

STRENGTHENING TREATY BODIES, PROTECTING HUMAN RIGHTS: VIEWS FROM THE GROUND



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Introduction

Opening up perspectives on the 2020 review of UN Treaty Bodies

The review of UNGA resolution 68/268 on the functioning of the Treaty Bodies has just kicked off with the appointment of Morocco and Switzerland as co-facilitators of the process by the President of the UN General Assembly in April 2020. The process was envisaged in a 2014 resolution, yet there have been limited consultations related in preparation for the 2020 review. While the academic community has been mobilised around a project implemented by the Geneva Academy of International Humanitarian Law and Human Rights, there has been only limited interest from States and international NGOs, and no engagement or consultation of national and local actors. The treaty bodies are far from perfect, but they have contributed to far-reaching changes and improvements in human rights protection. For many victims of human rights violations, they continue to constitute a last hope for justice. Their improvement and effective functioning is critical to the global human rights movement.

In advance of the review, OpenGlobalRights and the International Service for Human Rights agreed to stimulate a debate on ways to improve the work of the treaty bodies. Our common objective was to publish a series of short, accessible articles, in several languages, that point to innovative treaty body work in general, and in specific countries, and that suggest practical reforms that build on these successes. The series seeks to give a voice to local and regional NGOs, ahead of the 2020 review.

The series on OpenGlobalRights website engaged over 6,000 readers across its 12 articles and their five published languages – English, Spanish, French, Russian, and Turkish. About 80% of that readership was in English, though articles in Spanish had over 300 readers, and articles in French nearly 700 readers. The single translations into Russian and Turkish had 94 and 20 readers respectively. Collectively, the series' articles and translations earned over 1,000 likes, comments, shares, and retweets across OpenGlobalRights's social media channels.

Eleven of the contributions received as part of the series are reproduced in this publication. The full list of contributions, which continues to grow as we write these lines can be accessed on both the OpenGlobalRights and ISHR websites:

- <https://www.openglobalrights.org/treaty-body-reform/>
- <https://www.ishr.ch/news/treaty-bodies-strengthening-treaty-bodies-protecting-human-rights>

The eleven contributions to the series included in this publication are clustered into three thematic groups.

What difference does the system make and what could be improved?

In her paper, **Kseniya Kirichenko** who works for ILGA International underlines how treaty bodies have become increasingly active on issues related to sexual orientation and gender identity and why the effectiveness of these mechanisms is of high importance to LGBTI activists.

Using the example of her country Venezuela, **Marianna Alexandra Romero Mosqueda** underlines why the coherence and complementarity between international human rights mechanisms such as the Treaty Bodies and Human Rights Council are crucial for national advocates.

In French Guiana, a UN Committee adopted an “early warning” requesting to respect the willingness of indigenous communities opposing a major gold mining project envisaged on their land. Indigenous peoples celebrated the cancellation of the project, says **Alexandre Sommer-Schaechtele**, but practical improvements are needed in relation to the UN procedure.

Another national perspective is provided by **Armel Niyongere** from Burundi, whose post also touches upon the coherence and complementarity of the UN human rights architecture in a context of crisis like Burundi.

Taking the example of Laos, Human Rights Committee member **Marcia Kran** speaks about the formidable potential and benefits of her Committee’s follow up procedure, which can be used as part of in-country visits by Treaty Body members. She also highlights the role that UN country teams can play in supporting national process of follow up and implementation of Treaty Body recommendations.

Finally, **Christof Heyns** and **Frans Viljoen** provide a first taste of a new major study both researchers are working on with partners in 20 countries on the domestic impact of the treaties. The results of their findings, which are expected to be fully released in early 2021, are expected to provide a range of enlightening evidence on where, how and why the implementation of treaties is a success.

What needs to change and how?

When she was UN High Commissioner for Human Rights, **Navi Pillay** launched in 2012 arguably the most far-reaching and comprehensive study on the functioning of the UN Treaty Bodies, which resulted in a 100 page report with a range of recommendations to strengthen the system. Many of these recommendations have not been followed upon and her post is a wake up call on why and how 2020 provides an opportunity to take decisive action.

In a similar vein, Committee on Enforced Disappearance member **Olivier de Frouville** provides a stark overview of the fundamental challenges which have been undermining the Treaty Body system for decades and proposes avenues to overcome them.

Taking the example of Jamaica, **Malene Alleyne** and **Felix Kirchmeier** analyse the challenges that small States face in engaging with a system which is demanding and heavy, and provide practical suggestions on how the system could be reformed.

The dire situation of individual communications

In a concise summary of a comprehensive report based on inputs from academics and NGOs, **Başak Çalı** & **Alexandre Skander Galand** provide an overview of a Treaty Body individual communications system which is nearing the brink, yet which can and is expected to bring hope to potentially millions of victims around the world.

Like Marcia Kran’s, **Irina Crivet**’s post looks into the follow up practices of Treaty Bodies, but her focus is on individual communications. Her assessment demonstrates that while Treaty Bodies are ahead of many other international human rights mechanisms which have no procedure on follow up, the practice of Treaty Bodies needs to be improved and become more transparent and accessible for victims.

Through the compilation of these eleven posts, ISHR and OpenGlobalRights wish to provide relevant insights and practical suggestions to States, Treaty Body members and UN officials as part of the 2020 review process. We’d love to hear from you as well, so don’t hesitate to reach out!

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UN treaty bodies advance LGBTI rights

The UN treaty bodies are increasingly scrutinising States' treatment of LGBTI persons, and this is having positive local impact.



Currently, there are nine core international human rights treaties, but none of them explicitly mentions sexual orientation, gender identity and expression, or sex characteristics (SOGIESC) or the rights of gay, lesbian, bisexual, transgender and intersex (LGBTI) people. Of course, most of the treaties were adopted long ago when the LGBTI human rights discourse was yet to be developed. But it is also true that so long as 70 UN Member States still criminalise consensual same-sex sexual acts,¹ it would be difficult to amend the treaties.

At the same time, the interpretation and application of these nine international treaties by the treaty bodies has taken into account that social relations and legislative and political practices are changing at the local and regional level. Although the treaties don't mention SOGIESC or LGBTI, each of the Committees has referred to these terms² in their documents.

Over the last five years, the number of references to SOGIESC/LGBTI by all treaty bodies in their concluding observations (recommendations they make to States when considering State reports) has increased two and a half times from 54 references in 2014, to 138 in 2018. In 2016–2018, such references were included in half of the concluding observations, and the UN Human Rights Committee considered LGBTI issues in its reviews of every State in 2017 and 2018.

Further, the references to trans people have more than doubled (from 48 in 2014 to 104 in 2018), and the stand-alone references to specific problems of trans people (e.g. legal gender recognition or access to hormone therapy) have more than tripled (from 7 in 2014 to 24 in 2018).



By Kseniya Kirichenko
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The treaty bodies have taken into account that social relations and legislative and political practices are changing at the local and regional level.

The changes related to the human rights of intersex people are even more substantial. The references to intersex people have increased more than five times (from 14 in 2014 to 74 in 2018), and the stand-alone references to specific problems of intersex people (primarily, forcible surgeries on children) have increased from zero in 2014 to 15 in 2018.

The intersectional approach developed by the treaty bodies is another trend indicative of their deeper understanding of LGBTI human rights: for example, the UN Committee on the Elimination of Discrimination Against Women referred to the issue of so-called “corrective rape” of lesbian women, and the Committee on the Rights of Persons with Disabilities analysed the situation of LGBTI people living with disabilities and the problem of “conversion therapy”.

The treaty bodies’ jurisprudence in deciding individual cases has also considerably evolved in analysing the situation of LGBTI people. In 1992, the UN Human Rights Committee considered for the first time a State’s violation of its international obligations pertaining to sexual orientation in the case *Toonen v. Australia*.³ The Committee found that criminalisation of consensual same-sex sexual acts violated the right to privacy. The decision marked a turning point not only in the understanding of human rights at the UN level, but also in the evolution of national legislation and jurisprudence in many countries from India to South Africa, and from Fiji to Colombia.

Today, three treaty bodies have already ruled on LGBTI-related cases, and the total number of decisions has amounted to 30 (of which 23 were handed down over the past 10 years and 16 over the past five years). More individual complaints are still pending.

Significant changes were made possible because of the voices and energy of LGBTI activists.

However, the ultimate goal goes beyond the evolution of the UN’s discourse per se, and includes promoting changes at the local level that will impact individual lives. In recent years, we have seen many examples where recommendations by the treaty bodies led to actual transformations at the local level.

For example, Russian trans activists submitted their report to the Committee on Economic, Social and Cultural Rights and participated in its session in Geneva in 2017. As a result, the Committee issued its first recommendation to Russia⁴ on the need for legal gender recognition for trans people. This recommendation resulted in certain shifts in Russia: a political party included the matter in its agenda, and, more importantly, the Russian Health Ministry adopted a new protocol for legal gender recognition that allowed trans individuals to change identity documents without having to undergo gender reassignment surgery.

Those active in the LGBTI movement must maintain our agency even when we are criminalised, discriminated against, subjected to violence or excluded. By doing so, we transform our traumatic experiences into power and thus actively alter the space around us and become visible. I believe that such an approach is important at any level, including the universal system of human rights or the UN treaty bodies. The significant changes I mentioned above were made possible because of the voices and energy of all those LGBTI activists who communicated with the treaty bodies, gathered information, submitted reports and worked on the implementation of the recommendations.

Yet, many issues are yet to be resolved, especially for more vulnerable groups within the community. The treaty bodies need to better understand the specific problems of certain groups within the LGBTI community: for example, no recommendations have been made regarding bisexual people. A clearer legal framework to protect those suffering from multiple forms of discrimination is required. We are still waiting for the treaty body decisions on complaints arising from hate crimes against LGBTI people – they must recognise the obligation on States to ensure effective investigations of such cases.

Everyone has human rights, and every one of us can influence this system through our experiences. I believe that we can achieve more. The UN treaty bodies are critical and could be even more effective by strengthening their mechanisms to monitor the implementation of their recommendations.

1 https://lga.org/downloads/LGA_State_Sponsored_Homophobia_2019_light.pdf

2 https://lga.org/treaty_bodies_annual_reports

3 <http://hrlibrary.umn.edu/undocs/html/vws488.htm>

4 <http://pravo-trans.eu/un-committee-urges-russia-to-simplify-legal-gender-recognition/>



UN human rights system needs more coherence and coordination

Venezuela's election to the Human Rights Council despite UN scrutiny – including by Treaty Bodies – of human rights abuses shows need for greater coherence in the international human rights system.

For more than 20 years in Venezuela, a series of laws, policies and practices have been implemented that have led to the institutional dismantling and de-structuring of the rule of law. This has resulted in a complex humanitarian emergency¹ that – without access to effective mechanisms of justice that guarantee victims' rights to truth, justice, reparation and guarantees of non-repetition – has had serious consequences for the population's human rights.



By Marianna A. Romero Mosqueda
Director of the Center for Defenders and Justice (CDJ) in Venezuela.

This situation has resulted in a lack of protections for its citizenry, who are left destitute – unable to stake claim to their rights as there is no solid and independent Justice System that guarantees non-impunity² in situations involving violations of fundamental freedoms or human rights.

Faced with the impossibility of finding effective domestic mechanisms that provide justice to victims, and given Venezuela's withdrawal from the regional system of human rights protection, the bodies and authority of the United Nations are becoming increasingly necessary. In this context, in order to advance the scope of justice and the determination of State responsibility, it is essential to have the ability to go before the Treaty Bodies, so they can perform monitoring functions and issue recommendations and opinions regarding compliance with Venezuela's obligations to respect and ensure human rights.

The ability to turn to these mechanisms is very important; however, we must be vigilant that they not be co-opted by States. Between 2014 and 2015, Venezuela decided to catch up on their pending reports with the Treaty Bodies.

However, their efforts were not genuine but were done as part of their petition for re-election³ as a member of the Human Rights Council. To date, Venezuela has not shown interest in taking the necessary measures and actions to effectively comply with the recommendations issued by the different bodies, nor has it followed up on them or presented information in the framework of the new pending evaluations. This is why the Human Rights Committee has condemned the State in its most recent evaluation.

‘For those of us who defend human rights in Venezuela and ensure that victims can obtain truth, justice and effective reparation, it is essential to have competent international organisations that provide, above all, a more immediate and reactive response.’

We are currently facing a similar situation with Venezuela's election to the Human Rights Council,⁴ despite it being a State recognised for its human rights violations and abuses. This was highlighted on 27 September 2019 with the adoption of a resolution by this same Council to establish an independent fact-finding mission⁵ on possible violations of fundamental rights in Venezuela.

In such situations, and by virtue of the needs of the victims, it is necessary to work on strengthening the Committees' mechanisms and their respective evaluation and reporting procedures, not only to effectively monitor their observations and recommendations, but to provide and promote actions aimed at compliance with them.

Based on experience using the International Protection Systems, it is important to have systems such as the Treaty Bodies that not only contribute to States complying with their international human rights obligations and commitments, but also support the progressive evolution of their legal systems. This is achieved by applying and adhering to international *corpus juris*, as well as implementing the recommendations, general observations and opinions of the different bodies in each country.

‘The more monitoring and cooperation among UN bodies, the greater the chance of obtaining justice for victims.’

Under this measure, in cases such as Venezuela, it is necessary to move towards a more reactive response to the need for protection and justice for victims. When we are faced with States that fail to comply with their obligations or that co-opt human rights mechanisms, the Treaty Bodies – within the framework of their expertise and mandate – must act *ex officio* with scrutiny, control and condemnation of human rights abuses and violations. This is even more important when there is a lack of cooperation or dialogue with the State examined.

Additionally, it is essential to establish greater room for cooperation and protection among those who are a part of civil society organisations and Treaty Bodies. This is especially vital for those within the framework of consultation and evaluation processes, given that it is necessary to listen to independent voices to check the (non)compliance of the obligations derived from the pacts;

especially when the States are authoritarian, like Venezuela, and do not present information in a timely and truthful manner; while criminalising⁶ and attacking those that do.

It is equally important to be able to work hand in hand with the special procedures of the Human Rights Council, with the understanding that the more monitoring and cooperation among UN bodies, the greater the chance of obtaining justice for victims. This can be achieved by advancing strong proposals that promote human rights protections and serve as a mechanism to pressure for the compliance of both obligations and observations/recommendations – for example, by uniting voices in joint communiqués on general situations that fall within the mandates of both treaty bodies and special procedures.

This type of cooperation between agencies could also help to avoid the negative impact of special procedures members that could have a less independent position, and instead highlight the reality of the violations that are being committed. This happened in Venezuela, when the position and conclusions⁷ of a United Nations official after their visit to the country could be contrasted with the recommendations and findings of different treaty bodies. In addition to improving compliance and better protecting victims, Treaty Bodies would be strengthened by allowing for this ability to align communiqués or actions with other mechanisms in the face of violations related to their mandates.

For those of us who defend human rights in Venezuela and ensure that victims can obtain truth, justice and effective reparation, it is essential to have competent international organisations that provide, above all, a more immediate and reactive response that applies all the necessary measures to ensure that States fulfill their obligations. Such a response should also provide the support necessary for human rights defenders to carry out their peaceful and legitimate activities without undue restrictions, fear of harassment, threats or reprisals.

Combatting impunity and redressing wrongs to victims should not wait until a State decides it is in their interest to present information on compliance with the Treaty Bodies. In cases such as Venezuela, where massive and systematic human rights abuses and violations are committed, these bodies must react and take all the necessary measures *ex officio* to provide effective protection for victims.

1 <http://www.accionsolidaria.info/website/feliciano-reyna-ante-el-consejo-de-ddhh-de-la-onu-la-mayoria-de-la-poblacion-esta-sometida-a-violaciones-de-derechos-humanos/>

2 <https://elestimulo.com/provea-94-de-los-casos-de-violaciones-a-ddhh-en-venezuela-pasan-impunes>

3 <https://www.connectas.org/analisis/venezuela-y-ecuador-en-el-consejo-de-ddhh-de-la-onu/>

4 <https://www.ishrch/sites/default/files/documents/venezuela2.pdf>

5 <https://www.dw.com/es/onu-abre-una-investigaci%C3%B3n-sobre-las-presuntas-violaciones-de-derechos-humanos-en-venezuela/a-50606398>

6 https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session41/Documents/A_HRC_41_18_5P.docx

7 <https://www.openglobalrights.org/venezuelan-crisis-shows-need-to-enhance-the-coherence-of-the-UN-human-rights-machinery/?lang=Spanish>

How a UN Committee contributed to end a controversial mining project in French Guiana

The indigenous peoples of French Guiana used an urgent procedure of the UN's Committee on the Elimination of Racial Discrimination to help stop a mining development – more transparency could make such procedures even more effective.

On 14 December 2018, the UN Committee on the Elimination of Racial Discrimination (CERD) reprimanded France for its human rights violations against the indigenous peoples of French Guiana related to the controverted mining project "la Montagne d'Or" ("the Mountain of Gold"). This is the first instance of a UN treaty body, dealing specifically with indigenous peoples' issues, adopting an early warning procedure against France. In spite of Paris choosing to hide behind the idea, inherited from the Jacobin tradition, that no indigenous peoples reside on its territory, one cannot ignore the fact that the mining project does not have the consent of the Amerindian peoples affected by its implantation. A few months after the Committee issued its decision, the French executive announced that they had abandoned the mining project¹, a victory for all of those who opposed it, and notably for Amerindians.

The urgent procedure adopted by the CERD is the result of a petition filed a few months prior by the Organization of the Native Nations of Guiana (ONAG) with the support of an international NGO based in Geneva.

As a reminder, France adopted the UN Declaration on the Rights of Indigenous Peoples in 2007. This founding document recognises the right of indigenous peoples to free, prior and informed consent, but is not binding for the States parties. Consequently, treaty bodies, that are based on binding treaties, present a clear advantage for the indigenous peoples of the French territory.



By Alexandre Sommer-Schaechtele
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There was a clear lack of consent from the Amerindian communities, thus marking a flagrant violation by France of its obligations towards a basic principle of international law.

France, as a State party of the Convention on the Elimination of All Forms of Racial Discrimination since 1971, committed to implementing all possible measures to fight against racial discrimination on its territory. However, the violation of the free, prior and informed consent of indigenous peoples breaches this principle.

The procedure laid down in the treaty thus provides the victims of violations with an array of procedures to refer the State party concerning the respect of its engagements in line with the detriment suffered. In the case of the indigenous peoples of French Guiana, such procedure allowed for a rapid referral² of France, less than two months after the petition was received by the Committee.

France's official response to the Committee's request was neither made public, nor even shared with the petitioners.

It was a matter of responding to the urgent need to put an end to the largest gold mining project in France, led by the Russo-Canadian consortium Columbus Gold/Nord-gold. The "Montagne d'Or" mining project, located near natural reserves and Pre-Columbian indigenous vestiges,

was met with a strong opposition from the indigenous peoples³ of Guiana since 2016.

The publication of the letter from the CERD to France⁴ in national news media,⁵ and the polemic that followed, had the desired effect as the French Government eventually gave in to international pressure, and pressure from activists, and rejected the mining project a few weeks later in May 2019.

However, the procedure put in hand by the CERD revealed numerous deficiencies. The excessive bureaucracy and diplomacy that are self-imposed by the treaty bodies, in their dealings with the States, do not help the victims. For instance, France's official response to the Committee's request was neither made public, nor even shared with the petitioners, and this, despite the fact that one of the basic principles of justice entails sharing the responses from the other party. This lack of transparency is even more surprising given that it is not present in the Convention or the working methods of the Committee.

The non-disclosure of the responses from the State parties is detrimental, not only for the petitioners and the victims, who are not able to assess the elements of the response, but also for the procedure as a whole. Furthermore, it is regrettable that the Committee's injunction addressed to France remained relatively shy, not requesting it to simply abandon the project, but instead asking it to reconsider its consultation with indigenous peoples. In fact, during the consultation process⁶ undertaken by France, almost all the Amerindians of Guiana shared that they were opposed to this project.⁷ There was a clear lack of consent from the Amerindian communities, thus marking a flagrant violation by France of its obligations towards a basic principle of international law.

The upcoming review of the UN treaty body system, planned for 2020, gives us a chance to celebrate the victories it contributed, such as the defeat of the "Montagne d'Or" project. But it also gives us an opportunity to strengthen the protection and measures for prevention that the system is supposed to provide. As the example of "la Montagne d'Or" illustrates, it also requires more transparency, and more openness and availability for the victims. The system was created for them, and it must work.



1 https://www.lemonde.fr/planete/article/2019/05/23/en-guyane-le-projet-montagne-d-or-incompatible-avec-les-exigences-environnementales_5466070_3244.html

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

3 <https://reporterre.net/Paroles-d-Amerindiens-sur-la-Montagne-d-or-en-Guyane>

4 https://tbinet.ohchr.org/Treaties/CERD/Shared%20Documents/FRA/INT_CERD_ALE_FRA_8820_E.pdf

5 https://www.lemonde.fr/planete/article/2019/01/11/guyane-l-onu-s-immisce-dans-la-future-mine-de-la-montagne-d-or_5407578_3244.html

6 <https://www.debatpublic.fr/montagne-dor>

7 <https://reporterre.net/OEP-A-LA-TELE-La-resistance-des-Amerindiens-contre-la-mine-de-la-Montagne-d-or>

How do treaty bodies respond to situations of crisis such as Burundi?

Treaty bodies showed their ability to take the right measures in situations of crisis like in Burundi. A coordination with the high-level bodies of the United Nations, such as the Security Council or the Human Rights Council, is necessary for similar situations.



By Armel Niyongere

A human rights lawyer who has been a leader of the civil society in Burundi for several years.

He often represents the Burundi civil society by preparing and presenting Alternative Reports to UN treaty bodies.



Since 2015, Burundi has been going through a severe political crisis having extremely negative effects on the human rights situation. Several thousands of people have been killed or have disappeared¹, hundreds of women and girls have been raped,² while others, who have been wrongfully convicted, are rotting in prison,³ and while hundreds of thousands were forced to leave the country⁴ and find asylum in the sub-region and other countries.

One after the other, and without success, the various international mechanisms for the protection of human rights have called on the government of Burundi to protect its own citizens against violations of their rights.

Several UN treaty bodies have condemned, each within their specific sphere, the violations of rights and obligations committed, and have formulated recommendations asking the country to ensure the rights and freedoms of its citizens be respected.

Each time, instead of responding to the questions asked and complying with the recommendations issued by the treaty bodies, the Burundian government immediately retaliates⁵ against the organisations and/or individuals who collaborated with these bodies and dismisses the reviews,⁶ as was the case in July 2016 when the UN Committee against torture requested a special review of the situation in Burundi.



Treaty bodies are able to determine that a situation requires an urgent intervention from the international community.

Unfortunately, the responses from treaty bodies and other UN bodies did not stop the repressive machine, but they did expose the capacity of a repressive regime such as Burundi to employ all the means possible to retaliate against activists, thus highlighting the need for a strong and systemic response from UN bodies. In Burundi, almost all of the activists who engaged with UN Human Rights bodies in the last few years were forced into exile, and almost all of the independent human rights organisations were deregistered, their bank accounts frozen,¹² and let's not forget the closure of the UN High Commissioner for Human Rights' office.¹³

Burundi's violations of international and constitutional obligations call for a strong response from the international community, and especially from UN bodies. The special review of Burundi by the Committee against torture, and the creation of a Commission of inquiry by the Human Rights Council are supposed to provide answers, but to this day the victims are still seeking justice, and repression remains generalised.

Such a constant bitterness highlights the necessity for systematic and repeated violations of international Conventions, as well as proven crimes against humanity, to be referred directly by the treaty bodies to the highest-level bodies, that is, to the Security Council. Even though the latter may still be vetoed by the major powers, treaty bodies are able to determine that a situation requires an urgent intervention from the international community, since they receive and analyse detailed reports documenting violations, some of which are completely confidential due to the nature of their content.

By directly referring grave and proven violations of international treaties to the Security Council or the Human Rights Council, the treaty bodies would not only show that their relevance and ability to act are not limited to a cycle of periodic review, but that they are also able to respond when the situation requires immediate actions.

At that time, the Bujumbura regime retaliated against Burundian organisations by disbarring four Burundian jurists and activists.⁷ This measure was followed by a generalised seizure of the property of several other human rights activists, all wrongly accused of conspiring with the putschist armed forces of 13 May 2015.

The United Nations condemned⁸ the threats against individuals who took part in the review of Burundi. Such threats constitute a clear violation of the Convention that specifies that both the complainant and witnesses are protected "*against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.*"

The government uses a policy of burying one's head in the sand with its decision to deny access to Burundi⁹ to the Commission of inquiry mandated by the Human Rights Council and to declare *persona non grata*¹⁰ the UN experts of said Commission.

The unilateral withdrawal from the Rome Statute,¹¹ right when the International Criminal Court started its preliminary investigations into crimes related to popular opposition to a 3rd mandate by the current President, was an additional step taken to progressively relieve Burundi of its international obligations.

- 1 <http://sostortureburundi.over-blog.com/>
- 2 <http://www.rfi.fr/afrique/20160103-burundi-recrudescence-violations-quartiers-contestataires>
- 3 <https://www.ishr.ch/news/burundi-ngos-condemn-32-years-prison-sentence-germain-rukuki>
- 4 <https://www.unhcr.org/fr/situation-au-burundi.html>
- 5 <https://www.omct.org/fr/human-rights-defenders/urgent-interventions/burundi/2017/01/d24170/>
- 6 <http://blog.omct.org/le-burundi-se-defile-lors-de-lexamen-special-du-comite-contre-la-torture-queles-consequences-pour-la-societe-civile/>
- 7 <https://www.fidh.org/fr/themes/defenseurs-des-droits-humains/represailles-contre-quatre-avocats-engages-dans-la-defense-des-droits>
- 8 <https://news.un.org/en/story/2016/08/536232-un-rights-experts-gravely-concerned-reports-reprisals-against-burundian-lawyers>
- 9 <https://www.ishr.ch/news/burundi-commission-inquiry-renewed-human-rights-scrutiny-razors-edge>
- 10 <https://news.un.org/fr/story/2018/09/1023432>
- 11 <http://www.coalitionfortheicc.org/latest/resources/burundi-and-icc>
- 12 <https://www.dw.com/fr/au-burundi-des-ong-paralys%C3%A9es/a-18885661>
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Following up: The key to seeing States act on treaty body recommendations

UN treaty bodies need to monitor and follow-up on the recommendations they make to States. Some have begun doing so in innovative ways, and more could be done.

Implementation of the human rights obligations that States have agreed to under UN treaties is critical in order to ensure the fulfillment of human rights in people's lives. There is growing recognition that better ways are needed to measure and evaluate human rights implementation.¹ The UN Human Rights Committee² (HRC) which oversees country compliance with the International Covenant on Civil and Political Rights (Covenant), established unique follow-up procedures in order to encourage and monitor selected areas of implementation. These include a grading system for rating a State's progress in implementation, and undertaking follow-up visits to countries. These are proving effective, but a number of other steps could also be taken.

The HRC's new follow-up procedure³ was adopted in 2013. When the Committee reviews compliance with the Covenant by State parties, it generally selects two to four recommendations from the full set for follow-up, based on two criteria: (1) whether the recommendations can be implemented within one or two years and (2) whether they require immediate attention because of their gravity or an emergency. States have one year to reply to these specific concerns. National human rights institutions, non-governmental organisations (NGOs), and other organisations can submit reports in reply as well. The Committee then considers the responses and adopts a grade for the State's action to implement the recommendations selected as follows:

- A (largely satisfactory)
- B (partially satisfactory)
- C (not satisfactory)
- D (no cooperation with the Committee)
- E (contrary to or reflects rejection of the Committee recommendation)



By **Marcia V. J. Kran**

Member of the UN Human Rights Committee (2017 - 2020) and its Rapporteur on Follow Up to Concluding Observations, as well as former director at the UN Human Rights Office and the UN Development Programme. Sebastian Ennis assisted with research for this piece.

The Committee releases an official report with summaries of the information it receives. At the end of this procedure, further information may be requested from the State, or the follow-up procedure may be suspended, with any further information requested to be addressed during subsequent periodic reviews. Since 2016, the follow-up sessions have been made public and are webcast live on UN TV, accessible for viewing worldwide and archived online.⁴ From 2011 to 2019, the Committee reviewed 158 States under its follow-up procedure.

'One idea put on the table by a network of knowledgeable NGOs is precisely to formalise follow-up missions by treaty bodies as part of their normal functioning.'

Committee members also conduct missions to some countries to follow up on national progress in implementing recommendations, although not official UN missions. The Centre for Civil and Political Rights,⁵ a Geneva-based NGO set up in 2008, organises these country visits with current and former Committee members. Since 2013, there have been 31 such visits, 18 of these in the past two years. These visits include meetings with high-level national authorities, national human rights institutions, civil society, in-country development partners, and journalists to discuss follow-up. The annual number of the visits is increasing and this trend appears likely to continue.

There are additional ways missions can be organised to effectively encourage follow up. As a promising example, I recently carried out a mission which may suggest ideas for the future. On the occasion of Human Rights Day on 10 December 2018, the UN Resident Coordinator's Office in the Lao People's Democratic Republic invited me, as a sitting member of the Committee, to Vientiane to discuss with the government their plans to implement UN human rights recommendations and how the UN might support these efforts. Laos' constructive dialogue with the Committee had been held a short time before, in July 2018.

I met with government officials from various ministries, development partners such as the UN Country Team and the European Union, and other stakeholders on feasible ways for the government to implement recent human rights recommendations through cooperation with the UN and donors. The recommendations comprised those drawn from the Universal Periodic Review process of the UN Human Rights Council, multiple treaty bodies, and



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a thematic Special Rapporteur on human rights. With the full support of the UN Country Team, I proposed how ongoing and planned development programming in the country, which was based on the Sustainable Development Goals (SDGs), could directly support the implementation of the human rights recommendations.

‘National development plans could combine human rights and the SDGs to advance and monitor the results of reforms in these areas together.’

Next year, Member States of the UN General Assembly will review the effectiveness of treaty bodies.⁶ In discussion leading to the review, one idea put on the table by a network of knowledgeable NGOs is precisely to formalise follow-up missions by treaty bodies as part of their normal functioning.

There are a number of other ideas to strengthen the follow-up to treaty body recommendations.

Human rights principles underpin the Sustainable Development Goals. Where there is momentum to achieve the SDGs, government follow-up of human rights recommendations could be enhanced by linking human rights and the SDGs. National development plans could combine human rights and the SDGs to advance and monitor the results of reforms in these areas together, given that they are inter-related and mutually reinforcing.⁷ The connection between human rights and the SDGs should be strengthened. Even though the SDG agenda is not fully inclusive of the guarantees in UN human rights treaties, State commitment to the SDGs can be a supporting argument for working to attain certain human rights goals. Treaty bodies are mandated to review national progress on human rights and this can be done in the context of State parties’ efforts to achieve the SDGs. In fact, treaty bodies have recently been recognised as leaders in SDG monitoring.⁸ More broadly, it is important that the current emphasis on human rights in the SDGs is sustained at the UN.

UN Resident Coordinators lead UN Country Teams in 131 countries.⁹ Their terms of reference include human rights as one of the pillars of the UN. As development partners on the ground, Country Teams have the potential to play a critically important role in follow-up by supporting UN programme countries in this regard. Country Teams should consistently work across the peace, development and human rights pillars of the UN. Committee recommendations should be used as a basis for development programming. Results should be defined to include improvements in the human rights situation. Governments in UN programme countries would then be better supported to implement human rights recommendations at the domestic level.

Finally, quality data collection by States and other stakeholders is needed to gauge progress on follow-up or implementation of UN human rights recommendations. One promising system to transparently coordinate and prepare reports and track follow-up and implementation is SIMORE Plus.¹⁰ The latest generation of this tool links progress on human rights to the SDGs. These systems exist in a growing number of countries¹¹ to plan, track, and systematise implementation and reporting. That number should continue to grow.

1 <https://www.universal-rights.org/urg-policy-reports/is-the-global-situation-of-human-rights-improving-or-deteriorating-making-the-case-for-the-empirical-measurement-of-human-rights-change/>
 2 <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>
 3 https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/FollowUp.aspx?Treaty=CCPR&Lang=en
 4 <http://webtv.un.org/meetings-events/human-rights-treaty-bodies/>
 5 <http://ccprcentre.org/>
 6 <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBstrengthening.aspx>
 7 <https://undocs.org/A/HRC/RES/37/24>
 8 <https://www.openglobalrights.org/un-human-rights-mechanisms-proving-effective-sdgs-monitor/>
 9 <https://unsdg.un.org/2030-agenda/leadership>
 10 <https://www.mre.gov.py/simoreplus/>
 11 https://www.ohchr.org/Documents/Publications/HR_PUB_I6_I_NMRP_PracticalGuide.pdf



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What difference does the UN human rights treaty system make, and why?

A new, global academic study to answer this question is launched in collaboration with the UN High Commissioner for Human Rights.

The UN treaty bodies system has operated for the last more than half a century on the premise that it makes a difference where it matters: on the ground, in all countries around the world. Yet there is very little evidence available of the extent to which it actually makes such a difference, and why. It is hard to see how the system can survive – or for that matter be reformed, or even understood – without a much clearer picture of its impact and the forces that drive it.

A comprehensive research project on the impact of the treaty system,¹ which started some years ago, is now being expanded into a global study aimed at filling this gap.

The first steps of the study were taken two decades ago by a team of researchers coordinated from the University of Pretoria,² in collaboration with the UN Human Rights Office (OHCHR). In 1999, Mary Robinson, then High Commissioner for Human Rights, tasked the two authors of this post to conduct a study worldwide to answer the following question: To what extent can it be shown that the main human rights treaties (there were six at the time) and the work of the treaty bodies have influenced domestic human rights practices in a sample of 20 UN member States, representing the different UN regions? What tangible evidence is there, for example, that the treaty system has influenced the constitutions, the legislation, the judicial decisions or the policies of these countries? Is it taught in the law schools? What can be done to enhance its impact?

The researchers documented numerous instances of impact, and we were in a position to draw general conclusions, published as a book³ and an article.⁴ This included that the evidence showed that the treaty system has had an enor-



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mous impact on the protection of human rights on the ground, in particular through the – recognised or unrecognised – incorporation of treaty norms into domestic law.

‘The evidence showed that the treaty system has had an enormous impact on the protection of human rights on the ground, in particular through the incorporation of treaty norms into domestic law.’

The following factors were found to be among those that have enhanced its impact: a strong domestic constituency for specific treaties; national action plans; and the windows of opportunity that comes with a change to democracy. We also laid strong emphasis on a greater focus on the role of national human rights institutions in mediating impact, and for them to do follow-up.

Factors found to have limited the impact of the system included the following: concerns for State sovereignty; a lack of knowledge of the system; the absence of a robust domestic human right culture; ineffective coordination between governmental departments; an ad-hoc approach to reporting; federalism; reprisals against human rights defenders; a preference for regional systems; and weak follow-up by treaty bodies.

We reported a rallying cry from many far-flung countries that ‘Geneva is very far’ – not only in terms of geography but also in terms of accessibility and psychological ownership. And we proposed that the treaty bodies should consider holding some of their meetings away from UN headquarters in Geneva.

Now, twenty years later, we are reviewing the same 20 countries, again with the help of researchers based in the respective countries, and again in collaboration with the OHCHR. We are asking the same questions. This study is now nearing completion, and we plan to publish it in the middle of next year, this time, with Professor Rachel Murray from Bristol University as co-editor.

The data from the more recent study is still coming in. So far, the results provide further evidence of the strong impact of the system in most countries. However, a systematic analysis will only be possible once all the data has been gathered.

In the meantime, some of the issues identified up in the earlier study have been taken up within the system. There is for example a much stronger recognition of the role of national implementation and monitoring mechanisms. The Disability Rights Convention adopted in 2007, explicitly calls for creation of national ‘focal points’ and the designation of national human rights institutions to promote, protect and monitor implementation of the Convention.

‘Twenty years later, we are reviewing the same 20 countries, again with the help of researchers based in the respective countries, and again in collaboration with the OHCHR.’

The earlier study had made proposals for the establishment of inter-departmental fora to deal with reporting and implementation, along the lines of the

“National Mechanisms for Reporting and Follow-up” now being implemented.

The need to ‘bring the system closer to the ground’ is now recognised⁵ by a range of NGOs in preparation for the 2020 review of treaty bodies. The idea of treaty body meetings outside Geneva was advanced again by Heyns and Gravett⁶ in a blog two years ago, also on the basis of the regional experience,⁷ and the first such meeting for a UN treaty body is now being planned for 2020.⁸

During the course of these two studies, we became very aware of the importance of getting a clear picture of the impact of the system, but also of the limitations of what we were doing. With only 20 countries covered, the sample size is quite limited; and, providing a snapshot at a particular moment in those countries means they are quickly overtaken by events.

Following wide consultation, we are currently in the process of setting up an online database,⁹ where information on the impact of the system in all UN member States will be posted. The 20 country studies mentioned above, as well as the supporting documentation, will for a start be posted on a website. In the meantime, clinical groups¹⁰ are being formed at universities around the world, where international students are gathering the relevant information on their home countries, to be posted on the website. We anticipate that up to 50 new countries will be covered per year and the ones covered earlier will be updated. In an era of crowd-sourcing, contributions from all interested parties – NGOs, individual researchers etc. – will be solicited.

This will be a large-scale and long-term research project, but hopefully it will help to allow the collective wisdom of people anywhere in the world to ensure that the treaty system remains as effective and as responsive to the needs of our time as is possible. It is also intended, in some way, to be a response to the lament that ‘Geneva is very far’ and to ensure that the treaty system is brought closer to the actual rights-holders, even if only virtually.

The treaty system has played a pivotal role in developing the substantive norms of the global human rights project over the last six decades. The future of the treaty system depends on whether it will continue to lead the way on substance, but more is required: it will have to enhance its visibility and broaden its ownership to a global audience, and treaty norms will have to find their way into domestic law and practices. This is the gap that the new study aims to help fill.

1 <http://www.icla.up.ac.za/about-the-study>

2 <https://www.up.ac.za/faculty-of-law/>

3 <https://brill.com/view/title/10873>

4 <https://muse.jhu.edu/article/13787>

5 https://www.ishrch/sites/default/files/documents/joint_ngo_proposal_on_untb_reviews.pdf

6 <https://www.universal-rights.org/blog/bringing-un-treaty-body/>

7 <https://www.universal-rights.org/?s=inter-american>

8 <https://www.samoaoobserver.ws/category/samoa/52171>

9 <http://www.icla.up.ac.za/establishing-an-on-line-database/project-outline>

10 <http://www.icla.up.ac.za/establishing-an-on-line-database/countries-covered>

No more tinkering: real reform needed to UN human rights treaty monitoring

The human rights treaty bodies are central to human rights reform efforts, but are burdened by inefficiencies. The upcoming UN review offers a chance to make them both more efficient and more effective.



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The members of the United Nations (UN) human rights treaty bodies were recently informed that due to budget cuts, they would not be able to meet as normal for their autumn sessions – these were to be cancelled. The ten distinct treaty bodies were also informed that they should expect fewer, not additional, resources in future UN budgets. These bodies, whose members meet two or three times a year, for a total of approximately eight to ten weeks, already confront major issues in their work to monitor whether States are complying with their treaty obligations. They are barely able to keep on top of the reports States submit, even though 80% of these reports are late; if States submitted on time, the treaty bodies would be overwhelmed. Yet, over the years there has been a cold indifference to their pleas for more resources.



By Navi Pillay
Former UN High
Commissioner
for Human Rights from
2008 - 2014.

In the end, after strenuous efforts by the current UN High Commissioner for Human Rights, the UN Secretary General found the funds to allow the autumn treaty body sessions to proceed. But the long-term threat to cut funding remains, and there is no prospect of new resources to address current backlogs, which will only grow. This crisis, long in the making, arrives just as the UN General Assembly is scheduled in 2020 to consider the question of reform to the treaty body system. The last such review concluded in 2014, just as I ended my term as High Commissioner. It made some, limited reforms aimed at making the system more *efficient*, but it largely ignored the proposals I put forward to make it more *effective*. We can't let that happen again.

The treaty bodies do make a difference, and they could be even more effective if measures were put in place to streamline and harmonise their efforts.

The UN human rights treaty bodies may seem somewhat abstract – experts cocooned in UN meeting rooms and pouring over legal reports. But the scrutiny they give to the reports submitted by States, their views on individual cases, and the general advice they provide on how to best apply and interpret the human rights treaties, has profound real-world consequences. The work of the treaty bodies has led to progressive legal reform in dozens of countries, assisted individual victims in hundreds of cases, and persuaded governments to implement pro-human rights policies for the past 40 years. Women and children's rights have advanced considerably because of the work of the committees that monitor the Convention on the Elimination of Discrimination against Women, and the Convention on the Rights of the Child. The world-wide prohibition against torture, and a growing consensus against the death penalty, have both been strengthened by the work of the treaty bodies. Disability and migrants' rights are also gaining recognition through the work of these bodies, and so too the rights of LGBTQI persons.

As High Commissioner, I saw in my visits to dozens of countries, and frequent interactions with governments, the important – indeed, often unique – role the treaty bodies played in encouraging human rights reforms. As the UN, governments and civil society groups increasingly adopt rights-based approaches to development and combating poverty, the treaty body recommendations made for each country are providing a template to guide their efforts. I frequently saw too how local human rights groups relied on UN treaty body recommendations and advice to give greater legitimacy and potency to their campaigns for reform.

The treaty bodies do make a difference, and they could be even more effective if measures were put in place to streamline and harmonise their efforts, to better publicise their work, to bring them into more direct contact with civil society and government reformers on the ground, and to ensure proper follow-up to the recommendations they make.

New human rights treaties are being negotiated – will we simply continue to create new monitoring bodies?

There are currently ten UN human rights treaty bodies, and many States are required (because of their ratification of several treaties) to report periodically to several of them. There is considerable overlap, not only in what States should report, but in what the treaty bodies might recommend in terms of reform. Some measures have been put in place to streamline reporting, but much more could be done. The Chairpersons of the treaty bodies have recently announced a new vision for “a stronger, simpler monitoring system”¹, which is a step in the right direction.

There are a number of ideas, including creating a single, unified body, or the idea suggested in my own report² that a State's record be reviewed by all relevant treaty bodies at a fixed, predictable moment. It simply doesn't make sense that a country should report to up to 10 different human rights committees in an unpredictable and uncoordinated way. New human rights treaties are being negotiated – will we simply continue to create new monitoring bodies? This overlap and duplication of effort leads to backlogs, and the system is just not equipped to cope with yet more reports. There has got to be a better method.

There are now webcasts of treaty body sessions, but the impact of their work would be even greater if they could hold their sessions in the countries under review, or at least in the relevant sub-region. And without more resources (either new funds or relying on those saved by streamlining), the committees cannot devote the time needed to follow up with States on the recommendations made previously.

Past reform efforts, including the one I led from 2012 – 14, were met by the opposition of some States, and too little support from many other States. I believe, however, that these obstacles can be overcome. The proposal of the treaty body chairs constitutes an important development that needs political support. If a few States were to exercise a leadership role on this matter, I am certain dozens of others would follow, alongside a broad and truly global civil society coalition. Local NGOs in so many countries have direct experience of the beneficial role played by the treaty bodies, and want to see them become more visible, and more effective.

Further, I do not believe the vast majority of States who have voluntarily joined the treaty body review system want to see it fail. Reform could result in a system that is less burdensome in terms of reporting, and better informed to advise States on reforms. That should be a welcome result for all.

1 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24787&LangID=E>

2 <https://www2.ohchr.org/english/bodies/HRTD/docs/HCRPTTBStrengthening.pdf>

The Committee System: 2020 and beyond

The treaty body system has been in crisis for at least thirty years. Will the year 2020 bring change?



By Olivier de Frouville
Member of the United Nations Committee on Enforced Disappearances, former member of the UN Human Rights Committee (2015-2018) and of the UN Working Group on Enforced or Involuntary Disappearances (2008-2014).

The treaty body system has been diagnosed as being “in crisis” for at least thirty years, and the theme of its reform is just as old.

A first cycle of reflection started with the mandate given to Philip Alston who, already in 1997, considered that the system as it existed was not sustainable.¹ Since then, this assessment has been reiterated numerous times, and ambitious proposals have followed one after another.² But until now stakeholders have been satisfied with makeshift repairs to prevent the ship from sinking completely. Today, being a member of a treaty body feels like being a passenger aboard the Titanic: the ship is sinking, but the orchestra continues to play!

Will 2020 be the year when we get the ship back afloat?

If this is really what we want to achieve, not only do stakeholders need to concentrate on the process started in the General Assembly, but they must also look further. In other words, we need to consider a short-term strengthening, a medium-term restructuring, and a longer-term reform.

‘Until now stakeholders have been satisfied with makeshift repairs to prevent the ship from sinking completely.’

The first cycle achieved its objectives of strengthening the system, granted they were rather modest. For instance, treaty bodies have indeed significantly increased the number of periodic reports reviewed and have reduced their backlogs. However, this is not enough to claim victory as we have to remember that only a minority of States do submit their reports on time. Navi Pillay’s 2012 report³ thus remains valid: the system functions because States do not comply with their obligations. Furthermore, the member increase within the Secretariat in charge of treaties did not happen in the proportion initially envisaged. The failure to keep these promises placed the staff of the High Commissioner (responsible for the secretariat) under considerable stress, which inevitably undermines the sustainability of the effort undertaken.

The “strengthening” must therefore continue. First, promises to increase staff must be kept. The Secretariat is the spine of the system. Second, efforts relative to assisting the States need to be maintained and go even further: ensure that all the reports be submitted on time; encourage the creation of national structures in charge of preparing the reports; and more importantly, focus at least half of the next cycle’s resources to the follow-up and implementation of the recommendations.

2020 must be the beginning of an extensive restructuring of the treaty system.

Indeed, the Committees each have their respective dynamics, which need to be supplemented and encouraged by the States. Last July, the treaty body Chairpersons formulated a common vision of the treaty bodies,⁴ including measures



to be put in place rapidly: a generalisation of the simplified procedure, the creation of a fixed and coordinated schedule for the submission of reports, new working practices to strengthen capacities such as the bodies' ability to conduct reviews... All measures that, in the medium term, may improve the situation radically.

But the Secretariat also has to take responsibility. In accordance with all the conventions, the Secretary-General must provide the Committees with the necessary resources to implement their mandates. This involves a reflection about adapting the structures to the needs of the Committees. Therefore, we should seriously consider the proposal laid out in a recent report from the Geneva Academy of International Humanitarian Law and Human Rights⁵ that discusses the creation of a professional structure, similar to a Registry, to effectively handle the administration of individual communications.

'We need to consider a short-term strengthening, a medium-term restructuring, and a longer-term reform.'

The salutary exercise that led the treaty body Chairpersons to formulate a "vision" for their future was only possible as resulting from a real awareness of the existential challenge facing the system: either move forward, or perish! The proposed measures, if effectively implemented in the next five or six years, should get the ship back afloat. But we must be careful not to be lulled by the, once again, regular rhythm of the engine noise! The Committees have to continue innovating. And States must assume their responsibility to always improve before an international system of protection that, we must remember, was established for good reasons.

Also, we should not wait to start reflecting on what the system will be like the day after tomorrow. The periodic review must become a fully effective process for the

protection and promotion of Human Rights. To that extent, two paths are possible: maintaining the plurality of the bodies, but still improving the coordination of their actions, with, for instance, "clustered" reviews inspired by the Geneva Academy report;⁶ unifying and professionalising the system, with the creation of a single Committee, as recommended by Louise Arbour in her report.⁷

As for individual communications, it is necessary to reflect rationally and without taboos about possibly transferring them, at least partially, to a judicial body – a UN Human Rights Court.⁸ Matters could be referred to the Court directly or indirectly (after review by the relevant Committee, at the request of one of the parties). No need to modify the existing treaties: it would be sufficient to adopt a new convention establishing the status of the Court that States would then ratify to recognise its competence. It would constitute an improvement of the system, placing professional judges above experts, thus making decisions mandatory. Far from a "fragmentation" of international law, such an institution would reinforce its coherence, as long as clear *lis pendens* rules be fixed with regional courts as well as an obligation to maintain a real "dialogue of the judges." It would also prevent any risks of case law conflicts internal to the Committee system by unifying their jurisprudence.

1 <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/FirstBiennialReportbySG.aspx#treaty>

2 <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx>

3 <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/FirstBiennialReportbySG.aspx#treaty>

4 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24787&LangID=E>

5 <https://www.geneva-academy.ch/research/publications/detail/478-treaty-bodies-individual-communication-procedures-providing-redress-and-reparation-to-victims-of-human-rights-violations>

6 <https://www.geneva-academy.ch/research/publications/detail/356-optimizing-the-un-treaty-body-system>

7 <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/FirstBiennialReportbySG.aspx#proposals>

8 http://www.frouville.org/Publications_files/OdeFCourDHNU.pdf



Small States face big challenges in engaging UN treaty bodies

Small States often lack the capacity to engage effectively with the treaty body system as currently structured – it must become more streamlined and present locally to have an impact.



By Malene Alleyne
Jamaican human rights lawyer and country researcher in an international study on the domestic impact of the UN treaty system. Her research includes interviews with national stakeholders on this topic.



By Felix Kirchmeier
Executive Director of the Geneva Human Rights Platform and Manager of Policy Studies at the Geneva Academy. There he leads a multi-year global academic project on the 2020 Treaty Body Review.

Small States make a significant contribution to the United Nations treaty system. Despite their size, they serve as treaty drafters, thought leaders, and strong advocates for human rights. Nationals from small States serve on UN human rights treaty bodies, bringing diverse perspectives to key issues. And communities within small States enrich the system by providing treaty bodies with on-the-ground information, shining a light on invisible issues that affect vulnerable populations. In this sense, small States are critical to the advancement of an inclusive vision of human rights. Yet, small States face big challenges when engaging with the UN treaty system, particularly the UN treaty bodies that meet in Geneva.

Consider the case of Jamaica, with a population of just under 3 million¹ people. Interviews with a range of stakeholders in Jamaica reveal that they face significant challenges that prevent them from fully engaging with UN treaty bodies. Major challenges include limited resources, a lack of awareness of the UN treaty system, and complexities in the treaty system that alienate domestic stakeholders. The experiences of three of these stakeholders illustrate these challenges, namely Jamaica's Ministry of Foreign Affairs, State institutions involved with the protection of human rights, and communities of rights-holders.

The issue of limited resources is seen vividly in the size of Jamaica's Ministry of Foreign Affairs, whose relatively small staff must navigate a complex and, in some cases, inefficient process of treaty body engagement. They prepare and present State reports to multiple UN treaty bodies, each with its own procedures and schedules. In this context, capacity constraints invariably lead to a backlog in State reports and slow implementation of treaty body recommendations. Capacity constraints also impact the composition of Jamaica's delegation to UN treaty bodies, which sometimes lacks high-level officials who can provide useful information. Of course, a lack of political will is an important factor behind some of these issues. Nevertheless, capacity constraints in the government cannot be ignored.

Beyond the Ministry of Foreign Affairs, interviews suggest that State institutions with critical perspectives on human rights – like parliamentary commissions – generally lack awareness of the UN treaty system. As such, they do not have a practice of engaging with UN treaty bodies.

‘Travel to Geneva or New York involves a rigorous visa application process and is prohibitively expensive, meaning only the privileged can do so.’

At the community level, rights-holders lack awareness of a treaty body system that is largely invisible to them. Even where civil society organisations have an awareness, engaging the treaty bodies is difficult. Travel to Geneva or New York involves a rigorous visa application process and is prohibitively expensive, meaning only the privileged can do so. The result is that only a small number of domestic civil society organisations present shadow reports, or appear before UN treaty bodies.

These challenges form part of the shared experience of small States across the globe, whose location and size inhibit full engagement with UN treaty bodies. Importantly, these challenges negatively affect the diversity of issues that reach the UN treaty bodies, and ultimately detract from the legitimacy of the treaty system. The consensus among interviewees in Jamaica is that the situation would drastically improve if treaty bodies were to visit the country.

‘The upcoming review offers the opportunity to make two important changes: clustering State reports and doing a mid-term review of implementation at the national level.’

The upcoming General Assembly review of the treaty bodies² offers the opportunity to make two important changes to current practice: clustering State reports, so that performance under all ratified treaties is reviewed in two consolidated groups; and doing a mid-term review of implementation at the national level.

By combining reports on the implementation of several treaties and clustering the dialogues with the treaty bodies, the interaction of a State with the treaty

bodies is optimised.³ The State party, as well as other national stakeholders, can put less resources into repeated reporting and traveling to Geneva. But most importantly, the review under a number of treaties will be coordinated, enforcing synergies and avoiding unnecessary overlap in reporting and recommendations by the treaty bodies. Clustering will also enhance the visibility of the recommendations they make, as they are all issued at the same time, producing one coherent result, instead of the random and scattered way it is done today.

The second change concerns treaty body interaction at country level, called for⁴ by many national stakeholders.⁵ Mid-way through the reporting cycle, a delegation of members of different treaty bodies would visit the country to discuss implementation of recommendations, engaging with government, including all concerned ministries, parliament, National Human Rights Institutions and National Mechanisms for Implementation and Follow-up, civil society and UN country teams.

This so-called Technical Review of Implementation Progress (TRIP),⁶ would have multiple functions: an assessment of measures taken, raising awareness of the treaty bodies, offering assistance in translating the recommendations to national realities, and ensuring accountability of the governments. The results of the TRIP would be reported to the full treaty bodies and inform the issues it raises in the next reporting cycle. The TRIP would also contribute to a comprehensive approach of human rights realisation, by providing links to recommendations of other human rights mechanisms, such as the Universal Periodic Review⁷ or Special Procedures,⁸ as well as creating a link to related SDGs⁹ relevant for the implementation.

The 2020 treaty body review presents an important opportunity to deepen treaty body engagement with national stakeholders. For small States, in particular, the proposed clustering of reviews and TRIP mechanism could address capacity constraints by streamlining State reporting and building capacity at national level. The national visit component of TRIP could also attract national stakeholders who have been alienated from the treaty body system. In so doing, TRIP could pave the way towards more inclusive discourse and action on human rights at the national and international level.

1 https://statinja.gov.jm/Demo_SocialStats/Newpopulation.aspx

2 <https://www.geneva-academy.ch/geneva-humanrights-platform/initiatives/detail/70-treaty-body-review-2020>

3 <https://www.geneva-academy.ch/tb-review-2020/final-report>

4 <https://www.universal-rights.org/blog/bringing-un-treaty-body/>

5 <https://www.ohchr.org/Documents/HRBodies/TB/AnnualMeeting/29Meeting/CommonApproachNHRI.docx>

6 <https://www.geneva-academy.ch/news/detail/264-an-efficient-tool-to-implement-un-treaty-bodies-recommendations>

7 [ohchr.org/en/hrbodies/upr/pages/uprmain.aspx](https://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx)

8 <https://www.ohchr.org/en/hrbodies/sp/pages/welcomepage.aspx>

9 <https://sustainabledevelopment.un.org/?menu=1300>

Human rights victims' complaints to UN not treated effectively

UN human rights treaties allow individuals to launch complaints when their rights are violated – but the system for dealing with them needs urgent reform.

One major component overlooked in the United Nations' (UN) process this year to strengthen the human rights treaty bodies is the individual complaint mechanisms, whereby victims of abuse can raise their cases before these bodies. This is surprising, as individual complaints has been one of the fastest growing aspects of the United Nations human rights machinery in the last several decades.

Currently, eight of the ten existing human rights treaty bodies can give their "views" (it is not a formal judicial process, so the term "judgments" is not used) on individual complaints (or "communications", in UN parlance). Parallel to the rise in the ability of the bodies to receive individual complaints, there has also been a steady increase in the number of States voluntarily accepting the individual communications mechanism (under the treaties, it is optional).

Between 2013 and 2015,¹ the number of States that ratified the Optional Protocols enabling the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights to examine individual communications has increased by 144% and 90%, respectively. States have opted into the individual communication mechanisms from all five continents. In return, a number of the Committees, most notably, the Human Rights Committee (HRC) and the Committee against Torture (CAT), have adopted hundreds of views. In 2018-2019² alone, the HRC adopted an average of 130 final decisions, and CAT 57.

Furthermore, the treaty bodies are not short of new cases, as is demonstrated by the backlog of communications awaiting review by some of the Committees – a backlog amounting to 1,587 communications as of 31 October 2019.³ Between 2013 and 2016 there was an 85% increase in the number of registered individual communication to the treaty bodies, followed by a further⁴ 80% increase in 2018-2019 (compared to 2016-2017).

'As of 31 October 2019, there was a backlog amounting to 1,587 communications awaiting review.'



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The treaty bodies have often embraced the individual complaints mechanisms-driven model of human rights protection, traditionally associated with regional human rights courts and commissions. However, the next challenge for the UN human rights system as a whole is to make this model count for victims of human rights violations and for the end-users – those who use the committees' work to buttress human rights decision-making and advocacy. This includes victims of human rights violations, judges, national human rights institutions, civil society, and regional human rights courts and commissions.

There are significant challenges to overcome to achieve this.

The first challenge concerns the inability of the treaty bodies to address complaints in a timely and efficient way. Delays in cases, which oftentimes concern grave human rights violations, mean significantly delayed justice for victims. Currently, some victims wait for years⁵ even before the registration of their complaints is acknowledged. It is imperative that a victim-centered approach drives handling these individual complaints efficiently, and that the UN treaty body secretariat rises to the challenge of dealing regularly with a large volume of such complaints. The treaty bodies can learn from the practices of regional human rights courts and commissions.

The second challenge concerns the task of developing and disseminating the “views” of the UN treaty bodies on these hundreds of complaints – a crucial, global, human rights jurisprudence. There are eight treaties, eight Committees, about 250 views⁶ issued per year – and an under-resourced secretariat⁷ that lacks the capacity to properly organise and present this body of work. But victims need to know whether it makes a significant difference to complain before one committee or another; how they ought to present their case, what procedural rules apply, and more. Further, significant discrepancies between the UN treaty bodies' decisions undermine their credibility and disadvantage individuals and groups who are not experts (and unable to navigate easily the legal complexities).

‘Victims need to know whether it makes a significant difference to complain before one committee or another, how they ought to present their case, what procedural rules apply, and more.’

The third challenge concerns effective implementation.⁸ As organisations such as the European Implementation Network⁹ point out, implementation of human rights judgments is an uphill struggle, even in the case of the European Court of Human Rights. The UN treaty bodies face even bigger challenges, as the domestic legal status of “views” in each country depends on the domestic legal framework, judicial interpretation by courts and the executive branch. While there have been important clarifications in this regard in some countries, such as Spain,¹⁰ more work needs to be done to ensure that States provide individual reparations for victims and take measures so similar violations do not reoccur.

There are many positive examples¹¹ where the UN treaty bodies have successfully led to redress for victims of human rights violations and given important interpretive guidance to domestic as well as regional courts. Treaty bodies have provided robust protections, amongst others, for LGBTI individuals,¹² women,¹³ victims of non-refoulement,¹⁴ victims and next of kin of enforced disappearances, and children.¹⁵

A recent civil society report¹⁶ makes seven main recommendations¹⁷ for the upcoming UN review. These echo and complement many of the ideas raised in this series¹⁸ so far:

- 1 Provide basic and essential knowledge for victims of human rights violations to effectively access the complaint mechanisms before the UN human rights treaty bodies;
- 2 Better communicate with complainants during the examination of the complaint;
- 3 Improve the coherence, transparency and quality of decision-making on individual communications;
- 4 Ensure the clarity and usefulness of the remedies recommended;
- 5 Follow up effectively so that the committees' views are implemented;
- 6 Ensure effective dissemination of the committees' work to the end-users;
- 7 Urgently improve funding to the Office of the UN
- 8 High Commissioner for Human Rights (OHCHR) to ensure the highest levels of expertise in handling individual communications.

In sum, these recommendations urge all stakeholders involved to strengthen and enhance the effective functioning of the UN individual complaints mechanisms. A victim-centered perspective and the needs of end-user must be incorporated in all efforts that seek to improve the system. This is the only way to further strengthen the transformative potential of the treaties, and their individual complaints mechanisms.

- 1 <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/2ndBiennialReportbySG.aspx>
- 2 <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/3rdBiennialReportbySG.aspx>
- 3 <https://undocs.org/A/74/643>
- 4 <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/3rdBiennialReportbySG.aspx>
- 5 <http://www.ishr.ch/news/treaty-bodies-backlog-individual-complaints-must-be-addressed-now>
- 6 <https://digitallibrary.un.org/record/3849276?ln=en#record-files-collapse-header>
- 7 <https://www.openglobalrights.org/UN-inefficiencies-undermine-effective-handling-of-individual-petitions/>
- 8 <https://www.openglobalrights.org/improving-domestic-compliance-with-un-decisions/>
- 9 <http://www.einnetwork.org/>
- 10 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23849&LangID=E>
- 11 <https://hr.un.org/sites/hr.un.org/files/editors/u4492/Implementation%20of%20decisions%20Under%20treaty%20body%20complaints%20procedures%20-%20Do%20states%20comply%20-%20202015%20Sabbatical%20-%20Kate%20Fox.pdf>
- 12 <https://juris.ohchr.org/Search/Details/2220>
- 13 <https://juris.ohchr.org/Search/Details/2152>
- 14 https://tinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%252fC%252f127%252fd%252f2728%252f2016&Lang=en
- 15 <https://juris.ohchr.org/Search/Details/2526>
- 16 <https://www.hertie-school.org/en/debate/detail/content/experts-call-for-further-action-to-improve-the-un-treaty-body-individual-communication-mechanisms/>
- 17 <https://www.hertie-school.org/en/debate/detail/content/experts-call-for-further-action-to-improve-the-un-treaty-body-individual-communication-mechanisms/>
- 18 <https://www.openglobalrights.org/treaty-body-reform/>

Improving domestic compliance with UN treaty body decisions

Many victims are denied access to international justice because States do not act in a timely manner, but reforming the treaty body follow-up process could help.

The majority of the UN treaty bodies have the competence to receive and decide on individual complaints submitted by individuals that allege one or more violations of the relevant treaty, in addition to reviewing periodic reports from States. To ensure that the States enforce their decisions (also called “views” or “opinions”), the treaty bodies have adopted “follow-up procedures”. These procedures entail that, on the one hand, the States must provide information regarding the measures they have adopted to give effect to the decisions, and on the other hand, that the treaty body assess whether the actions taken constitute a satisfactory remedial response to the violations. In case of a negative decision, finding the State at fault, it has a time window of six or twelve months, to take appropriate individual measures (and general measures if prescribed) to redress the situation of the victim. Therefore, the follow-up procedure is triggered after the treaty body finds a violation of the treaty, usually several years after the submission of the communication.¹

Unlike the European Court of Human Rights, where an executive body undertakes the monitoring process, the treaty bodies are responsible for the follow-up procedure. They appoint one member or a working group to coordinate follow up. Some of them also assess the level of domestic compliance² with their decisions. Some use a rating system: satisfactory, partially satisfactory, unsatisfactory, and no response. Others grade the State’s actions: A – response largely satisfactory; B – action taken, but additional information of measures required; C – response received, but actions or information not relevant or do not implement the recommendation; D – non-cooperation and no follow-up report received after reminders; and E – measures taken are contrary to the recommendation.

‘The follow-up procedures of treaty bodies provide certainty that the victim’s complaint and the treaty body’s decision have reached the national authorities.’

From a victim’s perspective, the follow-up procedures of treaty bodies are unique and crucial as they provide certainty that the victim’s complaint and the treaty body’s decision have reached the national authorities. It also provides moral support to the victim because someone, at the international level, closely monitors the individual’s situation. The treaty bodies also undertake measures aimed at finding amicable settlements, for instance, through meetings with representatives of the State in Geneva to discuss the complaints. Furthermore, the treaty body decisions can set the grounds for eliminating future similar violations³ or, at least, draw a path on how



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to deal with these individual decisions. Most importantly, the follow-up can prevent the re-victimisation caused by the non-implementation of the treaty body recommendations. Ultimately, the follow-up procedures contribute to delivering the promise of protection of the universal human rights of individuals.

But the follow-up procedure to views on communications is weakened by the States' late responses, stalling strategies, and insufficient financial support⁴ for adequately handling the individual complaint mechanism. It is primarily because States do not act in a timely manner that victims are denied access to international justice.

A reform of the follow-up processes is needed. The grading systems is a good start, and a unique international score-carding of State compliance. However, a lack of information about States' engagement with the follow-up procedure persists. It is not only an issue of information missing regarding State replies; information about the grading system and the grades adopted by the treaty bodies in the follow-up process is missing too. One must be well aware of the UN human rights system, but also the OHCHR website, to be able to follow and understand the treaty body reports on follow-up procedure and their grading of the measures the States have taken.

Further, insufficient dissemination of treaty bodies' views at the national level continues to downgrade the efficiency of the follow-up procedure. It is not possible

for individuals or victims to have access to the treaty body decisions if the States do not translate, where necessary, and widely disseminate the views not only to the appropriate governmental authorities, but also to the National Human Rights Institutions (NHRIs), civil society, and media.

'A fruitful exchange of information between the State, the victim and the treaty bodies is necessary to ensure the efficiency of the follow-up procedure.'

Relevant information regarding the implementation of the decisions is necessary. To improve this situation, States must strengthen the role NHRI have in the follow-up process. Consequently, the victim would be supported by the NHRI, which should act as a liaison between the victim and Special Rapporteurs, on the one hand, and a link between the State and the treaty body, on the other hand. The victims must be responsive and actively advocating for their right to a remedy.

The national civil society must also closely engage with the follow-up process and implementation of the views. In many instances, the national NGOs engage with the Universal Periodic Review and the State reporting procedures, but they are not as active in the follow-up ones.

Finally, and interestingly, with around 80% of treaty bodies' decisions related to refoulement in only a handful of countries (e.g., Denmark, Canada, Sweden or Switzerland), the system has indeed turned into a de facto international "asylum court". Subsidising the submission of asylum complaints to the UN treaty bodies does not help. A refocus of the system on the most serious violations of the treaties could help, and that would also entail more awareness and more use of the mechanism in regions such as Africa, which incidentally have higher rates of acceptance of the UN treaty bodies' individual communications.



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- 1 <https://www.openglobalrights.org/UN-inefficiencies-undermine-effective-handling-of-individual-petitions/>
- 2 <https://hr.un.org/sites/hr.un.org/files/editors/u4492/Implementation%20of%20decisions%20under%20treaty%20body%20complaints%20procedures%20-%20Do%20states%20comply%20-%20202015%20Sabbatical%20-%20Kate%20Fox.pdf>
- 3 <https://hr.un.org/sites/hr.un.org/files/editors/u4492/Implementation%20of%20decisions%20under%20treaty%20body%20complaints%20procedures%20-%20Do%20states%20comply%20-%20202015%20Sabbatical%20-%20Kate%20Fox.pdf>
- 4 <http://www.ishr.ch/news/treaty-bodies-backlog-individual-complaints-must-be-addressed-now>



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