translation of concluding observations into Finnish and Swedish is systematic. In contrast, no record was found on the translation of final views and general comments by the government in any of the six countries,

b) Dissemination

In *Finland* concluding observations are sent along with the delegation's report for consideration to various interested parties and the press is also informed.[135] For instance, after the CERD Committee issued its concluding observations in August 2000 on the fifteenth periodic report of Finland, a national briefing was arranged for both the media and official and other parties, including NGOs.[136] Finland has also indicated to the CRC

[131] *Ibid.* at 286.
[132] *Ibid.* at 217-218.
[133] Skr. 2001/02:83, *supra* note 80 at 137.
[134] *Ibid.* at 137-138. According to Human Rights in Sweden—A Baseline Study, it has been proposed that treaty body recommendations should be translated into some minority languages as well (*supra* note 80 at 15), but this item does not seem to be on the government agenda.
[135] Heyns & Viljoen, *supra* note 31 at 286.
[136] Human Rights and Finnish Foreign Policy 2001, *supra* note 106 at 82. Furthermore, a press conference was arranged on account of the consideration of Finland's fourth report under the ICCPR. See International Covenant on Civil and Political Rights—The fifth periodic report by Finland (2003) at 20. This report was recently submitted to the UN and is available online: Ministry for Foreign Affairs of Finland <http://formin.finland.fi>.

Committee that it wishes to circulate in Parliament the summary records of its dialogue with the Committee members and the Committee's concluding observations.[137] Moreover, if a country report is published in the publication series of the Ministry for Foreign Affairs, the previous concluding observations are officially published in the same document.[138] In particular, both reports and concluding observations can be accessed in several languages on the Internet which is a readily accessible and frequently used technology in Finland.[139] As noted in the Heyns study, it can be said that reports and concluding observations are easily accessible to those individuals or organisations who are interested and who know what to look for.[140] On the other hand, a dissemination strategy that goes beyond making the concluding observations widely available is certainly to be recommended: for instance, in its 1999 concluding observations on Finland the CERD Committee welcomed the possibility of holding a seminar to disseminate the Committee's concluding observations.[141]

In *Sweden* both reports and concluding observations are placed on an excellent government website *www.manskligarattigheter.gov.se* which is a collaborative effort by the Ministry of Justice and the Ministry for Foreign Affairs. The only problem is that all documents are not yet available in Swedish.[142] Regarding the access to printed copies of country reports, the government has announced its intention to begin to distribute them more widely.[143] Furthermore, the CERD Committee has explicitly acknowledged Sweden's efforts to disseminate concluding observations among Sami and other minority groups, NGOs, trade

[137] Concluding Observations of the Committee on the Rights of the Child on Finland, UN Doc. CRC/C/15/Add.53 (1996), para. 8.
[138] Heyns & Viljoen, *supra* note 31 at 286. It appears that not all periodic reports are officially published in this manner. The latest CERD and CEDAW reports and the second CRC report were published in the publication series in Finnish and English and the latest ICESCR report in Finnish (*ibid.* at 284 and note 131). The latest CRC report has recently (19 November 2003) been published online: Ministry for Foreign Affairs of Finland <http://formin.finland.fi>.
[139] Reports are rapidly posted in Finnish and in English on the website of the Ministry for Foreign Affairs of Finland (*ibid.*) On the same site one can find the latest concluding observations in Finnish and English (ICESCR, CEDAW, CRC, CERD), in Swedish (CRC, CERD) and in North Sami (CERD). It appears, however, that there exists no archive that would contain older concluding observations as well. Naturally, both old and new reports and concluding observations are accessible in English on the OHCHR website.
[140] Heyns & Viljoen, *supra* note 31 at 286. In addition to the more selective publication of reports in the publication series of the Ministry for Foreign Affairs referred to above, the usual practice is to print some 600-1,000 copies of each report and send them to university libraries, faculties of law, the library of the parliament, the Union of Journalists in Finland and Finnish embassies (*ibid.* at 284).
[141] Concluding Observations of the Committee on the Elimination of Racial Discrimination on Finland, UN Doc. CERD/C/304/Add.66 (1999), para. 20.
[142] See the previous paragraph on the question of translation.
[143] Skr 2001/02:83, *supra* note 80 at 138.

unions and the wider public.[144] Sweden is also open to the idea of convening press conferences focusing on the Committee's concluding observations.[145]

In *Canada* the situation is good as well. Country reports are prepared in English and French and become available to the public immediately after they have been submitted to the UN, and they are disseminated in both printed and electronic form.[146] Concluding observations are distributed among government officials and the Department of Canadian Heritage also posts them on its website *www.canadianheritage.gc.ca*.[147] What is unique in Canada is that federal contributors to the report and participants in the dialogue between the government delegation and the treaty body discuss the concluding observations at a 'post-mortem' meeting held in the week following the oral presentation of the report.[148] Quoting from the Heyns report: 'At this meeting, participants have the opportunity to share their views and determine what, if any, follow-up and/or future action is required. … In addition, the concluding observations are discussed at a Department of Foreign Affairs debriefing session for its officials and at the bi-annual Federal-Provincial-Territorial Continuing Committee of Officials of Human Rights.'[149] Moreover, the Committees have in the Canadian context considered it appropriate to disseminate concluding observations in Parliament and among judges. In its 1999 concluding observations on the Canadian report the Human Rights Committee welcomed the delegation's commitment 'to distribute the Committee's concluding observations to all members of Parliament and to ensure that a parliamentary

[144] Concluding observations of the Committee on the Elimination of Racial Discrimination on Sweden, UN Doc. CERD/C/304/Add.103 (2001), para. 9.
[145] During the consideration of Sweden's fourth and fifth periodic reports under the CEDAW in 2001 the government representative indicated that a press conference focusing on the Committee's concluding comments would be convened after the session. Concluding Comments of the Committee on the Elimination of Discrimination against Women on Sweden, UN Doc. A/56/38,paras.319-360, para. 329. See also Concluding Observations of the Committee on Economic, Social and Cultural Rights on Sweden, UN Doc. E/C.12/1/Add.70 (2001), para. 3.
[146] Heyns & Viljoen, *supra* note 31 at 137, 144. Single copies of the report are sent to, *inter alia*, public libraries, educational institutions, NGOs, associations and individuals (*ibid.* at 137, note 147). Furthermore, the Department of Canadian Heritage posts a copy on its website (*ibid*. at 137). All reports continue to be available in print format and the most recent reports are also available online: Department of Canadian Heritage <http://www.canadianheritage.gc.ca>.
[147] Heyns & Viljoen, *ibid.* at 144. In its fourth periodic report under the ICCPR, Canada provided information on measures taken to disseminate the Human Rights Committee's concluding observations. It stated that concluding observations were provided to all relevant federal departments after they were received, and the summary records and a summary of the questions raised by the Committee were provided to all officials participating in the preparation of the fourth report, at the federal, provincial and territorial levels, with a request that questions and concerns of the Committee be taken into account. UN Doc. CCPR/C/103/Add.5, para. 18.
[148] Heyns & Viljoen, *ibid.* at 25, 144.
[149] *Ibid.* at 144.

committee will hold hearings of issues arising from the Committee's observations.'[150] In 1998 the Committee on Economic, Social and Cultural Rights recommended that Canada 'request the Canadian Judicial Council to provide all judges with copies of the Committee's concluding observations and encourage training for judges on Canada's obligations under the Covenant.'[151]

Dissemination of reports in the *Czech Republic* has improved since the establishment of the Council for Human Rights of the Czech Government: country reports prepared since 1999 are now available in Czech and in English on its website *www.vlada.cz/1250/eng/vrk/rady/rady.ht*. In contrast, the dissemination of concluding observation appears to have gained less attention.[152] In the case of the concluding observations issued by the CRC Committee, the civil society took an active role: NGOs organised a seminar about the observations a month after they were received and they were discussed several times in the international media with guests representing different groups of the Czech population.[153] Furthermore, in 2001 the CERD Committee welcomed the 'publication on an Internet site of the Ministry of Justice of the initial and second periodic reports as well as the concluding observations and other related documents relating to the dialogue between the State party and the Committee.'[154]

As to *Australia*, it is reported that it 'is not the practice of the Australian government to publicise concluding observations on relevant departmental websites'[155] and that they 'are available at UN depository libraries and other specialist collections but otherwise are not generally and easily accessible' except through the OHCHR website which is not complete.[156] Perhaps not surprisingly, the general level of awareness of concluding observations is low.[157] The situation is somewhat improved by the fact that Australia's combined second and third report under the CRC, the concluding observations on Australia's initial report (and some other documents relating to the consideration of that

[150] UN Doc. CCPR/C/79/Add.105 (1999), para. 3.
[151] UN Doc. E/C.12/1/Add.31 (1998), para. 57.
[152] See Heyns & Viljoen, *supra* note 31 at 216-218.
[153] *Ibid.* at 218.
[154] Concluding Observations of the Committee on the Elimination of Racial Discrimination on the Czech Republic, UN Doc. CERD/C/304/Add.109 (2001), para. 8.
[155] Heyns & Viljoen, *supra* note 31 at 79. I could not find any concluding observations either while doing an extensive search on the relevant websites in November 2003.
[156] *Ibid.*
[157] *Ibid.*

report) were tabled in the federal parliament, and the concluding observations were provided to each state and territory government.[158] As to country reports, copies are available on request, at government bookstores, libraries and on the relevant departments' websites.[159] Moreover, it appears that among the countries included in this study, Australia is the only one where reports are tabled in Parliament after submission.[160]

In this comparison *Spain* will obtain the lowest grade. It appears that the Spanish government does not make much of an effort to disseminate either country reports or concluding observations.[161] The notable exception is the initial report of Spain under the CRC that was published by the Ministry of Work and Social Affairs together with the concluding observations in an edition of 2,000 copies.[162] As a result, it is reported that the level of awareness in the administration and among the NGOs of these concluding observations is high in comparison with other conventions.[163] In contrast, the Committee on Economic, Social and Cultural Rights has taken note of widespread ignorance of the provisions of the ICESCR and has recommended that Spain give extensive publicity to its reports under the Covenant and the Committee's concluding observations, especially through the media, the universities and interested NGOs.[164]

In conclusion, one can observe a clear trend towards an increasing use of governmental websites for the purpose of disseminating both reports and concluding observations soon after their submission (reports) or release (concluding observations).[165] Such development is very welcome, for it is not enough that country reports and concluding observations are

[158] 'Australia's Combined Second and Third Reports under the Convention on the Rights of the Child' (March 2003), para. 68. The report was lodged with the UN on 30 September 2003, and is available online: Attorney-General's Department <http://www.ag.gov.au>.
[159] Heyns & Viljoen, *supra* note 31 at 74. Currently, two most recent reports of Australia under the CERD and the latest report under the ICESCR can be accessed online: Australian Department of Foreign Affairs and Trade <http://www.dfat.gov.au/hr/>. All reports under ICCPR, CAT, and CRC are available online: Attorney-General's Department <http://www.ag.gov.au>. Reports under the CEDAW should be posted on the website of the Office for the Status of Women in the Office of the Prime Minister and Cabinet, but an extensive search gave no results.
[160] 'It is also practice for reprots to be tabled in parliament after submission'. Heyns & Viljoen, *ibid.*
[161] See *ibid.* at 593, 596-597. When browsing the relevant government websites, the only mention of country reports that the present author came across was on the website of the Institute for Women's Issues where it was mentioned that Spain's periodic reports under the CEDAW can be obtained free of charge from the Institute (*Instituto de la Mujer, Ministerio de Trabajo y Asuntos Sociales* <http://www.mtas.es/mujer/pubdocum.htm>).
[162] See *ibid.* at 597.
[163] *Ibid.*
[164] Concluding Observations of the Committee on Economic, Social and Cultural Rights on Spain, UN Doc. E/C.12/1/Add.2 (1996), para. 19.
[165] Indeed, the use of the Internet to disseminate concluding observations is trend that is visible in many other countries as well. See generally Heyns & Viljoen, *supra* note 31 at 25.

published on the OHCHR website alone.[166] It is clear that governments carry the main responsibility for translating and disseminating concluding observations, and Internet is an easy, economic and efficient way to increase the awareness of the treaty body output at the domestic level. Placing reports and concluding observations on a governmental website in citizens' mother language(s) renders these documents more accessible, as one does not have to be able to speak foreign languages or be familiar with the complexities of the UN system in order to obtain them. Naturally, Internet should not replace the distribution of printed copies of concluding observations to relevant national and local authorities, including courts and parliaments, and to the general public through, for instance, press conferences, NGOs, universities and libraries.

There is no information readily available regarding the dissemination of final views and general comments in Canada, the Czech Republic, Finland, Sweden and Spain. As regards Australia, it has been reported that the government 'disseminates information about the communications received on request and by tabling a brief description outlining the main allegations raised in each communication in parliament. The decisions and views of the Committees as well as Australian government responses are also tabled in the federal parliament.'[167] It may well be that the incentive to translate and disseminate views and general comments is lower than in the case of concluding observations, for owing to their more legal language, these documents are less accessible to the general public. Understanding the Committees' reasoning in individual cases or in respect of the interpretation of specific treaty provisions requires expertise in the field of human rights law, and views and general comments are therefore not likely to attract the same amount of interest than concluding observations that evaluate the human rights situation in a particular country. Those individuals and organisations who are interested in the contents of views and general comments are probably knowledgeable enough to obtain these documents from the OHCHR website. Nonetheless, when a treaty body issues its final views on an individual communication in respect of a particular country, the government of that country should at least inform the media of the outcome of the case and place information about the views in question on its website (preferably the original document and a summary in (other) official

[166] The OHCHR website contains various documents relating to the reporting process (periodic reports, lists of issues, summary records, concluding observations) as well as the Committees' views and general comments. This list is not exhaustive.
[167] Heyns & Viljoen, *supra* note 31 at 83.

language(s)). Moreover, both views and general comments should be disseminated within relevant parts of national administration, in Parliament and among judges.

In general, it would be important to undertake the dissemination of all three categories of treaty body findings as quickly as possible in order to obtain the maximum amount of attention, both within state institutions, NGOs and public at large. In addition, regarding those institutions, bodies and officials that are responsible for the practical implementation of UN human treaties, mere dissemination is not necessarily enough but (multidisciplinary) workshops and seminars (if appropriate, with NGO participation) should be considered, in particular in relation to concluding observations. This would constitute a more effective opening of the subsequent implementation process—a topic dealt with in the next chapter. Governments could also encourage appropriate bodies to draw judges' attention to treaty body findings, in particular views and general comments, and to incorporate these documents into training given for judges on the country's obligations under the UN human rights treaties.

3.2 Government Implementation of Treaty Body Findings

3.2.1 General remarks

A difference can be made between *government* implementation of treaty body findings, implementation by the *legislature* and implementation by the *judiciary*. In this study the main focus will be on the government implementation and follow-up of treaty body output, in particular concluding observations, which is, however, in many cases connected with legislative measures so that co-operation between the executive and the legislature is required. It can be said at the outset that the practice in Finland regarding the use of treaty body output in the *legislative process* is unique among the countries selected for this study, and probably otherwise as well. Namely, UN treaty body findings (final views on Finland and on other countries, concluding observations on Finland and on other countries, and general comments) are used in Government Bills, and the Parliamentary Committees, in particular the Constitutional Law Committee, use these findings to evaluate the compatibility of the Government Bills with human rights.[168] The input from academic

[168] Martin Scheinin, 'Use of Treaty Body Output by National Bodies other than Courts and Tribunals: The Legislative Process in Finland' (Paper presented to the Meeting on the Impact of the Work of the United

experts during the drafting of Government Bills and in the course of parliamentary proceedings has played a vital role in bringing treaty body findings in the legislative process in Finland.[169] This institutional practice of soliciting expert advice together with the willingness of experts to bring forth a wide selection of views, general comments and concluding observations certainly constitutes a veritable best practice in the legislative implementation of the work of the treaty bodies.

Another instance where implementation of treaty body findings may require efforts by several branches of government is the *implementation of final views in which a Committee finds a violation of a treaty*. Heyns & Viljoen categorise the reactions of states to such views in the following way: a) institutional changes were effected (legislative amendments, administrative steps); b) redress was afforded to the individual (compensation, release, sentence commuted); and c) nothing done/ settlement still outstanding.[170] Accordingly, the implementation process may involve the judiciary, the executive and the legislature. In the context of this paper it is not necessary to examine in detail the legislative or administrative responses of Australia, Canada, the Czech Republic, Finland, Spain and Sweden to such individual cases.[171] The aspect of judicial implementation of views finding a violation of a treaty will, however, be dealt with briefly in Chapter 3.3 below.

Another limitation in the scope of this chapter concerns *general comments*. Information that would explicitly relate to the national implementation of general comments is hard to come by. For instance, in contrast to views and concluding observations, the treaty bodies have no follow-up mechanism that would focus on the implementation of general comments and produce information on the performance of states in this respect. The Committees do occasionally refer to general comments in their concluding observations and ask the state parties to take them into account when implementing the treaty in some particular instance.

Nations Treaty Bodies on National Courts and Tribunals, Turku, 26-27 September 2003), online: Institute for Human Rights, Åbo Akademi <http://www.abo.fi/instut/imr/>.

[169] *Ibid.*

[170] Heyns & Viljoen, *supra* note 31 at 33.

[171] For more information on this issue, see Heyns & Viljoen, *ibid.*, that contains the relevant information in respect of all those countries, except for Sweden. The Swedish government has declared in respect of views of the CAT to which it has been subject several times that it 'takes a serious view of the criticism levelled against Sweden by the Committee and attaches great importance to the right of individuals to complain to international monitoring bodies. Every case in which criticism has been made of Sweden is carefully analysed, and routines for the handling of assessment of asylum cases where torture may have occurred are being improved in various ways. Sweden always complies with decisions by the European Court of Human Rights and the UN Committee against Torture. There has been no refusal of entry in cases where Sweden has been criticised.' A National Human Rights Action Plan – A Summary, *supra* note 91 at 23.

Implementation of general comments by the judiciary will be dealt with briefly in Chapter 3.3.

Prior to examining government implementation of concluding observations a few general remarks are in order. First, in addition to translating (if necessary) and disseminating concluding observations by the various means specified in the previous chapter, governments should study them carefully and use them as the basis for improving the compatibility of national legislation and practices with international human rights treaties. In general, the record of governments in the implementation of concluding observations varies considerably and is often patchy.[172] A second, related way of using concluding observations is to use them as the basis for the next country report—a practice actually required by the UN treaty bodies.[173] It appears that even if there are states that, mostly for domestic political reasons, 'studiously ignore' concluding observations, there are governments that are mindful of such observations and take them into account when preparing their next periodic report.[174] Both ways of using concluding observations are connected to governmental mechanisms for the implementation of UN human rights treaties in general and for the preparation of country reports in particular, such as those described above in Chapter 2. It has been reported that 'officials entrusted with reporting responsibilities often admit privately that they are much more concerned with fulfilling as quickly as possible, and with the least possible effort, the unwanted, boring and burdensome task of reporting than they are with using the reporting process as a means of determining treaty compliance and working toward improvement.'[175] In such cases, concluding observations are likely to be ignored, unless civil society puts pressure on the administration and the legislature and demands that it take the recommendations into account in law-making and policy formulation. In any case, my thesis is that some sort of governmental mechanism or structure for the implementation of concluding observations should be established in order to facilitate the process towards better compliance with international human rights standards. Preparation of reports may well function as a national follow-up mechanism, but a more *proactive* process focusing on the implementation of concluding observations is

[172] See *e.g.* findings in *ibid.*
[173] The Committees now expect that the states parties submit so-called 'focused reports' which are based on the concluding observations on the previous report and take up any new developments within the scope of the respective convention. Scheinin, 'Work, *supra* note 17 at 10 (on the Human Rights Committee), and concluding observations referred to *supra*, in notes 125 to 128 (the Committees ask, usually in the last paragraph, for updating reports that would address the previous concluding observations).
[174] Schmidt, *supra* note 23 at 463.
[175] Leckie, *supra* note 35 at 131. See also findings in Heyns & Viljoen, *supra* note 31.

needed to accompany reporting within the overall framework of treaty implementation. One has to remember that UN human rights conventions are 'multidisciplinary' or 'inter-departmental/ministerial', so the need for governmental co-ordination, co-operation and monitoring is evident. Also, different levels of government have powers in the field of human rights, so both horizontal and vertical mechanisms or structures should exist. What, if anything, do the Committees have to say about this topic?

Different treaty bodies have emphasised the institutional dimension of the implementation of UN human rights treaties to a varying degree. On the basis of the Committees' general comments and a number of concluding observations on Australia, Canada, the Czech Republic, Finland, Spain and Sweden it is clear that the CRC Committee has paid most attention to this issue. Indeed, quoting Gerison Lansdown:

> In the course of analysing States parties' reports on the measures taken to ensure implementation, the Committee has identified clearly strategies and structures which need to be introduced. Scrutiny of these structures is as important as scrutiny of compliance with the individual rights. The Committee's recommendations favouring inter-ministerial committees, independent monitoring mechanisms, interdepartmental cooperation at national and local level, child impact statements, annual reports to parliament, dialogue with NGOs and dissemination of the Committee's findings are consistent with a commitment to strategic implementation.[176]

The concluding comments formulated by the CEDAW Committee in relation to these six countries also suggest that it pays attention to the creation of inter-ministerial co-ordinating bodies[177] and stresses the need for an effective national machinery for the implementation of the CEDAW[178] and for collaboration between central and regional/local governments/authorities.[179] In addition, the CEDAW Committee has advocated effective monitoring mechanisms covering both national and regional/local level.[180]

How does the situation in Australia, Canada, the Czech Republic, Finland, Spain and Sweden measure up to these standards? What is the quality of the existing arrangements for treaty implementation in Australia, Canada, the Czech Republic, Finland, Spain and

[176] Gerison Lansdown, 'The Reporting Process under the Convention on the Rights of the Child' in Alston & Crawford, *supra* note 9, 113 at 116.
[177] See *e.g.* Concluding Comments of the Committee on the Elimination of Discrimination against Women on the Czech Republic, 14 May 1998, UN Doc. A/58/38,paras.167-207.
[178] See *e.g. ibid.* and Concluding Comments of the Committee on the Elimination of Discrimination against Women on: Sweden, UN Doc A/48/38,paras.474-522, para. 496, and Australia, UN Doc. A/52/38/Rev.1, Part II, paras.365-408, para. 391.
[179] Spain, 1 July 1999, UN Doc. A754/38,paras. 236-277, para. 256.
[180] Finland, 2 February 2001, UN Doc. A/56/38,paras.279-311, para. 298; Spain, *ibid.* paras. 255, 256.

Sweden? What is good and what is lacking from the point of view of the implementation of concluding observations? The existence or lack of inter-ministerial governmental mechanisms or structures for co-ordination, co-operation and monitoring in the implementation of concluding observations will be examined below.

3.2.2 Governmental mechanisms for co-ordination, co-operation and monitoring

a) Finland

The Ministry for Foreign Affairs has the co-ordinating responsibility, not only for reporting but also for the national implementation of concluding observations. Usually it is some other ministry (line ministry) that is responsible for the adoption of the necessary bills.[181] The process starts when the Ministry for Foreign Affairs sends the concluding observations and its own recommendations to the competent authorities for them to consider whether any action is needed (also a form of dissemination).[182] It appears that concluding observations are taken seriously and they are carefully considered.[183] However, even when recommendations are followed, considerable delays may occur before they are implemented.[184] Non-implementation may sometimes occur simply because the government, or a ministry, is reluctant to implement certain treaty body recommendations.[185] Despite the relatively good record of Finland in implementing both final views and concluding observations, there is no evidence of an official, established inter-ministerial mechanism that would plan, prepare and monitor the implementation of human rights treaties, including concluding observations.[186]

This is reflected, for instance, in the concluding observations of the CRC Committee on Finland. It has been concerned about the absence of 'a focal point for children' within the government and the lack of an efficient co-ordination mechanism—between various ministries, between central and local authorities (municipalities) and at the local level—that

[181] Heyns & Viljoen, *supra* note 31 at 286.
[182] *Ibid.*
[183] *Ibid.*
[184] *Ibid.* 287. For a more detailed analysis of which concluding observations have been implemented in Finland and how, see *ibid.* at 287-288.
[185] See *ibid.* at 287.
[186] According to a Finnish human rights NGO 'Ihmisoikeusliitto' (the Finnish League for Human Rights) Finland should pay more attention to the implementation of treaty body recommendations (Ihmisoikeusliiton puheenvuoro Suomen kolmannen ihmisoikeuspolitiisen selonteon valmistelua koskevassa kuulemistilaisuudessa 9.10.2003, on file with the author).

would be responsible for the implementation of 'comprehensive' and 'visionary' policies for the promotion and protection of the rights of the child.[187] It has also been concerned at the absence of an integrated mechanism for monitoring the implementation of the CRC.[188] As a result, the Committee has encouraged Finland to take further steps to establish a focal point for children within the government and to strengthen the co-ordination between different governmental mechanisms involved in human rights and children's rights, at both central and local levels.[189] The Committee has further recommended that because of the significant delegation of powers from the central level to the municipalities (decentralisation, municipal self-government) Finland should establish an integrated monitoring system or mechanism to ensure that all children in all municipalities benefit to the same extent from basic social services.[190]

Finland has in recent years made efforts to strengthen the implementation mechanisms in the field of children's rights. Possibly as a response to the CRC Committee's observations, it established in 1998 an Assistant Parliamentary Ombudsman on child issues with the task of supervising the implementation of the rights of children in Finland.[191] However, the CRC Committee has invited Finland seriously to consider the establishment of an independent national ombudsperson for children, taking into account the experience with the Assistant Parliamentary Ombudsman and the positive experiences in other Nordic countries.[192] This discussion, started in 1995, arrived at a significant milestone in spring 2003: the programme of the new Vanhanen government states as one of its objectives the establishment of the position of an ombudsman for children.[193] Furthermore, the Association of Finnish Local and Regional Authorities adopted in January 2000 a programme on child policy with the aim of promoting the implementation of the CRC in municipalities.[194] In spring 2003 the Ministry of Social Affairs and Health set a Committee for child issues that was assigned,

[187] UN Doc. CRC/C/15/Add.53 (1996), para. 11 [Finland 1996]; and UN Doc. CRC/C/15/Add.132 (2000), para. 11 [Finland 2000].
[188] Finland 1996, para. 12, and Finland 2000, *ibid.*
[189] Finland 1996, para. 22, and Finland 2000, para. 12.
[190] Finland 1996, para. 23, and Finland 2000, paras. 13, 14.
[191] Finland 2000, para. 5.
[192] *Ibid.* paras. 19, 20.
[193] Third periodic report by Finland on the implementation of the Convention on the Rights of the Child (July 2003), online: Ministry for Foreign Affairs of Finland <www.formin.finland.fi> at 10.
[194] See Finland 2000, *supra* note 187, para. 7. The association recommends that 'each municipality prepare a child policy programme to meet the local needs, carry out regular reviews of the programme and evaluate the implementation of the measures taken.' Third periodic report by Finland on the implementation of the Convention on the Rights of the Child, *ibid.* at 8. Local decision-makers and office-holders have obtained information about the CRC through this programme as articles of the Convention have been incorporated into the Programme to support municipalities' own objectives and measures (*ibid.* at 15).

inter alia, to make a proposal concerning a permanent national mechanism for child and family issues.[195] The Committee will also take responsibility for disseminating information about the rights of the child,[196] and a Working Party, which operates under the administration of the Committee, will prepare a National Action Plan of Finland.[197] Each of these initiatives will offer new possibilities to develop the national implementation and follow-up of concluding observations in the field of children's rights, and the last one (committee for child issues, national action plan) could constitute a beginning for an inter-ministerial structure for co-ordination, co-operation and monitoring.

On a more general level it is important to mention that since 1998 the Finnish parliament has been kept informed of the main areas of the government's human rights policy through reports submitted by the Minister of Foreign Affairs to the Foreign Affairs Committee of Parliament. The government's intent is to prepare such a report at the beginning of the term of each elected parliament and possibly more often, if necessary. A new development is the inclusion in the next report of an analysis of the internal human rights situation in Finland. This was required by the Foreign Affairs Committee in its response to the latest report which, similarly to its predecessor, only dealt with human rights in Finnish foreign and security policy. The new report, to be released at the beginning of 2004, is expected to focus on issues to which treaty bodies have drawn attention in their findings.[198] This initiative could thus act as an incentive to create an inter-ministerial co-ordination, co-operation and monitoring mechanism for the implementation of treaty body findings, including concluding observations, in which the parliament and NGOs[199] would also be also involved.

[195] *Ibid.* at 10.
[196] *Ibid.* at 10, 16.
[197] *Ibid.* at 10.
[198] International Covenant on Civil and Political Rights—The fifth periodic report of Finland, *supra* note 135 at 4-5.
[199] In fact, the Finnish Foreign Ministry arranged a public hearing in October 2003 on the preparation of this third report on the Finnish human rights policy in which a number of NGOs participated. The author of this report was also present.

b) Spain and Sweden

It is interesting to note that the CRC Committee's concluding observations on Spain and Sweden regarding the issue of co-ordination, co-operation and monitoring are essentially similar, albeit less detailed, to those it has made on Finland.[200]

In Spain there are no clear institutional arrangements for the implementation of concluding observations, and the record of Spain in their implementation is patchy in respect of all six conventions.[201] Furthermore, the Heyns study does not contain any indications of an existence of a governmental monitoring mechanism in relation to the implementation of treaties in general or of concluding observations in particular. Spain has, however, reacted to the CRC Committee's observations and established, on the national level, an Observatory for Children in 1999 as well as the post of an assistant to the *Defensor del Pueblo* (Ombudsman) in charge of children's issues.[202] Moreover, some autonomous communities have created institutions or services specifically responsible for children, and a network of municipalities for children's rights was established in 1996.[203] Nevertheless, the Committee has made it clear that these measures are insufficient.[204]

It was impossible here to conduct a study of the extent of the national implementation of concluding observations in Sweden, but based on the Committees' concluding observations one can draw a preliminary conclusion that Sweden takes this task seriously and complies well with the treaties in question. This is also the official policy of the Swedish government.[205] It is interesting to note that the Swedish government has apparently for some time already been striving towards better co-ordination and monitoring of the national implementation of human rights treaties, in particular in the area of children's rights. Already in 1993 a Children's Ombudsman was set up, in accordance with the CRC Committee's recommendation, as one of the measures intended to guarantee full

[200] See Concluding Observations of the Committee on the Rights of the Child on a) Spain, UN Doc. CRC/C/15/Add.28 (1994) and UN Doc. CRC/C/15/Add.185 (2002) and b) Sweden, UN Doc. CRC/C/15/Add.2 (1993) and UN Doc. CRC/C/15/Add.101 (1999).
[201] See Heyns & Viljoen, *supra* note 31 at 597-602, and Chapter 2 above.
[202] See UN Doc. CRC/C/15/Add.185 (13 June 2002), paras. 5, 7.
[203] *Ibid.* para. 5.
[204] *Ibid.*
[205] 'A careful analysis is made in the Government Offices of cases in which Sweden has been criticized and the criticized procedures are improved.' Human Rights in Sweden—A Baseline Study, *supra* note 80 at 14-15; and Skr. 2001/02:83, *supra* note 80 at 26.

implementation of the CRC at all levels of society.[206] Moreover, a co-ordinating unit has been established in the Ministry of Health and Social Affairs for the task of co-ordinating, supporting and stimulating work on the CRC and related matters in the Government Offices (*Regeringskansliet*).[207] In fact, since 1998 Sweden has a national strategy for giving effect to the CRC in Sweden,[208] and the government has also included in its 1999 child policy document 'Children—Here and Now' (Comm. 1999/2000:137) a report on measures that have been, or will be taken, in response to the comments of the CRC Committee.[209] As noted above, each of these measures, or similar ones, are currently being prepared or implemented in Finland.

On a more general level, the first Swedish National Human Rights Action Plan (2002-2004) has as one of its goals to promote better co-ordination of activities related to the promotion of human rights in general and in respect of certain priority areas in particular.[210] From the point of view of this study, one of the most interesting features of this action plan is the establishment of an inter-ministerial working group for human rights within the Government Offices. The Swedish government states that human rights 'must be constantly highlighted and monitored' and the setting up of this new working group should strengthen the organisation of the Government Offices with a view to guaranteeing that 'respect for human rights is maintained in all parts of the national administration.'[211] It is not entirely clear whether the working group will concern itself with the national implementation of concluding observations, but its inter-ministerial structure would certainly provide a good starting point for the co-ordination and monitoring of such work.[212] Another positive feature

[206] The Ombudsman's 'main task is to safeguard the rights and interests of children and young people as laid down in the Convention on the Rights of the Child. … In particular, the Ombudsman shall verify that laws and statutory instruments, as well as their implementation, agree with Sweden's commitments under the Convention.' UN Doc. HRI/CORE/1/Add.4/Rev.1, *supra* note 74, para. 44. See also Skr. 2001/02:83, *ibid.* at 32, and Concluding Observations of the Committee on the Rights of the Child on Sweden, UN Doc. CRC/C/15/Add.101 (1999), para. 8.
[207] See Human Rights in Sweden—A Baseline Study, *supra* note 80 at 20, and Skr. 2001/02:83, *ibid.* at 74.
[208] *Ibid.* at 20.
[209] *Ibid.* at 21.
[210] See Skr. 2001/02:83, *supra* note 80.
[211] *Ibid.* at 106 (quotations from the English summary of the action plan A National Human Rights Action Plan – A Summary, *supra* note 91 at 51).
[212] A National Human Rights Action Plan – A Summary provides the following description of the inter-ministerial working group: 'The members of this intra-ministerial working group will serve as contact persons in their several ministries on matters relating to human rights. The task of the working group will be to co-ordinate activities in this field on a more general plan, but it is not in any way to take over responsibility for human rights issues otherwise devolving on the various ministries in the course of their regular activities. The working group is to be regarded as an adjunct and support in this connection.' *Ibid.* The working group is also tasked with following up the Action Plan and ensuring that is evaluated (*ibid.* at 70).

of the Action Plan is the fact that a number of the Committees' concluding observations and final views were taken into account when preparing the document,[213] and such findings are also referred to in the text itself in relevant contexts.[214] Finally, the Swedish government announces in the Action Plan that it intends returning to the Riksdag (Parliament) at regular intervals to report on work at national level with reference to human rights.[215] These reports will inform the Riksdag of the follow-up of the Action Plan, of the progress of human rights activities at the national level, and of '*the criticism which Sweden sometimes incurs from the UN investigating Committees* and, for example, the European Court of Human Rights.'[216] Hence, the Plan can be seen as representing in itself one step towards governmental implementation of concluding observations. Furthermore, the inter-ministerial working group has potential to develop into a governmental body for co-ordination, co-operation and monitoring in respect of the national of implementation of concluding observations.[217]

c) Czech Republic

In relation to the Czech Republic, it has been reported that concluding observations have been implemented in a number of instances and that they have had a significant impact on legal developments.[218] For example, the Czech Republic accepted the inter-state and individual complaints procedures as well as the CAT inquiry procedure after the Committee against Torture encouraged it to do so.[219] Overall, it seems that the Czech Republic takes the implementation of human rights treaties, including that of concluding observations,

[213] See Human Rights in Sweden—A Baseline Study, *supra* note 80.
[214] See Skr. 2001/02:83, *ibid.*
[215] *Ibid.* at 27.
[216] A National Human Rights Action Plan – A Summary*, supra* note 91 at 12 [emphasis added], and Skr. 2001/02:83, *ibid.* (original version in Swedish).
[217] In this context it may be noted that UN treaty bodies put much emphasis on the existence of national plans of action for the protection of human rights in accordance with the Vienna Declaration of 1993, in particular in their respective fields of expertise. See *e.g.* Concluding Observations of the Committee on Economic, Social and Cultural Rights on: the Czech Republic, UN Doc. E/C.12/1/Add.76 (2002), paras. 9, 26; Finland, UN Doc. E/C.12/1/Add.52 (2000), paras. 8, 21; Sweden, UN Doc. E/C.12/1/Add.70 (2001), para. 5; Concluding observations of the Human Rights Committee on Sweden, UN Doc. CCPR/CO/74/SWE (2002), para. 3; Concluding Observations of the Committee on the Elimination of Racial Discrimination on: Finland, UN Doc. CERD/C/304/Add.7 (1996), para. 4, UN Doc. CERD/C/304/Add.66 (1999), para. 3; UN Doc. CERD/C/304/Add.197 (2001), para. 5, and UN Doc. CERD/C/63/CO/5 (2003), para. 7; and Sweden, UN Doc. CERD/C/304/Add.103 (2001), para. 8; Concluding Comments of the Committee on the Elimination of Discrimination against Women on the Czech Republic, UN Doc. A/58/38,paras.167-207, para. 180; Concluding Observations of the Committee against Torture on Sweden, UN Doc. CAT/C/CR/28/6 (2002), para. 4.
[218] Heyns & Viljoen, *supra* note 31 at 26.
[219] *Ibid.* See Concluding Observations of the Committee against Torture on the Czech Republic, UN Doc. A/50/44,paras.86-94, para. 94, and UN Doc. A/56/44,paras.106-114, paras. 110, 112.

seriously. It has paid attention to the need to co-ordinate and monitor the national implementation of its human rights obligations and it has made concrete efforts to reform its laws and practices.

As noted in Chapter 2.1, the Council for Human Rights of the Czech Government is responsible for the practical implementation of human rights treaties. However, it is not clear what its precise role is in the implementation of treaty body recommendations, apart from the fact that it uses concluding observations as basic guidelines for the preparation of country reports.[220] Does it have an active advisory role in pushing for the implementation of concluding observations in particular? In any case, it seems that it would have good possibilities to adopt such a proactive role due to its inter-ministerial structure consisting of various specialised sections and involving NGO representatives, and its mandate to both monitor and advise. It is worth noting that it the Council itself appears to have been established in conformity with the concluding observations of the CRC Committee on the initial report of the Czech Republic,[221] and that the establishment of the Section of Equal Opportunity for Women and Men of the Council is an example of government implementation of a recommendation adopted by the CEDAW Committee on the Czech Republic's initial report.[222]

d) Australia and Canada

The Heyns study does not provide any clear assessment of the record of Australia and Canada in the national implementation of concluding observations,[223] but the Australian government's decision to ignore the CERD Committee's recommendations on the Native

[220] Heyns & Viljoen, *supra* note 31 at 218.
[221] *Ibid.* at 219. Nonetheless, the CRC Committee 'remains concerned at the lack of an adequately mandated and resourced coordination mechanism for all issues relating to the implementation of the CRC.' UN Doc. CRC/C/15/Add.201 (2003), para. 12. In other words, the Council's Committee on the Rights of the Child is not sufficient: the CRC Committee recommends the creation of 'a single permanent body, which is adequately mandated and resourced, to coordinate implementation of the Convention at the national level, including by effectively coordinating activities between central and local authorities and cooperating with … NGOs and other sectors of civil society.' *Ibid.* para. 13.
[222] Heyns & Viljoen, *ibid.* at 218. Although satisfied about the creation of an inter-ministerial co-ordinating body on women's issues within the Ministry of Labour and Social Affairs, the Committee considered that such a body cannot be viewed as a sufficient national machinery (Concluding Comments of the Committee on the Elimination of Discrimination against Women on the Czech Republic, UN Doc. A/53/38,paras.167-207, paras 180, 187). The Committee recommended the establishment of 'an adequately resourced national machinery with a clear mandate to implement, coordinate and monitor the provisions of the Convention' (*ibid.* para. 200).
[223] It appears that there have been few instances where the Committees have suggested that Canada take special action. The bulk of such recommendations is of quite recent origin, whereby it remains to be seen what the general trend of the Canadian response will be. Heyns & Viljoen, *ibid.* at 145-146.

Title Act of 1993, as well as a request by the same Committee to address its concerns as a matter of utmost urgency,[224] raised international attention and cast doubt on the government's commitment to the treaty body system. When taken together with a high profile refusal to implement, for example, views of the Human Rights Committee in the case of *A v. Australia* (Communication No. 560/1993), 'a strong message of sovereignty' has emerged from a country generally perceived to be 'pro-human rights'.[225] Furthermore, the decentralised character of both treaty implementation and state reporting arrangements suggest that Australia has no clear strategy or mechanism for the implementation of concluding observations either. In fact, both the CRC Committee and the CEDAW Committee have noted the lack of a strategy to implement children's rights and equality issues respectively and of a national machinery to plan and monitor the implementation of the respective conventions.[226]

What is unique in Canada is that federal contributors to the report and Canadian participants in the dialogue between the government delegation and the treaty body discuss the concluding observations at a 'post-mortem' meeting held in the week following the oral presentation of the report.[227] Moreover, the Human Rights Committee noted in its 1999 concluding observations on Canada 'the delegation's commitment to take action to ensure effective follow-up in Canada of the Committee's concluding observations and to further develop and improve mechanisms for ongoing review of compliance of the State party with the provisions of the Covenant.'[228] According to Canada, the Federal-Provincial-Territorial

[224] See *ibid.* at 26, 80. For the comments of the government of Australia on the concluding observations adopted by the CERD Committee on the tenth, eleventh and twelfth periodic reports of Australia, see UN Doc. A/55/18, Annex X. The Australian government states that it 'rejects these comments.' Moreover, the government announces that following the issue of the Committee's concluding observations, it initiated 'a review of its engagement with United Nations treaty bodies, which will involve, *inter alia*, consideration of the working procedures of CERD.'

[225] Heyns & Viljoen, *supra* note 31 at 31, 82-86.. The Human Rights Committee commented in its concluding observations on Australia: 'The Committee is concerned over the approach of the State party to the Committee's Views in Communication No. 560/1993 (A v. Australia). Rejecting the Committee's interpretation of the Covenant when it does not correspond with the interpretation presented by the State party in its submissions to the Committee undermines the State party's recognition of the Committee's competence under the Optional Protocol to consider communications.' UN Doc. A/55/40, paras.498-528, para. 520.

[226] See Concluding Comments of the CEDAW Committee on Australia, UN Doc. A/52/38/Rev.1, Part II, paras.365-408, paras. 391, 398; and Concluding Observations of the CRC Committee on Australia, UN Doc. CRC/C/15/Add.79 (1997), para. 9, 24.

[227] Heyns & Viljoen, *supra* note 31 at 25, 144. See also Chapter 3.1 above.

[228] UN Doc. CCPR/C/79/Add.105 (1999), para. 3. Canada had stated in its fourth periodic report on the implementation of the ICCPR that '[t]he question of ensuring implementation of international human rights treaties and, in particular, that there is adequate follow-up to the concluding observations of United Nations committees on Canada's reports implementation of such treaties, is increasingly a matter of attention and priority in Canada.' UN Doc. CCPR/C/103/Add.5 (1997), para. 17.

Continuing Committee of Officials on Human Rights[229] was considering 'how better to achieve adequate follow-up to the concluding observations' and had agreed that 'the question of implementation of human rights treaties should be a standing item on the agenda for its meetings.'[230] Nonetheless, the Canadian system for the implementation of human rights treaties, including concluding observations, is not sufficient: the Human Rights Committee recommended that 'consideration be given to the establishment of a public body responsible for overseeing implementation of the Covenant and for reporting on any deficiencies.'[231] Similarly, the CRC Committee has noted that the establishment by Canada of certain bodies or initiatives[232] or the existence of the Continuing Committee of Officials on Human Rights have not removed the need to set up a permanent federal co-ordination and monitoring mechanism that will enable an effective system of implementation of the CRC in all parts of Canada.[233] Again, an efficient governmental mechanism for co-ordination and monitoring of the implementation of concluding observations would be a useful tool in achieving the goals set by the treaty bodies.

3.3 Independent Monitoring Structures Other Than Courts

UN human rights treaties oblige states parties to implement the rights contained in them by all appropriate legislative, administrative or other measures.[234] The establishment and strengthening of governmental mechanisms for co-ordination and monitoring of the implementation of human rights treaties, dealt with in the previous chapter, fits this obligation. In addition, the Committee on Economic, Social and Cultural Rights has noted that the work of *national institutions for the promotion and protection of human rights* would fall within the category of such appropriate means.[235] Similarly, the CRC Committee has recently stated its view that the establishment of *independent national human rights institutions* (NHRIs) falls within the commitment made by the states parties to ensure the

[229] See Chapter 2.1 above.
[230] UN Doc. CCPR/C/103/Add.5 (1997), para. 19.
[231] *Ibid.* para. 10.
[232] Canada has created a 'Children's Bureau' to ensure that the CRC is taken into account in government policies, as well as to enable consultations between the authorities and private and voluntary sectors (UN Doc. CRC/C/15/Add.37 (1995), para. 5), launched, in 1997, a multisectoral initiative 'National Children's Agenda', and created the position of Secretary of State for Children and Youth (UN Doc. CRC/C/15/Add.215 (2003), para. 10).
[233] See Canada 1995, *ibid.* paras. 9, 20, and Canada 2003, *ibid.* paras. 10, 11
[234] See *supra* note 40 and the accompanying text.
[235] General Comment No. 10 (19) of the Committee on Economic, Social and Cultural Rights on the role of national human rights institutions in the protection of economic, social and cultural rights (1998), para. 1.

implementation of the CRC.[236] The establishment of independent national human rights institutions has also been supported by the Vienna World Conference on Human Rights (1993), UN General Assembly, the Commission on Human Rights and the Office of the United Nations High Commissioner for Human Rights.[237]

According to one definition, national human rights institutions are 'independent entities which have been established by a government under the constitution or by a law and entrusted with specific responsibilities in terms of the promotion and protection of human rights.'[238] These institutions can take many forms: national human rights commissions, Ombudsman offices, and public interest or other human rights advocates.[239] Anne Gallagher has observed that, in practice, they are either 'quasi-judicial' or 'administrative' in nature, 'in the sense that they are neither judicial nor law-making,'[240] and that their functions commonly include 'an advisory function (with regard to government policy and practice on human rights); an educative function (oriented towards the public); and what may be termed an impartial investigatory function.'[241] In establishing NHRIs states can opt for separate specialist human rights institutions for children/ women/ minorities/ civil and political rights/ economic, social and cultural rights, etc., or for a broad-based institution with specific commissioners or sections responsible for different issue areas (integrated structure).[242] The CRC Committee considers that where resources are limited the latter approach is likely to constitute the best approach from the point of view of the effective promotion and protection of everyone's human rights, including children's.[243] Similarly, the Committee on Economic, Social and Cultural Rights has encouraged the creation of a

[236] General Comment No. 2 (31) of the Committee on the Rights of the Child on the role of independent national human rights institutions in the promotion and protection of the rights of the child (2002), para. 1. See also General Recommendation XVII (42) of the Committee on the Elimination of Racial Discrimination on the establishment of national institutions to facilitate the implementation of the Convention (1993).
[237] See General Comment No. 10 (19) of the Committee on Economic, Social and Cultural Rights, para. 1, and General Comment No. 2 (31) of the Committee on the Rights of the Child, para. 3. See also Gallagher, *supra* note 38, and Miko Lempinen et al., 'Kansallisen ihmisoikeusinstituution tarve Suomessa: "Pariisin periaatteiden" mukaiset tehtävät, niiden toteuttaminen Suomessa ja kehittämismahdollisuuksien hahmottelua' (Turku/Åbo: Åbo Akademin ihmisoikeusinstituutti, 2002), online: Institute for Human Rights, Åbo Akademi <http://www.abo.fi/instut/imr/>.
[238] Gallagher, *ibid.* at 202.
[239] See *e.g.* General Comment No. 10 (19) of the Committee on Economic, Social and Cultural Rights, para. 2.
[240] Gallagher, *supra* note 38 at 203.
[241] *Ibid.* at 204. See also General Comment No. 10 (19) of the Committee on Economic, Social and Cultural Rights, para. 3, and General Comment No. 2 (31) of the Committee on the Rights of the Child, para. 19.
[242] See *e.g.* General Comment No. 2 (31) of the Committee on the Rights of the Child, para. 6, and Lempinen et al., *supra* note 237 at 6. The broad-based (integrated) model can, in turn, take different forms (see Lempinen et al., *ibid.*)
[243] General Comment No. 2 (31) of the Committee on the Rights of the Child, para. 6.

national human rights institution, preferably within a framework of a National Plan of Action for Human Rights, to deal with the protection and promotion of *all human rights*, including economic, social and cultural rights.[244] Of the six countries included in this study only Australia, Canada and the Czech Republic have established broad-based national human rights bodies. Only the Australian HREOC and the Canadian Human Rights Commission[245] qualify as NHRIs, for the Council for Human Rights of the Czech Government is a governmental advisory body, not an independent national institution in accordance with the so-called 'Paris Principles'.[246]

What is interesting in the present context is that the first, advisory function of a national human rights institution is usually accompanied with the responsibility to monitor implementation of and compliance with international human rights treaties.[247] Indeed, in the Paris Principles one of the responsibilities of an NHRI is 'to promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation.'[248] It appears, however, that of the existing NHRIs '[f]ew have yet taken it upon themselves to disseminate, debate or follow up on reports produced by the state or on the resulting observations made by the treaty bodies,'[249] which would be valuable tools in their monitoring efforts. This seems to apply to the national human rights institutions in both Australia and Canada as well.[250] The aspect of NHRIs disseminating, debating or following up on country reports and concluding observations would certainly merit further attention,[251] but has so far not been effectively addressed in the Committees' concluding observations.

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[244] Czech Republic, UN Doc. E/C.12/1/Add.76 (5 June 2002), para. 9; Sweden, UN Doc. E/C.12/1/Add.70 (30 November 2001), para. 26.
[245] See Chapter 2 above. For more information about the HREOC, see *e.g.* Lempinen et al., *supra* note 237, Chapter 3.2.
[246] For instance, the Human Rights Committee has been concerned about the lack of independent mechanisms for monitoring the practical implementation of rights in the Czech Republic and has encouraged the establishment of such. See Concluding Observations of the Human Rights Committee on the Czech Republic, UN Doc. CCPR/CO/72/CZE (2001), para. 7. For more information on the Paris Principles (*Principles Relating to the Status of National Institutions,* GA Res. 48/134 (1993), Annex), see *e.g.* Lempinen et al., *supra* note 237.
[247] Gallagher, *supra* note 38 at 202.
[248] Paragraph 3 (b) of the first section ('Competence and responsibilities') of the Paris Principles.
[249] Gallagher, *supra* note 38 at 208.
[250] See sections on Australia and Canada in Heyns & Viljoen, *supra* note 31.
[251] See also Heyns & Viljoen, *ibid.* at 41, who argue that NHRIs 'should be encouraged to do their own follow-up of UN procedures, both as regards concluding observations and individual complaints, and to keep track of what has been done by governments in this respect.' They add that where human rights institutions do not exist, an inter-ministerial or interdepartmental co-ordinating human rights forum (the establishment of which they also strongly recommend, regardless of the existence of a NHRI) should fulfil the same function (*ibid.* at 42).

Furthermore, Australia, Canada, the Czech Republic, Finland, Spain and Sweden have all established one or more Ombudsman offices, often both at the national and regional/local level.[252] It appears that disseminating, debating or following up on country reports and concluding observations is not part of their functions either.[253] In fact, this is in accordance with the traditional ombudsman model which, as observed by Gallagher, focuses primarily on overseeing fairness and legality in public administration and is not concerned with human rights except insofar as they relate to this principal function.[254] It follows that either the mandates of ombudsmen should be extended to monitoring the implementation of concluding observations or a new independent institution/mechanism should be established to do so (unless a NHRI already exists that could take care of this task). In this respect it is important to note that the government should not delegate its reporting or monitoring obligations to the national institution. The CRC Committee has stressed that it is 'essential that institutions remain entirely free to set their own agenda and determine their own activities.'[255]

3.4 Other Relevant Considerations

As I have noted earlier in another study, participation of *civil society* in the implementation and follow-up of concluding observations is crucial. There is a need for an NGO community that is knowledgeable of treaty processes, aware of the concluding observations, and ready to sensitise the public as to their contents and pressure the government towards compliance. Same considerations apply to the *national media* as well.[256] Moreover, apart from pressuring the government towards compliance and monitoring its progress in this respect, NGOs should, where appropriate, collaborate with the government in the implementation of concluding observations—one important function of the reporting process being to generate dialogue between the government and civil society.[257] One way to create such a dialogue is to involve NGOs in the preparation of country reports, either through consultation before the submission of reports or by encouraging them to submit so-called 'shadow reports',[258] which will create a favourable ground for the implementation process. UN treaty bodies

[252] See Chapter 2 above.
[253] See *ibid.*, relevant sections in Heyns & Viljoen, *supra* note 31, Human Rights in Sweden—A Baseline Study, *supra* note 80, and Skr. 2001/02:83, *supra* note 80.
[254] Gallagher, *supra* note 38 at 203.
[255] General Comment No. 2 (31) of the Committee on the Rights of the Child, para. 25.
[256] Niemi & Scheinin, *supra* note 45 at 33.
[257] *Ibid.* at 34-35.
[258] *Ibid.* at 27-28.

have systematically drawn attention to the need to strengthen and develop co-operation between authorities and NGOs, both before and after the consideration of country reports.[259] The record of Finland in this respect is relatively good.[260] Nevertheless, the CRC Committee has recommended that the government strengthen its co-operation with NGOs, *including in relation to the implementation of the Committee's recommendations.*[261] One forum for doing this might be the Advisory Board on Human Rights Affairs, which is already consulted during the preparation of periodic reports.[262] Another mechanism for strengthening the government-NGO co-operation is provided by periodic submission by the Finnish government of a report on its human rights policy. The soon-to-be-released third report will for the first time deal with the internal human rights situation of Finland and in so doing it will focus on issues to which treaty bodies have drawn attention in their findings.[263] The Finnish Foreign Ministry arranged a public hearing in October 2003 on the preparation of this report during which a number of NGOs could make their views heard on a variety of human rights related issues. Naturally, any governmental mechanism for co-ordination and monitoring of the implementation of concluding observations or an NHRI possibly created in Finland in the future should co-operate with interested NGOs.[264]

Yet another way of improving government implementation of concluding observations is to focus on the composition of government delegations that participate in the consideration of country reports. In short, a high-level delegation consisting of representatives of relevant authorities ('multidisciplinarity')[265] will provide the best possible starting point for the

[259] Evidence of this can be found in several of the concluding observations referred to in the previous chapters.
[260] See *e.g*. Heyns & Viljoen, *supra* note 31 at 37 where the Finnish practice of holding public hearings on the basis of draft reports prior to their submission to the UN is defined as a best practice. Moreover, it may be noted that the CERD Committee has welcomed efforts by the Finnish government to establish a dialogue with the NGO sector and to promote public debate on questions and problems relating to racial discrimination (UN Doc. CERD/C/304/Add.7 (1996), para. 6).
[261] UN Doc. CRC/C/15/Add.53 (1996), para. 22.
[262] See Heyns & Viljoen, *supra* note 31 at 283. It may be noted that the Committee on Economic, Social and Cultural Rights has noted 'with satisfaction the existence and the activities of the Advisory Board on Human Rights Affairs, composed of representatives of various human rights organizations and of several ministries' (UN Doc. E/C.12/1/Add.8., para. 3). This board is attached to the Ministry for Foreign Affairs and focuses on international human rights affairs, but nothing prevents it from considering the internal human rights situation. See Lempinen et al., *supra* note 236 at 60.
[263] See Chapter 3.2.2 above.
[264] On NHRIs and NGOs see *e.g.* General Comment No. 2 (31) of the Committee on the Rights of the Child, para. 26.
[265] The CRC Committee in particular has paid attention to both the rank and multidisciplinary nature of the delegation. Delegations of Spain and Sweden, at least, have simultaneously incorporated these two dimensions. See Concluding Observations of the Committee on the Rights of the Child on Spain, UN Doc. CRC/C/15/Add.185 (2002), para. 2, and on Sweden, UN Doc. CRC/C/15/Add.2 (1993), para. 3. Spain's and Sweden's delegation before the Committee on Economic, Social and Cultural Rights have also consisted of

implementation process, in particular when combined with a Canadian style 'post mortem' session soon after the consideration of a report and both quick and wide dissemination of concluding observations.

Finally, it should be mentioned that institution by the treaty bodies of follow-up procedures on the implementation of concluding observations[266] together with efforts to improve the quality (accuracy, clarity, specificity) of concluding observations are developments that are likely to encourage and facilitate the national implementation of concluding observations. So far, lack of pressure to implement the recommendations,[267] combined with their having been 'so general as to lose any realistic hope of being taken seriously'[268] by governments, NGOs, or other relevant bodies, has prevented the reporting procedure from attaining its full potential in changing states' human rights laws and practices. In the context of this report it is appropriate to quote Anne Gallagher who has noted that 'the overwhelming majority' of proposals and suggestions made to or about state parties by the treaty bodies concerning the strengthening of national structures 'are so broad as to verging on the platitudinous.'[269] She writes:

> States parties are, for example, routinely urged to ensure that their public officials are given human rights training; that 'law reforms' be undertaken; that effective monitoring mechanisms be introduced; and that public information and education activities be strengthened. Recommendations for action often expose gaps and weaknesses in the

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members with expertise in all fields relevant in the context of the ICESCR. See Concluding Observations of the Committee on Economic, Social and Cultural Rights on Spain, UN Doc. E/C.12/1/Add.2 (1996), para. 2, and on Sweden, UN Doc. E/C.12/1/Add.70 (2001), para. 3.

[266] See *e.g.* Scheinin, 'Work', *supra* note 17 (on the Human Rights Committee), and Bank, *supra* note 26 (on the CAT Committee). The follow-up procedure of the Human Rights Committee is as follows: 'At the end of the concluding observations, a follow-up submission is requested within 12 months on some concerns identified by the Committee. One member of the Committee was appointed Special Rapporteur on follow-up under Article 40. On the basis of follow-up submissions received the Special Rapporteur recommends to the Committee what further measures should be taken in respect of a State Party. These may include the adjustment of the due date of the next periodic report.' Scheinin, 'Work', *supra* note 17 at 11. According to Article 40 of the ICCPR, periodic reports are due 'whenever the Committee so requires.' The Committee applied for a long time a uniform reporting period of five years, but since July 2001 its practice consists of specifying *separately* for each state the due date of the next report, which is set at the end of the concluding observations (Scheinin, *ibid.* at 9-10).

[267] Quoting Roland Bank: 'The crucial point for assuring that state reporting procedures actually have an impact lies in the follow-up procedures. Governments will not be very motivated by the recommendations of an international monitoring body … if these are not reinforced by subsequent pressure to implement the recommendations.' Bank, *ibid.* at 161.

[268] Leckie, *supra* note 35 at 132. See also the discussion contained in Niemi & Scheinin, *supra* note 45 at 34-36 and 61-63.

[269] Gallagher, *supra* note 38 at 220.

committees' own information sources and it is only very occasionally that recommendations are made with enough specificity to enable their follow-up to be measured or evaluated.[270]

3.5 Implementation by the Judiciary

3.5.1 General remarks

The judiciary plays an important role in the national implementation of treaty body findings. The word 'implementation' can here have two meanings: a) use by national courts of any treaty body output in their reasoning (arguably a form of treaty implementation) or b) judicial implementation of final views that contain a finding of violation against the state where the court has jurisdiction. Regarding the first meaning, an excellent source of information is the 'Interim Report on the Impact of the Work of the United Nations Human Rights Treaty Bodies on National Courts and Tribunals' that identifies a certain number of trends in the use by the judiciary of such output:

First, national courts and tribunals have begun to make an increasing number of references to the work of the treaty bodies.[271] Second, a majority of those references relate to the findings of the Human Rights Committee.[272] Third, national courts and tribunals have drawn mainly on two types of treaty body output: case law (views) of the UN treaty bodies under the individual communication procedures and general comments.[273] Only occasional use has been made of concluding observations.[274] This difference is best explained by the abstract nature and style of concluding observations as policy recommendations, which diminishes their impact on the judiciary. On the other hand, 'the use by judiciary and other legal bodies of the case law is currently more than marginal, owing to its concrete nature and its style of

[270] Gallagher, *supra* note 38 at 220. See also Heyns & Viljoen, *supra* note 31, reporting on criticism levelled by a number of national contributors against the quality of concluding observations. Australia, Canada, the Czech Republic, Finland and Spain are part of this group.
[271] ILA Interim Report, *supra* note 13, paras. 13, 16, 62, 64.
[272] *Ibid.* paras. 16, 48
[273] *Ibid.* para. 16. For examples of such use see *ibid.* at 15-16 (views), 20-23 (general comments). The jurisprudence of the Human Rights Committee is the most extensive and is regarded the most authoritative. Jurisprudence of the CAT Committee relates mainly to the obligation of *non-refoulement* contained in Article 3 of the CAT and is now encapsulated in the Committee's first and only general comment (General Comment No. 1 (16) on implementation of article 3 of the Convention in the context of article 22 (1996)). This case law has increasingly been cited before national courts and tribunals in the immigration field. See ILA Interim Report, *ibid.*, para. 23. The CERD Committee is the oldest treaty monitoring body, but has so far examined relatively few cases under the individual complaints procedure.
[274] See *ibid.* paras. 56-59 (at 23-25).

legal interpretation of treaty obligations.'[275] Fourth, even if the awareness of treaty body output is rising at the national level and the courts have started to refer to the work of the treaty bodies in an increasing number of occasions, this material is often used in a rather superficial manner as part of a lengthy listing of other international sources and comparative national case law.[276] Finally, the ILA Interim Report suggests that with the continuing development and improvement of the treaty body output, and the growing knowledge of these documents among lawyers and courts, 'there is every chance that these materials will become an increasingly important source of assistance for national courts and tribunals.'[277]

Use by national courts of treaty body findings in Australia, Canada, the Czech Republic, Finland, Spain and Sweden has so far been very limited. (No mention of Spanish or Swedish courts can be found in the ILA Interim Report, which does not necessarily mean that no such cases exist.) Finnish, Australian and Canadian courts have reportedly referred once to the Committees' views in their reasoning,[278] and references to the views of the Human Rights Committee can be found in several decision of the Czech Constitutional Court.[279] In addition, Canadian courts have referred twice to both general comments[280] and concluding observations[281] on Canada. The main issue to be dealt with in this chapter is, however, the second meaning of 'implementation', that is, actual judicial implementation of views that contain a finding of violation against the state where the court exercises jurisdiction. Hence, factors that influence the extent to which national courts have used treaty body output or strategies to increase the use by courts of treaty body output by will remain outside the scope of this study.[282]

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[275] Niemi & Scheinin, *supra* note 45 at 44.

[276] ILA Interim Report, *supra* note 13, para. 62. 'It is difficult to assess the extent to which international jurisprudence has had a significant influence on the outcome of a particular case. Even in those cases in which a court reaches a conclusion consistent with the treaty body's interpretation of a norm, treaty body materials will frequently be cited along with other international material (including regional human rights material, and comparative national case law).' *Ibid.* para. 18.

[277] *Ibid.* para. 63.

[278] *Ibid.* paras. 50, 52, 53 respectively. The Finnish case is *Länsman and Others v The Government Forestry Agency*, KKO 1995:117 (Supreme Court of Finland). The Court referred to views of the Human Rights Committee in *Ominayak v. Canada* (167/1984) and in *Kitok v. Sweden* (197/1985). The case was later submitted to the Human Rights Committee as *Länsman No. 2 v. Finland* (671/1995).

[279] Mahulena Hoffman, 'Impact of the Views of the UN Human Rights Committee in the National Legal Order of Some Eastern and Central European States (Paper presented to the Meeting on the Impact of the Work of the United Nations Treaty Bodies on National Courts and Tribunals, Turku, 26-27 September 2003), online: Institute for Human Rights, Åbo Akademi <http://www.abo.fi/instut/imr/>. Five such decisions of the Czech Constitutional Court are listed in the paper.

[280] See ILA Interim Report, *supra* note 13 at 22, 23.

[281] See *ibid.* at 24.

[282] 'A number of factors have influenced the extent to which national courts have used the output of the treaty bodies. These factors (familiar from studies of the use of international standards by domestic courts more

3.5.2 Implementation of final views within the national legal system

It was already noted above that reactions of states to a findings of violation can be categorised in the following way: a) institutional changes were effected (legislative amendments, administrative steps); b) redress was afforded to the individual (compensation, release, sentence commuted); and c) nothing done/ settlement still outstanding, depending on the case at hand.[283] Quoting Professor Scheinin:

> In cases where the Committee finds one or more violations of the Covenant, it also expresses the question of an effective remedy to be afforded. Basing itself on Article 2, paragraph 2, of the Covenant, the Committee declares that the victim of a violation has a *right* to an effective remedy and the state responsible for the violation a corresponding legal *obligation* under international law to provide the remedy. Thereafter, the Committee proceeds to express its own view on what, in the circumstances of the case, would constitute an effective remedy. The Committee's pronouncements of an effective remedy range from, for instance, the commutation of death sentence or release to compensation or a new trial [footnote omitted]. Although the Committee has so far not quantified the pecuniary amount of compensation it has, in some recent cases, expressed its view on how the compensation should be calculated.[284]

The relevant question for the victim is, then, whether he or she can actually obtain an effective remedy and, in particular, whether he or she can enforce the Committees' final views—which, as noted above, are not legally binding upon the state party[285]—through domestic court proceedings.

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generally) include the knowledge of those materials by national courts and advocates, the ability of the materials to be applied in the resolution of a specific case before a tribunal, the normative standard being interpreted by the national court and the relationship of the international standard to the domestic one, the quality of the reasoning of the international source, the availability of international review of the national decision, the accessibility of the international materials to national courts and advocates, and the general attitude of the national courts to international law.' *Ibid.* para. 20.

[283] See Chapter 3.2.1 above.

[284] Scheinin, 'Work', *supra* note 17 at 22.

[285] See Chapter 1. On the other hand, 'it would be wrong to categorize the Committee's views as mere "recommendations". They are the end result of a quasi-judicial adversarial international body established and elected by the States Parties for the purpose of interpreting the provisions of the Covenant and monitoring compliance with them. It would be incompatible with these preconditions of the procedure that if a state that voluntarily has subjected itself to such a procedure would, after first being one of the two parties in a case, then after receiving the Committee's views, simply replace the Committee's position with its own interpretation as to whether there has been a violation of the Covenant or not. If a state wishes to question the correctness of a legal interpretation by the Committee, it should at least resort to some other procedure before an international court or an independent expert body. As this is not likely to happen in practice, the presumption should be that the Committee's views in Optional Protocol cases are treated as the authoritative interpretation of the Covenant under international law.' Scheinin, 'Work', *ibid.* For a discussion on the status of the Committees' views, see also *ILA Interim Report, supra* note 13, paras. 29-34.

Of the countries included in this study only Finland and Spain allow for implementation of final views through domestic courts.[286] In *Finland* it has been established by way of decisions by the Supreme Administrative Court in *Torres* and *Vuolanne* that compensation may be sought in administrative courts on the basis of a finding of violation by the Human Rights Committee under the Optional Protocol to the ICCPR.[287] In other words, the state has a duty under Finnish law to pay compensation in cases where the Human Rights Committee has found a violation of the Covenant.[288] The ministry under which the violation occurred is responsible for the payment of compensation.[289] Although there have so far been no findings of violation under the CERD or the CAT, it is most likely that the duty to compensate would apply.[290] It is to be noted that at least so far Finnish courts have allowed only the granting of compensation, not reopening of a criminal case after a violation is found.[291]

In *Spain* the views of the Human Rights Committee 'are not directly applicable by ordinary courts, especially if they imply a revision of a previous sentence; they normally need a special procedure, *amparo* (protection), of the Constitutional Court in order to be implemented. In those cases in which decisions of the Committee do not require a revision of a former national sentence, but compensation for the victim, there is no need for any special procedure in order to make compensation effective.'[292] The government is responsible for the payment of compensation.[293] It appears that there is no right to re-evaluate the facts of a criminal case before another judge on account of the Human Rights

[286] A third country where domestic implementation of views is allowed is Colombia. Colombian legislation provides for special procedures at the national level that need to be followed to obtain monetary compensation after views have been issued by the HRC. See Heyns & Viljoen, *supra* note 31 at 31, 188.
[287] *Ibid.* at 288, 290; and ILA Interim Report, *ibid.* para. 37. For the Human Rights Committee's views in *Mario Ines Torres V. Finland* (Communication No. 291/1988), see KHO 1991 A 47 (procedural issue) and KHO 1993 A 25 (final judgment on compensation and legal costs). For views in *Antti Vuolanne v. Finland* (Communication No. 265/1987), see KKO 1993:3 (procedural issue) and KHO 16 April 1996 No. 1969 (upholding a decision of a lower administrative court, granting compensation and legal costs).
[288] Heyns & Viljoen, *ibid.* para. 288. There is no specific legislation regulating the implementation of the views of treaty bodies; the implementation rests on the fact that the human rights treaties in question have been incorporated into domestic law (*ibid.*)
[289] *Ibid.*
[290] *Ibid.*
[291] *Ibid.* at 288, 291. See KKO 28 May 1996 No. 1944, dnro H 94/444, which is a judgment by the Supreme Court of Finland after the Human Rights Committee's issued its final views in *Kivenmaa v. Finland* (Communication No. 412/1990).
[292] Natalia Alvarez Molinero, 'Implementation of the Views of the Human Rights Committee in Spain: new challenges' (Paper presented to the Meeting on the Impact of the Work of the United Nations Treaty Bodies on National Courts and Tribunals, Turku, 26-27 September 2003), online: Institute for Human Rights, Åbo Akademi University <http://www.abo.fi/instut/imr/> at 1.
[293] Heyns & Viljoen, *supra* note 31 at 602.

Committee's views in Spanish law as they are not considered as new facts that could re-open the criminal procedure.[294]

The current legal situation in Finland and Spain concerning the right to re-open criminal cases can be contrasted with the situation in Poland and Hungary where *legislation* allows that decisions of treaty bodies are considered a ground for an automatic reopening of the criminal procedure to the benefit of the convict (Poland)[295] or as 'new evidence' for the purpose of reopening criminal cases (Hungary).[296] What, then, will happen with individual remedies in Australia, Canada, the Czech Republic and Sweden where views cannot be given effect through domestic courts?

In the *Czech Republic* the Ministry of Justice has been entrusted with co-ordination of the implementation of the Human Rights Committee's views.[297] In essence, the Ministry of Justice shall inform the Constitutional Court and relevant authorities about such views and request the relevant authorities to submit information about measures they have taken or intend to take in order to implement them. The Minister of Justice shall then submit this information to the government and shall recommend, in co-operation with the relevant authorities, measures to be adopted by the government for the implementation of the views.[298]

As to *Australia*, it is for the Commonwealth government and/or parliament to decide if a remedy will be made available to give effect to the Committees' views.[299] *Canada*'s legal system does not provide either direct or indirect remedy to give effect to the decisions of treaty bodies, because the relevant treaties have not been directly incorporated into domestic law. Neither the ICCPR nor the CAT can give rise to a cause of action per se and a Committee decision cannot be enforced through obtaining a Canadian court order.[300] Finally, there are no special mechanisms for the implementation of the Human Rights

[294] Alvarez Molinero, *supra* note 292 at 2, 4,
[295] Hoffman, *supra* note 279 at 7.
[296] *Ibid.* at 8-9.
[297] *Ibid.* at 2.
[298] Comments by the Government of the Czech Republic on the Concluding Observations of the Human Rights Committee, UN Doc. CCPR/CO/72/CZE/Add.1 (2003).
[299] Heyns & Viljoen, *supra* note 31 at 82-83.
[300] *Ibid.* at 149.

Committee's views in *Sweden*.[301] Presumably the Canadian and Swedish governments and/or parliaments can give effect to final views if they so decide.

Finally, it is worth noting that even if treaty bodies do not have any power to enforce their views against recalcitrant states, they, and in particular the Human Rights Committee, have since 1990 worked to enhance the quasi-judicial nature of the complaints mechanisms by establishing formal follow-up procedures designed to monitor how states parties implement treaty body decisions at the domestic level.'[302] Today, after having pronounced on the question of remedy in its final views, the Human Rights Committee moves on to a standard formulation related to follow-up:

> Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognised 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 or subject to its jurisdiction the rights recognised 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 these Views. The State party is also requested to publish the Committee's Views.[303]

If nothing else, such a request produces first-hand information from governments concerning the implementation of views and thereby increases their accountability before the international community as well as their own nationals and may thus generate some pressure towards compliance.

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[301] International Covenant on Civil and Political Rights—Fifth periodic report of Sweden, UN Doc. CCPR/C/SWE/2000/5, para 139. Sweden adds: 'If the Committee should find that Swedish legislation was not in conformity with the Covenant in some way, Sweden could amend its legislation. If the Committee found that the implementation of Swedish law was incompatible with the Covenant, the Government could inform the concerned authority of the Committee's views and give general instructions on how to implement the law.'

[302] Schmidt, *supra* note 23 at 464.

[303] Scheinin, 'Work', *supra* note 17 at 23 (quotation from paragraph 11 of the Committee's views in *Alexander Zheludkov v. Ukraine*, Communication No. 726/1996). The CAT Committee has used the following formula: 'Pursuant to rule 112, paragraph 5 of its rules of procedure, the Committee urges the State party to conduct an investigation into the complainant's allegations of torture and ill-treatment, and to inform it, within 90 days from the date of the transmittal of the decision, of the steps it has taken in response to the views expressed above.' See *Dhaou Belgacem Thabti v. Tunisia* (Communication No. 187/2001), Views adopted on 14 November 2003, UN Doc. CAT/C/31/D/187/2001), para. 12. The rule of procedure in question reads: 'The State party concerned shall generally be invited to inform the Committee within a specified time period of the action it has taken in conformity with the Committee's decisions.' As to the CERD Committee, Rule 95, paragraph 5, of its rules of procedure reads: '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.' For the Committees' rules of procedure, see Compilation of Rules of Procedure adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/3/Rev.1 (28 April 2003) at 165 (CAT) and 91 (CERD).

4. CONCLUSIONS AND RECOMMENDATIONS

4.1 GROUNDWORK

The idea of the UN human rights treaty system can be summarised as follows:

> Human rights instruments create legally binding obligations for state parties to implement: they must respect and ensure the rights protected by the instrument, and also take part in the supervisory, or monitoring system established by it. States parties have voluntarily assumed these obligations and must be taken to have the intention to fulfil them. To do so in good faith, they must at the minimum present reports as required by the treaty, consider and respond to the treaty bodies' observations on the report, take appropriate follow-up action, cooperate in any communications procedure, and make appropriate responses to the views of the treaty body.[304]

This quote from Elisabeth Evatt may sound simple, even self-evident—and in a sense it is—but putting this idea into practice is not an easy undertaking, even if good faith exists on the part of the state party. This research report is but one attempt to operationalise the comprehensive and continuing task of treaty implementation. CERD, ICESCR, ICCPR, CEDAW, CAT and CRC each obligate states parties to implement their provisions by all appropriate means, and treaty body findings—concluding observations, views and general comments—provide the treaty bodies with an institutionalised and authoritative way to encourage and facilitate the task of national implementation by various domestic actors. This report focuses on one particular aspect of treaty implementation—national implementation of treaty body output—and it sees the work of treaty bodies not as a nuisance, but as a tool, 'constructive dialogue', that states parties should use in moving towards (better) compliance with the international human rights standards. Special emphasis has been laid on the implementation of concluding observations, but each type of finding gives treaty provisions 'relevance, legal validity and concrete application'[305] in their particular ways.

The functioning of the treaty body system and the quality of treaty body output certainly leave room for improvement, but in the end it is the strength of states' domestic institutions that determines the degree of compliance. The central thesis of the paper is that the existence and strength of domestic 'institutions' in the field of national implementation of treaty body findings is one positive indicator of a state's commitment to implement treaties

[304] Elisabeth Evatt, 'Ensuring Effective Supervisory Procedures: The Need for Resources' in Alston & Crawford, *supra* note 9, 461 at 463.
[305] Scheinin, 'Domestic Implementation', *supra* note 36 at 240.

to which it is a party. Consequently, developing and strengthening such institutions is a way to improve state compliance. Thus, the contribution of this research report will lie in the area of policy conclusions rather than in the field of legal analysis of the treaties themselves. Similar difference can be observed in the nature of treaty body findings: concluding observations are more like policy recommendations whereas views and most general comments contain legal analysis.

In this study, the practices of Australia, Canada, the Czech Republic, Finland, Spain and Sweden were examined in order to find deficiencies, obstacles, problems and best practices in the field of national implementation of treaty body output. Of course, there are a number of differences between these countries which affect the treaty implementation process (federal/unitary structure, civil/common law system, status of international law, and UN human rights treaties in particular, in domestic legal order), but they do not render our comparison meaningless, nor do they constitute an obstacle to implementation. Nevertheless, as national implementation of the work of treaty bodies does not happen in a vacuum but within the institutional framework of general treaty implementation, the examination of the main issue was preceded by a short overview of how the (administrative) implementation of human rights treaties is arranged in the six countries[306] and of existing reporting structures (Chapter 2).

In short, Finland, Sweden, Spain and Australia have opted for a decentralised implementation procedure in which one or two ministries (usually the Ministry for Foreign and/or Affairs and the Ministry of Justice) possess a certain general responsibility, but each line ministry takes care of the practical implementation. In contrast, the Czech Republic and Canada have chosen a more centralised and co-ordinated arrangement by creating either a governmental advisory body to be responsible for the practical implementation of human rights treaties (the Czech Republic) or by entrusting one government department with a specific mandate to facilitate co-ordination of implementation efforts between different levels of government (Canada). In addition, while Australia and Canada are the only countries in this study that have created a veritable national human rights institution (NHRI) to promote recognition, protection and implementation of human rights, all six countries have established one or more Ombudsman offices at one or several levels of government.

[306] The role of legislature in enacting and amending legislation and the role of national courts and tribunals as the main control structure for the protection of human rights did not require similar clarification.

Interestingly enough, a decentralised implementation model does not automatically lead to a decentralised reporting procedure whereas co-ordinated treaty implementation does correspond to centralised reporting. This is demonstrated by the fact that Canada, the Czech Republic and Finland appear to have the most centralised reporting systems with one ministry (Canada, Finland) or governmental body (Czech Republic) leading the preparation of reports. On the other hand, Australia, Spain and Sweden have opted for a more decentralised procedure in respect of reporting as well: responsibility is shared between a few departments/ministries (Australia, Sweden) or is assigned to a relevant line ministry (Spain). NGOs are consulted in each country, albeit to a varying degree. In Australia and Canada, the national human rights institutions do not participate in the reporting effort in any significant extent. The same appears to be the case in respect of the national Ombudsman institutions in Finland, Sweden, Spain and the Czech Republic. Parliaments are not consulted, but in Australia reports are tabled in the federal parliament after they have been submitted to the UN.

4.2 National Implementation of Treaty Body Findings

For the purposes of this paper, national implementation of treaty body findings was operationalised as follows:

(i) translation and dissemination of treaty body output as a precondition for its effective use at the national level;
(ii) establishment of a national mechanism for the implementation of treaty body findings and the follow-up of progress in this respect;
(iii) use of treaty body output in the legislative process; and
(iv) use and implementation by the judiciary of treaty body findings.

As to point (ii), it was later limited to a discussion of the establishment of a national mechanism for implementation and follow-up of *concluding observations* and divided into the following three elements:

- *governmental* mechanisms for inter-ministerial/departmental co-ordination, co-operation and monitoring;
- *independent* monitoring structures other than courts;
- other relevant considerations.

In the following conclusions and recommendations in respect of each point will be put forward.

(i) Translation and dissemination of treaty body findings

As a first step in the implementation process, governments should disseminate concluding observations, views and general comments both 'internally' (that is, distribute copies of them within relevant parts of administration and to the legislature, judiciary and other state institutions dealing with human rights), among NGOs and to the general public. There will be no national implementation of treaty body findings unless relevant actors have knowledge of them. Moreover, such knowledge will enable the media and civil society to better monitor governments' response to the Committees' views and recommendations and to pressure governments towards better compliance with the treaties. Indeed, the treaty bodies usually recommend in their concluding observations (and the Human Rights Committee does so in its final views) that governments should disseminate these documents.

In this context one should not ignore the question of translation of treaty body findings into local language(s); the impact of dissemination will suffer if no translation is available. Australia, Canada and Spain are in a privileged position because English, French and Spanish are among the official languages of the United Nations. In the case of Finland, Sweden and the Czech Republic it can be concluded that they have taken the necessary task of translating concluding observations seriously. In Finland such translation has so far been more systematic than in the other two countries. In contrast, no record was found on translation of views and general comments by the government in any of the six countries.

Returning to dissemination, one can observe a clear trend towards an increasing use of governmental websites for the purpose of disseminating both reports and *concluding observations* soon after their submission (reports) or release (concluding observations). Such development is very welcome, for it is not enough that country reports and concluding observations are published on the OHCHR website alone. It is clear that governments carry the main responsibility for translating and disseminating concluding observations, and Internet is an easy, economic and efficient way to increase awareness of the treaty body output at the domestic level. Placing reports and concluding observations on a governmental

website in citizens' mother language(s) renders these documents more accessible, as one does not have to be able to speak foreign languages or be familiar with the complexities of the UN system in order to obtain them. Naturally, Internet should not replace the distribution of printed copies of concluding observations to relevant national and local actors and institutions (such as government policy-makers, civil servants, judges, parliamentarians, ombudsmen, human rights commissioners, NGOs) or the practice of informing the general public through electronic and/or print media.

In contrast, the practice of disseminating *views and general comments* appears to be less developed, possibly because of a lower incentive to translate and disseminate these documents which, owing to their more legal language, are less accessible to the general public than concluding observations. Nonetheless, when a Committee issues its final views on an individual communication in respect of a particular country, the government of that country should at least inform the media of the outcome of the case and place information about the views in question on its website (preferably the original document in its entirety accompanied by a translated summary if need be). Moreover, both views and general comments should be disseminated within relevant parts of national administration, including state institutions dealing with human rights, in parliament and among judges. The Australian government's practice of tabling in the federal parliament a brief description outlining the main allegations raised in each communication submitted against Australia and, subsequently, the views themselves and the government's responses, is a good one.

In general, it would be important to undertake the dissemination of all three categories of treaty body findings as quickly as possible in order to obtain the maximum amount of attention, both within state institutions, NGOs and public at large. In addition, regarding those institutions, bodies and officials that are responsible for the implementation of UN human treaties, mere dissemination is not necessarily enough but (multidisciplinary) workshops and seminars (if appropriate, with NGO participation) should be considered, in particular in relation to concluding observations ('dissemination with analysis'). The Canadian practice of holding a 'post-mortem' meeting in the week following the oral presentation of the country report between federal contributors to the report and members of the government delegation certainly qualifies as a best practice. It constitutes an effective opening of the subsequent implementation process in that the participants discuss the

concluding observations and determine what, if any, follow-up and/or future action is required.[307]

(ii) National mechanisms for the implementation and follow-up of concluding observations

Governmental mechanisms for co-ordination, co-operation and monitoring

In addition to translating (if necessary) and disseminating concluding observations by the various means specified above, governments should study them carefully and use them a) as the basis for improving the compatibility of national legislation and practices with international human rights treaties and b) as the basis for the next country report. Both ways of using treaty body output, in particular concluding observations, is connected to governmental mechanisms for the implementation of UN human rights treaties in general and for the preparation of country reports in particular, such as those described in Chapter 2 of this report. My thesis is that some sort of permanent inter-ministerial mechanism or structure for the implementation of concluding observations should be established in order to facilitate the process towards better compliance with international human rights standards. Preparation of reports may well function as a national follow-up mechanism, but a more *proactive* process focusing on how to implement concluding observations is needed to accompany reporting within the overall framework of treaty implementation. One has to remember that UN human rights conventions are 'multidisciplinary' or 'inter-departmental/ministerial', so the need for governmental co-ordination, co-operation and monitoring is evident. Also, different levels of government have powers in the field of human rights, so both horizontal and vertical mechanisms or structures should exist.

Despite the relatively good record of Finland in implementing both views and the concluding observations, there is no evidence of an official, established inter-ministerial mechanism that would plan, prepare and monitor the implementation of human rights treaties, including concluding observations. One can approach the creation of such a mechanism from different angles. For instance, it is possible to establish a mechanism for a

[307] Regarding the translation and dissemination of concluding observations in Finland the Heyns study suggested following measures: 'translation into official and minority languages; publicity, for example through a press conference organised together with the NGOs that contributed; presentation to parliament or an appropriate standing committee of parliament; official distribution, with relevant instructions or recommendations in the covering letter, to pertinent levels and branches of government; and use as a starting point for the next reporting cycle.' Heyns & Viljoen, *supra* note 31 at 296.

specific treaty—an approach strongly advocated by the CRC Committee to which first Sweden and then Finland have reacted positively. In Finland, plans to create the office of Children's Ombudsman, elaboration of a proposal concerning a permanent national mechanism for child and family issues, and preparation of a National Action Plan are all initiatives which will offer new possibilities to develop the national implementation and follow-up of concluding observations in the field of children's rights.

Another approach (which may co-exist with the 'sectoral' approach) would be to envisage the creation of a comprehensive mechanism covering all human rights treaties to which Finland is a party. One step to this direction appears to be the inclusion in the next report on the Finnish government's human rights policy of an analysis of the internal human rights situation in Finland. The new report, to be released at the beginning of 2004, is expected to focus on issues to which treaty bodies have drawn attention in their findings. It is likely that concluding observations will occupy a more prominent role in the report than views or general comments. This initiative, if successful, could act as a basis and an incentive to create a new, proactive inter-ministerial mechanism for co-ordination, co-operation and monitoring in the implementation of concluding observations in which the parliament and NGOs would also be involved.

One leap further on this road would be to follow the Swedish example and to draft a comprehensive National Human Rights Action Plan with a number of priority areas and an emphasis on co-ordination, co-operation and monitoring. It could contain the following components relating to the national implementation of both concluding observations and other forms of treaty body output:

- use of concluding observations and final views to draft the Action Plan, in particular when defining priority areas, together with highlighting the Committees' views and recommendations in the text itself in relevant contexts;
- establishment of an inter-ministerial working group for human rights within an appropriate ministry (in Sweden *Regeringskansliet* was chosen) to strengthen co-ordination and monitoring of the implementation of human rights treaties;
- mandating the inter-ministerial working group to integrate concluding observations in its activities;
- periodic submission of reports by the government on the internal human rights situation of Finland to Parliament within the framework of the follow-up of the

Action Plan, taking into account the Committee's views and recommendations on Finland.

As noted in the Swedish context, such an Action Plan can be seen as representing in itself a step towards governmental implementation and monitoring of concluding observations, and the inter-ministerial working group would have potential to develop into a permanent governmental body for effective co-ordination, co-operation and monitoring in the field of national implementation of concluding observations. Ideally, it would also take care of the preparation of country reports, because state reporting is an important part of the monitoring effort.[308] None of the countries included in this study has created a body or a structure that would effectively participate in both implementation and monitoring. The Council for Human Rights of the Czech Government comes closes in this respect.

Independent monitoring structures other than courts

There seems to be an international consensus that in addition to governmental mechanisms for co-ordination and monitoring of the national implementation of human rights treaties there should exist an independent national human rights institution (NHRI). Since the need for such an institution in Finland has been dealt with in an earlier research report prepared by the Institute for Human Rights at Åbo Akademi University for the Ministry for Foreign Affairs[309] I will not discuss the matter any further. Suffice it to say that in case an NHRI is established, the aspect of it disseminating, debating or following up on country reports and concluding observations would merit serious attention.

[308] This course of action would be supported by Heyns & Viljoen who have identified identifies the Interdepartmental Commission in Mexico as a best practice: it not only participates in the process of writing reports but also engages in the follow-up of concluding observations (Heyns & Viljoen, *supra* note 31 at 37). According to the Heyns study: 'An inter-ministerial or interdepartmental human rights forum with an "institutional memory" should be established to deal with reporting and implementation of concluding observations in each country. Such a forum should include the relevant organs of state and civil society. The forum should also receive and consider concluding observations and views on individual complaints (*ibid.* at 40).'

[309] See Lempinen et al., *supra* note 236.

Other relevant considerations

1) The Finnish government should continue its good co-operation with the NGO community and develop new ways to involve them in the implementation of concluding observations. If a permanent inter-ministerial mechanism for co-ordination and monitoring were to be established, NGOs should be integrated into its structure in order to further strengthen the dialogue between government and civil society, which is an essential feature of the treaty implementation process. In this respect, the public hearing organised in connection with the preparation of the third report of the Finnish government on its human rights policy is welcome. Another forum for the strengthening of NGO involvement in the implementation process might be the Advisory Board on Human Rights Affairs that is already consulted during the preparation of country reports. In addition, the Heyns study recommended that the government should organise press conferences together with NGOs that contributed to the reporting procedure after the release of concluding observations.[310] Of course, this presupposes that Finnish NGOs are prepared to devote their time, energy and resources to monitor the government's response to concluding observations and to pressure for compliance.

2) When sending delegations to appear before UN treaty bodies during the consideration of Finnish reports the Finnish government should aim for a high-level delegation consisting of representatives of relevant authorities. Combination of authority and 'multidisciplinarity' will provide the best possible starting point for the implementation process, in particular if Finland will organise a Canadian style 'post mortem' session soon after the consideration of each report and combine it with quick dissemination of concluding observations.

(iii) Use of treaty body output in the legislative process

The practice in Finland regarding the use of treaty body output in the legislative process is unique among the countries selected for this study, and probably otherwise as well. Namely, UN treaty body findings (final views on Finland and on other countries, concluding observations on Finland and on other countries, and general comments) are used in Government Bills, and the Parliamentary Committees, in particular the Constitutional Law

[310] Heyns & Viljoen, *supra* note 31 at 296.

Committee, use these findings to evaluate the compatibility of the Government Bills with human rights. The input from academic experts during the drafting of Government Bills and in the course of parliamentary proceedings has played a vital role in bringing treaty body findings into the legislative process in Finland. This institutional practice of soliciting expert advice together with the willingness of experts to bring forth a wide selection of final views, general comments and concluding observations certainly constitutes a veritable best practice in the legislative implementation of the work of the treaty bodies.

(iv) Use and implementation by the judiciary of treaty body findings

The role of the judiciary in the implementation of treaty body findings should not be forgotten—judges should take treaty body jurisprudence into account when deciding human rights cases. Work of the treaty bodies should therefore be integrated into human rights training given to judges. In the Heyns study it was recommended that the availability in Finnish courts of final views in printed form should also be improved.[311]

Implementation of the above suggestions obviously requires an increase in the share of budget directed towards implementing treaty body output. In the end, then, genuine and effective enhancement of the national implementation of UN treaty body findings depends on political will and governmental priorities.

[311] Heyns & Viljoen, *supra* note 31 at 296.

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(ii) Canada

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Canadian Human Rights Commission
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(iii) Czech Republic

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(iv) Finland

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K. OTHER

Ihmisoikeusliiton puheenvuoro Suomen kolmannen ihmisoikeuspolitiisen selonteon valmistelua koskevassa kuulemistilaisuudessa 9.10.2003 (on file with the author).