

# TREATY BODIES' INDIVIDUAL COMMUNICATION PROCEDURES:

PROVIDING REDRESS AND  
REPARATION TO VICTIMS OF HUMAN RIGHTS VIOLATIONS

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MAY 2019

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## ACKNOWLEDGEMENTS

The Geneva Academy team who worked on this report wishes to thank several stakeholders for their contribution, both in terms of information provided and feedback on multiple versions of the draft paper. Firstly, we thank the Petitions and Urgent Actions Section of the Office of the High Commissioner for Human Rights (OHCHR) and the whole Treaty Body secretariat for their invaluable input and feedback, which has been very enlightening considering the issue is so little known, even amongst experts of the treaty body system. Several consultations were organized in partnership with and the support of the Paris Human Rights Center (CRDH), the Norwegian Centre for Human Rights, the Centre for Civil and Political Rights and the Open Society Justice Initiative. We are extremely grateful for the opportunities to discuss the many issues that emerged from the research process with current and former members across all the treaty bodies. We would also like to thank diplomats, based in Geneva or in other capitals, as well as all the other persons interviewed for the purpose of this report, be they legal experts, NGO representatives, academics, OHCHR staff other than the Petitions and Urgent Actions Section, treaty body secretariat or staff of the European Court of Human Rights and Inter-American Commission on Human Rights.

The Geneva Academy thanks the Federal Department of Foreign Affairs of Switzerland for the support it has given to the Geneva Human Rights Platform, and other donors who have supported this project.

**May 2019**

**ISBN: 978-2-9701253-3-4**

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# 1. INTRODUCTION

In May 2018, the Geneva Academy of International Humanitarian Law and Human Rights published a first report to contribute to the current treaty body<sup>1</sup> reform process,<sup>2</sup> *Optimizing the UN Treaty Body System*,<sup>3</sup> based on its Academic Platform on Treaty Body Review 2020 research project.<sup>4</sup>

This new publication focuses on a particular aspect of treaty body activities: the consideration of complaints from individuals alleging a violation of their rights. Compared to the periodic reviews based on state reports,<sup>5</sup> the issue of communications has received little attention in the debate, hence the need to fill this gap. The 2020 review of the United Nations treaty body system offers an important opportunity to strengthen procedures.

Individual communications procedures (ICPs) were developed to enforce the rights enshrined in the corresponding treaties and provide victims of violations with an effective remedy before an international body. They also represent a key entry point for victims of human rights violations into the UN human rights system.<sup>6</sup>

1 Treaty bodies are supervisory independent expert bodies tasked with reviewing the compliance of states parties with their legal obligations under the relevant treaties. The Human Rights Committee (HRCttee) monitors the International Covenant on Civil and Political Rights (ICCPR); the Committee on Economic Social and Cultural Rights (CESCR) monitors the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Committee on the Elimination of Racial Discrimination (CERD) monitors the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Committee on the Elimination of Discrimination against Women (CEDAW) monitors the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Committee against Torture (CAT) monitors the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Committee on the Rights of the Child (CRC) monitors the Convention on the Rights of the Child; the Committee on Migrant Workers (CMW) monitors the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW); the Committee on Enforced Disappearances (CED) monitors the International Convention for the Protection of All Persons from Enforced Disappearance (ICED); the Committee on the Rights of Persons with Disabilities (CRPD) monitors the Convention on the Rights of Persons with Disabilities; and the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) has a preventive mandate derived from the Optional Protocol to the Convention against Torture (OP-CAT). See [www.ohchr.org](http://www.ohchr.org), treaty bodies section for the documents quoted under [www.ohchr.org](http://www.ohchr.org) hereafter. NB: All the documents quoted in this research have last been last accessed in May 2019).

2 The current reform process was launched by the United Nations General Assembly (UNGA) in 2014 with the adoption of Resolution 68/268 on 9 April, providing for a review of the system in 2020.

3 Geneva Academy of International Humanitarian Law and Human Rights (Geneva Academy), *Optimizing the UN Treaty Body System: Academic Platform Report on the 2020 Review*, <https://www.geneva-academy.ch/joomla-tools-files/docman-files/Optimizing%20UN%20Treaty%20Bodies.pdf>.

4 See Geneva Academy, 'Academic platform on Treaty Body Review 2020', <https://www.geneva-academy.ch/tb-review-2020>.

5 All states parties to the relevant treaties are required to report periodically to the relevant committees on the steps they have taken to implement each treaty. At the end of country reviews, treaty bodies adopt 'concluding observations' that contain recommendations on how individual states parties can improve implementation of the treaty at the domestic level.

6 The expressions 'individual communications' and 'individual complaints' are used interchangeably. The outcome of these ICPs is a dedicated decision adopted by the relevant treaty body called 'views' or 'decision'. These constitute the jurisprudence of the treaty bodies. See OHCHR, 'Human Rights Treaty Bodies – Glossary of Technical Terms Related to the Treaty Bodies' [www.ohchr.org](http://www.ohchr.org)

Since the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1965, all the human rights treaties or their optional protocols provide individuals with the right to submit communications before the relevant committee.<sup>7</sup> Currently, 8 treaty bodies out of 10 may receive individual communications.<sup>8</sup> Under these procedures, treaty bodies determine whether rights protected by the relevant treaties may have been violated and recommend remedial action. This crucial function is often qualified as 'quasi-judicial' as it is comparable to that of courts.

## A. INTER-STATE COMMUNICATIONS

Seven treaties also provide inter-state communications procedures (ISCPs) that allow states parties to submit information to the relevant treaty body about alleged violations of the treaty by another state party. There are two kinds of ISCPs. The first concerns alleged violations of the treaty by another state party.<sup>9</sup> The second provides for inter-state complaints regarding the interpretation or application of a treaty.<sup>10</sup> With the exception of ICERD, under which the inter-state complaint procedure applies to all states parties, these procedures are optional and reciprocal.<sup>11</sup>

The human rights treaties regulate ISCPs differently. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons From Enforced Disappearance (ICED), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Optional Protocol to the Convention on the Rights of the Child (OP-CRC) set out a procedure for the relevant committee itself to consider communications from a state party that claims another state party is not fulfilling its obligations under the convention. ICERD, the International Covenant on Civil and Political Rights (ICCPR) and Convention on the Rights of the Child (CRC) provide for a more elaborate procedure for the resolution of disputes between states parties through the

7 See T. Stavrinaki, *Le régime des procédures de communications individuelles dans le système des traités des Nations Unies*, Pedone, 2016.

8 CAT, CERD, the CEDAW, CCPR, CRPD, CRC, CESCR and CED. The ICMW also provides for an individual communication procedure but this has not yet entered into force. This mechanism will become operative when 10 states parties have accepted. As of January 2019, six states parties only have made the necessary declaration recognizing the competence of the CMW to receive and consider individual communications. The SPT does not perform the same functions as the other nine treaty bodies. Its preventive mandate lies in visits to places of detention and advice given to national preventive mechanisms. The SPT does not examine periodic reports by states parties or individual communications.

9 Art 11, ICERD; Art 41, ICCPR; Art 10, OP-ICESCR, Art 21, Convention against Torture; Art 12, Optional Protocol to the CRC on a communications procedure (OPIC); Art 76, ICMW; Art 32, CED.

10 Art 22, ICERD; Art 29, CEDAW; Art 30, Convention against Torture; Art 92, ICMW; and Art 42, ICED. All these provisions place the International Court of Justice at the top of the pyramid should arbitration fail.

11 Regional human rights systems provide similar procedures. The inter-state procedure is also optional and reciprocal under Art 45, American Convention on Human Rights, whereas it applies to all states parties to the European Convention on Human Rights (Art 24) and to the African Charter on Human and Peoples' Rights (Art 47).

establishment of an ad hoc conciliation commission. Despite these differences, the various procedures are characterized by their confidentiality.

In 2018, three inter-state communications were submitted under Article 11 of ICERD for the first time in the history of treaty bodies.<sup>12</sup> On 8 March 2018, Qatar submitted two inter-state communications to the Committee on the Elimination of Racial Discrimination (CERD): one against Saudi Arabia and the other against the United Arab Emirates. On 23 April, Palestine submitted an inter-state communication against Israel. These recent developments before CERD open up new conciliation opportunities.<sup>13</sup>

## B. URGENT ACTIONS UNDER THE CED

Urgent actions are a different sort of procedure proper to the Committee on Enforced Disappearances (CED) that aim to find disappeared persons.<sup>14</sup> Under this procedure, the CED requests the state party to immediately take all necessary measures to search for and locate a disappeared person and investigate the disappearance. Between March 2012 and December 2018, the CED registered 560 urgent actions.

## C. ACHIEVEMENTS

This report focuses on individual communications only. These have proved instrumental in guaranteeing human rights for individuals and providing states parties with guidance as to how to implement their legal obligations (see Section 3.A.3). Thanks to ICPs, states parties obtain guidance on how victims can seek redress in often complex situations that could not be resolved domestically. The committees' decisions have a remedial effect for the individuals concerned, but also a larger preventive role as the adjustment of laws and practice recommended is expected to prevent recurrence of violations. ICPs thus serve both an individual and general purpose. The general impact of these procedures on human rights worldwide, be it remedial or preventive, deserves to be better known.

<sup>12</sup> Until 2018, the very existence of these procedures appeared to have some deterrent effect as states parties had never resorted to this mechanism.

<sup>13</sup> Rather than pursuing judicial means only, states might be more inclined to look for more flexible solutions. As stated by Emmanuel Decaux, it might be 'more useful to seek a quick and amicable settlement of a legal dispute within the framework of "good offices" and follow-up by independent experts than to exacerbate a political crisis, arguing during years about the narrow jurisdiction of the Court' (E. Decaux, 'The Potential for Inter-State Conciliation Within the Framework of the UN Treaties for the Protection of Human Rights', Effectiveness through Flexible Procedures – International Conciliation in a Wider Context, colloquium co-organized by the Court of Conciliation and Arbitration within the OSCE and the Graduate Institute of International and Development Studies, 11–12 October 2018, Geneva).

<sup>14</sup> Art 30, ICED.

## D. UNDERUSED, LITTLE-KNOWN PROCEDURES DESPITE A SHARP INCREASE IN NUMBERS

Unlike periodic state reporting, which applies to all states parties to the relevant treaties, states have to opt in to enable a committee to receive and consider individual communications, either by becoming a party to an optional protocol (to the IC-CPR, ICESCR, CEDAW, CRC or CRPD), or by making a declaration to recognize the competence of the relevant Committee (CERD, CAT, CMW or CED). The number of states that have recognized the competence of the corresponding committees to review communications from individuals has risen, yet significant gaps remain.<sup>15</sup>

CCPR*	116 of 172 states parties
CAT	68 of 166 states parties
CEDAW	109 of 189 states parties
CERD	58 of 179 states parties
CRPD	94 of 177 states parties
CRC	42 of 196 states parties
CESCR*	24 of 169 states parties
CED	22 of 59 states parties
CMW	6 of 54 states parties ( <i>not yet in force</i> )

\* Committee on Civil and Political Rights is the treaty of the CCPR.

The number of communications received has also increased sharply in recent years, with a record number of 370 communications registered in 2018, which represents approximately 10 percent of communications received.<sup>16</sup> Despite these figures, the ICPs appear to be underused. By the end of 2018, the total number of communications registered by all committees since the entry into force of the procedures was 4,608.<sup>17</sup> This figure seems very small compared to the number of cases received by regional courts.<sup>18</sup>

<sup>15</sup> As of April 2019.

<sup>16</sup> Figures provided by OHCHR. Treaty bodies registered an 80% increase between 2012 and 2015 from 107 to 307 individual communications. The HRCtee alone registered 211 new communications in 2016 compared to 93 in 2013. See UN General Assembly (UNGA) Status of the Human Rights Treaty Body System, Report of the Secretary-General, UN doc A/71/118, 18 July 2016, §21, and the latest annual Report of the Human Rights Committee, UN doc A/72/40, 2017, §27. In 2018, the number of communications registered by the CESCR increased by 2,133%, from 3 cases in 2017 to 67 the following year (OHCHR figures).

<sup>17</sup> Figures provided by OHCHR. Only a small number of the approximately 30,000 incoming correspondences received every year by the Petitions and Urgent Actions Section are registered as communications. On filtering and registration, see Section 2.A.3.

<sup>18</sup> In comparison, in 2017, the European Court of Human Rights (ECtHR) allocated 60,900 applications to a judicial formation, and 40,650 in 2018, excluding December (ECtHR, 'Statistics 1/1-30/11/2018', [https://www.echr.coe.int/Documents/Stats\\_month\\_2018\\_ENG.pdf](https://www.echr.coe.int/Documents/Stats_month_2018_ENG.pdf)). See also ECtHR 'Statistics, 2017', [https://www.echr.coe.int/Documents/Stats\\_annual\\_2017\\_ENG.pdf](https://www.echr.coe.int/Documents/Stats_annual_2017_ENG.pdf). The Inter-American Commission on Human Rights (IACHR) received 2,494 new petitions in 2017 (IACHR, 'Statistics', <http://www.oas.org/en/iachr/multimedia/statistics/statistics.html>).

### Communications registered for consideration 2009–2018

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
CCPR	68	96	106	104	95	191	196	211	168	190
CAT	40	40	42	48	45	68	76	69	65	49
CEDAW	4	7	7	12	17	15	18	13	12	16
CERD	3	2	1	3	2	2	1	3	1	6
CESCR	0	0	0	0	1	3	7	8	4	67
CRC	0	0	0	0	0	1	1	6	31	30
CRPD	0	3	4	3	9	8	8	4	6	12
CED	0	0	0	0	1	0	0	0	1	0
Total	115	148	160	170	170	288	307	314	287	370
Grand total	4,608									

There are multiple reasons why treaty body output is not as well-known as the jurisprudence of regional courts. Issues relate notably to the lack of visibility and accessibility of the procedures themselves and of treaty body jurisprudence.<sup>19</sup>

## E. METHODOLOGY

This report aims to examine an essential aspect of treaty body work which, unlike state reporting, has received insufficient attention despite representing an important mechanism to enforce victims' rights. Victims' access to redress is the basis of the reflections in this report. How do the available procedures function? How useful are they to victims in terms of guaranteeing their rights and providing remedies? How are they implemented? How could they be improved? These are some of the questions that this report aims to answer. Apart from the existing relevant literature, this publication is based on numerous interviews with state and NGO representatives – including litigating NGOs – staff at the UN Office of the High Commissioner for Human Rights (OHCHR), academic experts on the system, domestic stakeholders and members of international judicial institutions such as the European Court of Human Rights (ECtHR) and the Inter-American Commission on Human Rights (IACHR).

The guiding principle of the research has been how to best provide relief to victims of human rights violations and guidance to states parties, and how to strengthen treaty body communications procedures with that double goal in mind.

<sup>19</sup> Other issues of general concern mentioned during consultations include the lack of enforcement of treaty body decisions, the absence of domestic implementation mechanisms, the absence of specific monetary damages and the lack of regular follow-up updates.

Section 2 outlines the way in which the system as it currently stands works. Similarly to the previous Academic Platform publication on the treaty body system, this report presents options to improve various aspects of the ICPs that emerged from discussions. Suggested ideas and measures are compiled in Section 3 and 4.

## 2. HOW TREATY BODIES HANDLE INDIVIDUAL COMMUNICATIONS

Like other treaty body activities, review of individual communications relies on support from the secretariat as provided by the OHCHR.

To perform this particular task, the secretariat has set up the Petitions and Urgent Actions Section.<sup>20</sup> This section receives, assesses and processes all individual communications submitted on the basis of the relevant treaties, as well as urgent actions under the ICED and inter-state communications.<sup>21</sup>

### A. THE PROCEDURE

#### 1. THE WRITTEN AND CONFIDENTIAL NATURE OF THE PROCEDURE

The nature of the ICP differs from that of national and international jurisdictions: it examines 'communications' or 'complaints'.<sup>22</sup>

The committees consider individual communications based mostly on the information provided by the parties. At the moment, the CESCR, Human Rights Committee (HRCttee) (since 2019), CAT, CRC and CRPD accept submissions from third parties (*amicus curiae*).<sup>23</sup> Moreover, treaty bodies cannot carry out inquiries or fact-finding missions as part of the ICP.<sup>24</sup> All documents remain confidential apart from the de-

20 Felice D. Gaer relates the history of the Petitions and UA section within the secretariat since the 1970s in her article 'The Institutional Future of the Covenants: A World Court of Human Rights?', in D. Moeckli and H. Keller (eds), *The Human Rights Covenants at 50: Their Past, Present, and Future*, Oxford University Press, 2018.

21 For a detailed account of all the activities undertaken by the Petitions and UA Section see Section 3.D.a.

22 See OHCHR 'Human Rights Treaty Bodies – Glossary of Technical Terms Related to the Treaty Bodies', supra fn 6.

23 See CESCR, Provisional Rules of Procedure Under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, Adopted by the Committee at its Forty-Ninth Session (12-30 November 2012), UN doc E/C.12/49/3, 15 January 2013, Rule 14; HRCttee, Rules of Procedure of the Human Rights Committee, UN doc CCPR/C/3/Rev.11, 9 January 2019, Rule 96; CAT, Rules of Procedure, UN doc CAT/C/3/Rev.6, 1 September 2014, Rule 118(2); CRPD, Rules of Procedure, UN doc CRPD/C/1/Rev.1, 10 October 2016, Rule 72(3). The CRPD rule differs from the others in that '[t]he third party intervention must be accompanied by written authority from one of the parties to the communication'.

24 CAT can, however, carry out visits in the context of follow-up. Also, the CRPD may request information from UN bodies, e.g. as per Rule 73 of its Rules of Procedure, supra fn 23. Six committees are empowered to conduct enquiries in the case of serious or systematic human rights violations in a state party, which are unrelated to the individual communication procedure. See Art 20, Convention against Torture; Art 8, OP-CEDAW; Art 6, OP-CRPD, Art 33, ICED; Art 11, OP-ICESCR; Art 13, OPIC.

cisions, unless a party decides to make them public.<sup>25</sup> However, complainants themselves may submit legal opinions and expert documents. For example, in the recent *Nell Toussaint v Canada* case before the HRCttee, the author submitted two legal opinions<sup>26</sup> as well as the opinion of leading experts in the relevant area.

Although some committees' rules of procedure provide for parties to make oral comments,<sup>27</sup> individual communications are generally considered in closed session meetings. This makes the procedure inexpensive and more accessible in principle as the parties do not need to hire a lawyer<sup>28</sup> – though bringing a case before a committee without a lawyer can be challenging given the complexity of the system – or travel to Geneva to be heard by the relevant bodies.<sup>29</sup> On the other hand, the absence of a public hearing also means that the parties cannot support their written statements in person and answer the committee's questions.

### 2. ADMISSIBILITY CRITERIA

For the treaty bodies to be able to review individual communications, a number of criteria of registration need to be fulfilled:

- **The competence of the committee.** The state must have ratified the relevant treaty and accepted the individual complaints procedure either through making a declaration under the relevant treaty or by ratifying the relevant optional protocol.

25 See, e.g., A. Tholal and J. Mahmood, Individual Communication to the United Nations Human Rights Committee, 25 September 2016, [https://www.ishr.ch/sites/default/files/documents/09-25-2016-complaint\\_to\\_humanrightscommittee\\_maldives.pdf](https://www.ishr.ch/sites/default/files/documents/09-25-2016-complaint_to_humanrightscommittee_maldives.pdf); International Service for Human Rights, Communication to the CEDAW, [https://www.ishr.ch/sites/default/files/documents/ishr\\_communication\\_to\\_cedaw\\_thailand\\_30dec2018\\_redacted\\_0.pdf](https://www.ishr.ch/sites/default/files/documents/ishr_communication_to_cedaw_thailand_30dec2018_redacted_0.pdf).

26 HRCttee, *Nell Toussaint v Canada*, Comm no 2348/2014, UN doc CCPR/C/123/D/2348/, 30 August 2018, §§7.4–7.9. The opinions were from the International Network for Economic, Social and Cultural Rights (ESCR-Net) and Amnesty International Canada.

27 CAT, CERD and the HRCttee. See HRCttee, Guidelines on Making Oral Comments Concerning Communications, 21 December 2017, UN doc CCPR/C/159. The video-hearing option has also been explored by the HRCttee in *Miller and Carroll v New Zealand*. However, this requires reliable technology so as to not defeat the purpose. See *Miller and Carroll v New Zealand*, Comm no 2502/2014, CCPR/C/121/D/2502/2014, 21 November 2017, §6.1. The state party's representatives made oral comments from New Zealand through a video conference whilst the author's lawyer was physically present in Geneva.

28 Though, in practice, in most instances leading to the adoption of views by treaty bodies, the author of the communication is represented by a lawyer and/or an NGO: 62% of cases concluded in 2016, as analysed by the Universal Rights Group (M. Limon, *Reform of the UN Human Rights Petitions System: An Assessment of the UN Human Rights Communications Procedures and Proposals for a Single Integrated System*, Universal Rights Group, January 2018, p 23, <https://www.universal-rights.org/urg-policy-reports/reform-un-human-rights-petitions-system-assessment-un-human-rights-communications-procedures-proposals-single-integrated-system/>). By contrast, at the ECtHR, during the exchange of observations between the parties, applicants need to have a legal representative see ECtHR, Rules of Court, Rule 36 [https://www.echr.coe.int/documents/rules\\_court\\_eng.pdf](https://www.echr.coe.int/documents/rules_court_eng.pdf).

29 Communications must be submitted in one of the UN official languages, which may incur translation costs. However, there is no obligation to provide a certified translation – summaries of the relevant parts by the author are enough.



- **The exhaustion of domestic remedies.** The complainant must have exhausted all available and effective remedies before submitting a complaint to a treaty body. This requirement does not apply if domestic remedies are unlikely to bring effective relief or are unreasonably prolonged.
- ***Ratione personae.*** Any individual<sup>30</sup> (under the jurisdiction or effective control of the state party concerned) claiming that his/her rights under the relevant treaty have been violated can file a complaint before the relevant committee. The alleged victim must show that s/he is directly affected by the events. ICPs do not aim to challenge state policies or practices in general. It is also possible to lodge a complaint on behalf of another person provided that that person has given his/her explicit written consent.<sup>31</sup>
- ***Ratione temporis.*** Events must have occurred after the entry into force of the complaint mechanism for the state party concerned. Events could also have occurred prior to the entry into force of the complaint procedure and have continued afterwards.<sup>32</sup>
- **Time limits.** Some committees have set time limits for filing complaints after the alleged violation has occurred and/or domestic remedies have been exhausted. Communications to the HRCttee may be submitted no later than five years after the exhaustion of domestic remedies or, where applicable, three years from the conclusion of another procedure of international investigation or settlement (Rule 99(c) of its Rules of Procedure). ICERD provides for a six-month time limit from the exhaustion of domestic remedies (Article 14, paragraph 5), whereas the CESCRC and CRC may declare communications inadmissible when they have not been 'submitted within one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit' (Article 3, paragraph 2(a), Optional Protocol (OP) to the ICESCR and Article 7(h), Optional Protocol to the CRC on a communications procedure (OPIC)).<sup>33</sup>

30 Or groups of individuals under ICERD (Art 14).

31 Unless the consent could not be obtained due to specific circumstances, e.g. the person is a victim of enforced disappearance or is in prison without access to the outside world. See OHCHR, *Individual Complaint Procedures Under the United Nations Human Rights Treaties*, Fact Sheet no 7, rev 2, p 4. <https://www.ohchr.org/Documents/Publications/FactSheet7Rev2.pdf>.

32 I.e. an enforced disappearance or murder that was not investigated. More recent optional protocols like OPIC include this language in the treaty itself: 'The facts that are the subject of the communication [must have] occurred prior to the entry into force of the present Protocol for the State party concerned, unless those facts continued after that date' (Art 7(7), OPIC).

33 Therefore, time limits to submit a communication before the treaty bodies are generally not as strict as the six months from the exhaustion of domestic remedies provided by the European and Inter-American jurisdictions. The African Court on Human and People's Rights (AfCHPR) provides in its Rule 40(6) that applications must be submitted within 'a reasonable time from the date local remedies have been exhausted' AfCHPR, Rules of Court [http://en.african-court.org/images/Protocol-Host%20Agtrmt/Final\\_Rules\\_of\\_Court\\_for\\_Publication\\_after\\_Harmonization\\_-\\_Final\\_\\_English\\_7\\_sept\\_1\\_.pdf](http://en.african-court.org/images/Protocol-Host%20Agtrmt/Final_Rules_of_Court_for_Publication_after_Harmonization_-_Final__English_7_sept_1_.pdf).

- ***Ratione materiae.*** The alleged violations must fall within the scope of application of the treaty in question.
- **Lis pendens rule.** The complaint must not be under examination or have been examined by another international body, be it another treaty body or a regional court. This rule aims to avoid forum conflict and treaty bodies acting as an appellate instance, notably with regard to regional courts.<sup>34</sup>

### 3. VARIOUS STAGES OF THE PROCEDURE

#### a. Filtering

All individual communications sent to the committees are first screened by the Petitions and Urgent Actions Section to review whether they meet some basic requirements regarding their author, the state party concerned and the description of the facts. The committees have set up special rapporteurs (HRCttee, CAT, CRPD, CED) or a working group (CEDAW, CERD, CESCRC, CRC) on new communications to facilitate exchange with the Petitions and Urgent Actions Section and deal with procedural issues.<sup>35</sup>

The decision to register a communication as such is eventually taken by either the special rapporteur or the working group, depending on the subsidiary body created by the committee to handle incoming communications. The Petitions and UA Section may correspond with the complainant to request additional information and/or clarification, for example when it is not clear which committee the communication should be addressed to, when the author has not provided enough information regarding the exhaustion of domestic remedies or to solicit observations from the state party. As a general practice, if the complementary information has not been received within a year from the request, the relevant special rapporteur or working group may decide to close the file.<sup>36</sup> A significant amount of 'invisible work' is done by the Petitions and UA Section at this stage, even on cases that are eventually registered.

34 However, the committees have adopted a broad interpretation of forum conflict and have admitted complaints despite an apparent jurisdictional conflict when the other human rights procedure did not examine the 'same matter'. See, inter alia, HRCttee, *Aarrass v Spain*, Comm no 2008/2010, UN doc CCPR/C/111/D/2008/2010, 30 September 2014; *Kirsanov v Russian Federation*, Comm no 478/2011, UN doc CAT/C/52/D/478/2011, 19 June 2014; CEDAW, *X and Y v Georgia*, Comm no 24/2009, UN doc CEDAW/C/61/D/24/2009, 25 August 2015.

35 This mandate concerns *new* communications and extends from the moment the individual communication is received until the moment it is considered, i.e. during the first two stages of the procedure (pre-registration and exchange between parties). The special rapporteur or working group is also competent to deal with requests from authors seeking the adoption of interim measures and protection measures by the state; requests from states to lift interim measures; requests to split the examination of admissibility from the examination of the merits; and requests from the parties in a communication to extend the deadline by which they must submit observations and comments. These are different from the HRCttee and CEDAW pre-sessional working groups on communications, whose mandate relates to the next phase of the procedure and is to facilitate and expedite the review of communications by the plenary. See section 2.A.3.c.

36 As indicated on the OHCHR website, <https://www.ohchr.org/EN/HRBodies/TBs/Pages/IndividualCommunications.aspx#OPICPR>, (last accessed 24 January 2019).



### b. Registration and exchange with parties

Once a communication is registered, it is first transmitted to the state party for observations. Most committees request a reply from the state party on both the admissibility and the merits of the communication within six months.<sup>37</sup> If the state responds, the author of the communication can reply to the state's comments within a set timeframe, usually two months. Most committees also give the state party the opportunity to challenge the admissibility of the communication only, generally within two months. Thus, if the state party wishes to do so, it may request the committee to deal with the admissibility and the merits separately (a 'split request'). It takes a minimum of 12 months for an individual communication to be ready for consideration by the relevant committee. In practice, it takes two to three years. If the state does not respond, on the third reminder it is informed that the committee may decide to examine the communication in the absence of observations from the state party.

As early as this stage, the committee may also decide to discontinue the consideration of a communication for various reasons, for example when the author or the counsel fail to respond to the committee despite multiple reminders, when the case has become moot or when the communication has been withdrawn. This may happen when the matter has already been resolved between the author and the state.<sup>38</sup> Indeed, it appears that 'a sizeable portion' of HRCttee cases are discontinued after registration and prior to consideration because the state has already provided remedies.<sup>39</sup> This is also true regarding communications submitted to the CRPD, CAT and, in one case, the CED. This shows the positive impact of the treaty body ICPs, as introducing a communication may result in the situation being remedied even before the examination phase.

### c. Consideration of admissibility and merits

The committee then proceeds to the examination of the individual communication. This used to happen in two different stages: first admissibility,<sup>40</sup> then merits.<sup>41</sup> However, it was found that this separate review was slowing the process down. Several years could elapse before the committee was able to consider the merits. The process has therefore evolved. Currently, as a general rule, these issues are considered simultaneously unless the state party requests that the admissibility

37 The deadline is three months under ICERD and four months under the ICED. At this stage of the procedure, CERD only requests a reply from the state party on admissibility.

38 These discontinuances are formalized by the committee by short decisions.

39 E.g. when the author has been released from detention; because the author, who was at risk of deportation, was allowed to stay in the country; or because of a legislative change in the state. See K. Fox Principi, 'United Nations Individual Complaints Procedures – How Do States Comply? A Categorized Study Based on 268 Cases of "Satisfactory" Implementation Under the Follow-Up Procedure, Mainly Regarding the UN Human Rights Committee', 37 *Human Rights Law Journal* 1 (June 2017), §46.

40 Formal requirements that an individual communication must meet before the committee can consider the substance, e.g. the exhaustion of domestic remedies.

41 The substance of the individual communication on which the committee decides whether the complainant's rights have been violated under the relevant treaty.

be examined separately (a 'split request'), and the committee decides that such a split can be granted.<sup>42</sup>

In terms of organization, all committees competent to examine communications have established a working group on individual communications.<sup>43</sup> Their mandate is to prepare the review of individual communications together with the Petitions and UA Section, and make recommendations to the committee in order to save time during the plenary sessions. It should be noted that only the HRCttee and CE-DAW working groups are granted pre-sessional meeting time. The other working groups on communications work via email between sessions and hold preparatory meetings during the committee's session, prior to the consideration and adoption of decisions by the plenary. Also, the CED has set up a working group on urgent actions given their high number.

## 4. INTERIM AND PROTECTION MEASURES

At any stage before the individual communication is examined, the committee may request the state concerned to take interim measures to avoid irreparable damage to the alleged victim. Typical interim measures include, for example, the suspension of the execution of a death sentence or of the deportation to a country where the author faces a risk of torture. The state can ask the committee to lift the request for interim measures at any stage in the proceedings. The Petitions and Urgent Actions Section prepares a substantive summary for the special rapporteur/working group to make an informed decision on lifting or maintaining interim measures. The decision of the committee to request interim measures and the decision to reject or to grant the state's request to lift them do not imply that any conclusion has been reached on the admissibility or the merits of the communication.

The material scope of interim measures before some treaty bodies has expanded to encompass the risk of 'damage' to the integrity of national proceedings and political rights, for example.<sup>44</sup> In comparison, the scope of interim measures before the ECtHR is much more restricted as it concerns a few provisions only, mostly those related to the right to life and the prohibition of torture and ill-treatment.<sup>45</sup> More-

42 This is also an important part of the Petitions and UA Section work. If a split is requested, it prepares substantive summaries for the rapporteurs/working groups to make informed decisions on the granting or denial of the split request. If it is granted, the decision on admissibility only is prepared by the Petitions and UA Section as a matter of priority. If the communication is considered admissible by the committee, the case goes back to the Petitions and UA Section to prepare the decision on the merits.

43 The CAT pre-sessional working group considers only draft inadmissibility and draft discontinuance decisions.

44 See, e.g., the recent request for interim measures submitted by Lula to the HRCttee to have his right to political participation (Art 25, ICCPR) protected. In this instance, the HRCttee requested the state to take measures to ensure that Lula could take part in the presidential election (OHCHR, 'Information Note on Human Rights Committee', <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23464&LangID=E>). The current wording of the Rules of Procedure of the HRCttee is: 'such interim measures as the Committee considers necessary to avoid possible actions which could have irreparable consequences for the rights invoked by the author' (HRCttee, Rules of Procedure, supra fn 23, Rule 94(1)).

45 See ECtHR, 'Interim Measures', Factsheet, January 2019, [https://www.echr.coe.int/Documents/FS\\_Interim\\_measures\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Interim_measures_ENG.pdf).

over, treaty bodies grant interim measures more frequently than the ECtHR, which implies a corresponding workload.

In 2019, the CRC adopted guidelines on interim measures, of which paragraph 9 states that the 'Committee is of the view that interim measures issued under article 6 of the OPIC impose an international legal obligation on State parties to comply'.<sup>46</sup>

Treaty bodies may also request the state to take protection measures to protect individuals involved in the communications from reprisals, including lawyers and family members.<sup>47</sup>

## B. THE OUTCOME

### 1. FOR THE PARTIES INVOLVED

Once the committee has taken a decision, it is transmitted to both parties. If the committee decides that the individual communication is inadmissible or that there has been no violation of the treaty, the case is closed. If it finds that the complainant's rights have been violated, the committee specifies general and individual recommendations as well as appropriate remedies and reparation measures. The committee also requests the state party to provide information within a certain period on the steps taken to implement the recommendations and remedy the situation. It also requests avoiding similar violations in the future and the wide dissemination of the decision adopted by the committee.

#### a. Remedies

Individual communication procedures aim primarily to provide redress and reparation to complainants whose treaty rights have been violated. The committees recommend various types of remedies and reparation to redress human rights violations.<sup>48</sup>

Some treaty bodies have published documents to offer guidance on this issue. The HRCttee has developed guidelines providing an overview of the jurisprudence of the committee on reparations.<sup>49</sup> The CAT issued a General Comment on redress

46 These guidelines are the first of their kind in the treaty body system. They are available on the CRC webpage under 'Complaints Procedure', <https://www.ohchr.org/en/hrbodies/crc/pages/crcindex.aspx>

47 See, e.g., protection measures requested by CAT mentioned in an NGO letter to the Petitions and UA Section and treaty body chairpersons, [https://www.ishr.ch/sites/default/files/documents/open\\_letter\\_on\\_reprisals\\_against\\_tb\\_litigators\\_consolidated.pdf](https://www.ishr.ch/sites/default/files/documents/open_letter_on_reprisals_against_tb_litigators_consolidated.pdf). On the issue of reprisals against those who cooperate with the UN system, see Section 3.B.2.

48 According to the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, full and effective reparation includes five forms of remedies: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

49 HRCttee, Guidelines on Measures of Reparation Under the Optional Protocol to the International Covenant on Civil and Political Rights, UN doc CCPR/C/158, 30 November 2016.

and compensation for acts of torture, including the right to rehabilitation.<sup>50</sup> The CEDAW has also provided recommendations on the types of measures states should take to remedy violence against women.<sup>51</sup>

Some recommendations relate to the victim only, whilst others are more general, such as suggesting amending the legislation to prevent more violations as a guarantee of non-repetition. The committees' approach towards remedies has been different. The CESCR, CRPD, CEDAW and CED make a clear distinction between 'recommendations in respect of the author' and 'general recommendations'. CERD and CAT tend to limit their recommendations to remedies for the victim, although CAT's practice seems to be evolving. The most commonly prescribed remedy is compensation, although the amount is never specified. In certain cases, the CEDAW, CESCR, CED and CRPD have provided highly specific remedies and measures of compensation, including restitution of legal costs, lost income, housing and psychological support.<sup>52</sup> These committees also recommend, depending on the subject matter of the communication, the adoption and implementation of training programmes as a guarantee of non-repetition, for example for law enforcement officers, judges and lawyers. Over time, the HRCttee's views have become more specific in terms of remedies. These include: public investigation to establish the facts; bringing the perpetrators to justice; retrial; guarantees of non-repetition; law amendments; release from detention; restitution of property, employment and human remains; rehabilitation, including medical treatment and care; and refraining from forcible removal.<sup>53</sup>

#### b. Follow-up procedures

To monitor states parties' implementation of their views, six out of the eight committees competent to review individual communications have developed formal follow-up procedures: the HRCttee, CEDAW, CRPD, CED, CAT and CERD.<sup>54</sup> All apart from CERD, have established a special rapporteur mandate to engage in follow-up activities.<sup>55</sup> CERD conducts follow-up of individual communications

50 CAT, General Comment no 3 (2012): Implementation of Article 14 by States parties, UN doc CAT/C/GC/3, 13 December 2012.

51 CEDAW, General Recommendation no 35 on gender-based violence against women, updating general recommendation no 19, UN doc CEDAW/C/GC/35, 26 July 2017, §33.

52 See examples provided in ESCR-Net's Strategic Litigation Working Group, *Key Proposals Regarding the Follow-Up on Views by UN Human Rights Treaty Bodies*, Discussion Paper, 2017, p 3, [https://www.escr-net.org/sites/default/files/attachments/key\\_proposals\\_regarding\\_the\\_follow-up\\_on\\_views\\_issued\\_by\\_un\\_human\\_rights\\_treaty\\_bodies\\_0.pdf](https://www.escr-net.org/sites/default/files/attachments/key_proposals_regarding_the_follow-up_on_views_issued_by_un_human_rights_treaty_bodies_0.pdf)

53 See OHCHR, Procedures of the Human Rights Treaty Bodies for Following Up on Concluding Observations, Decisions and Views, UN doc HRI/MC/2017/4, 8 May 2017, §§53-54. See also multiple examples and references in D. Shelton, *Remedies in International Human Rights Law*, Oxford University Press, 2015, p 196ff.

54 For more information on follow-up procedures developed by the various committees, see OHCHR, Procedures of the Human Rights Treaty Bodies for Following Up on Concluding Observations, Decisions and Views, *supra* fn 54.

55 The HRCttee, CRPD and CAT each elect, from among their members, a rapporteur or special rapporteur on follow-up to their views. The CEDAW designates two rapporteurs on follow-up.

through its working group.<sup>56</sup> Upon finding a violation of the relevant treaty provision(s), committees request the state party to provide information on measures taken to remedy the situation within a particular period – between 90 and 180 days. The request for information appears at the end of the dispositive part of the decisions. The state party's response is then transmitted to the author who may comment on the state's submission within two months. All committees analyse the follow-up information they receive from states parties and/or complainants and adopt follow-up decisions and progress reports based on this information. All information relating to follow-up by states parties on treaty body views is, in principle, public.<sup>57</sup> The HRCtee and CESCR have also developed working methods whereby, in addition to the parties, third parties such as civil society organizations (CSOs) can submit written contributions to the committees on measures taken by states parties to comply with its views. Additionally, the rapporteurs on follow-up appointed by the HRCtee, CED, CRPD, CESCR and CAT, may also request meetings with representatives from states parties. The CERD working group's chairperson has also met state delegations in the past. CAT may also request to visit a country to monitor the implementation of its decisions.

Implementation of treaty body decisions by states parties is hard to measure and translate into figures. Some remedies are easier to implement than others, such as allowing non-citizens to stay in the country rather than deporting them.<sup>58</sup> To facilitate this process, several committees (the HRCtee, CEDAW, CRPD, CERD and CAT) have established formal 'grading' systems to assess states parties' compliance with their decisions.<sup>59</sup> In October 2016, the HRCtee adopted a new, simplified grading system, getting rid of the subcategories it had adopted, thus increasing clarity.<sup>60</sup>

<sup>56</sup> CERD has not set up a special rapporteur on follow-up. This is conducted by the working group, in general through its chair.

<sup>57</sup> Follow-up reports are posted on the committees' websites. Reports on follow-up have been published separately from the general annual report as word limits have been introduced by UNGA Res 68/268. In 2017, the treaty body system produced 10 reports relating to the follow-up of their decisions (UNGA, Status of the Human Rights Treaty Body System, Report of the Secretary-General, UN doc A/73/309, 6 August 2018, §67).

<sup>58</sup> This partly explains the higher rate of states' compliance with CAT decisions, given the number of deportation cases.

<sup>59</sup> Four general categories have been established: satisfactory, partially satisfactory, unsatisfactory and no response.

<sup>60</sup> Implementation of the HRCtee decisions are graded as follows: 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 – noncooperation with the Committee and no follow-up report received after reminders; and E – response indicates that the measures taken are contrary to the Committee's recommendation.

## 2. DEVELOPMENT OF JURISPRUDENCE AND UNIVERSAL STANDARDS

Apart from the state party and the author of the complaint, treaty body views have an influence on the development of universal human rights standards and their application and observance. Their contribution to the development of international human rights law is significant and permeates regional and national legal systems. Cross-referencing is increasingly observed. Domestic<sup>61</sup> and regional courts<sup>62</sup> have referred to treaty body jurisprudence.<sup>63</sup> National laws have been amended as a result of treaty body ICPs,<sup>64</sup> sometimes even when the communication was declared inadmissible.<sup>65</sup> Some scholars consider that 'the UN human rights committees offer important advantages compared to regional human rights courts on certain issue-areas and rights'.<sup>66</sup> For example, treaty bodies have developed more specific standards regarding the right to legal assistance, enforced disappearance and group-specific rights, thus providing more specific guidance on how to interpret and implement these rights.

<sup>61</sup> See the examples mentioned by M. Kanetake, 'UN Human Rights Treaty Monitoring Bodies Before Domestic Courts', 67 *International & Comparative Law Quarterly* 1 (January 2018) 214–215. Examples concern the following jurisdictions: the Supreme Court of Argentina, the Supreme Court of Norway, the German Federal Constitutional Court, the Supreme Court of Nepal and the Human Rights Chamber for Bosnia and Herzegovina.

<sup>62</sup> See, e.g., IACtHR, *Velásquez Rodríguez Case* (Compensatory Damages), Series C no 7, 1989, §28, citing HRCtee views; IACtHR, *Herrera-Ulloa Case*, Series C no 107, 2004, note 117, also citing HRCtee views in two cases; ECtHR, *Opuz v Turkey*, Judgment, App no 33401/02, 9 June 2009, §§76–77, mentioning two cases examined by the CEDAW.

<sup>63</sup> Apart from treaty body decisions, references have also been made to their general comments on the interpretation of the treaties and concluding observations on country reports.

<sup>64</sup> E.g. Spain amended its national legislation following several decisions of the HRCtee on the right to review by a higher tribunal. See Fox Principi, 'United Nations Individual Complaints Procedures', supra fn 40, §23.

<sup>65</sup> France amended its legislation regarding the transmission of family names to children following two decisions adopted on 4 August 2009, even though both cases were declared inadmissible. See Section 3.A.3.

<sup>66</sup> See examples concerning the HRCtee, CEDAW, CESCR, CRPD and CERD in B. Çalı, A. Skander Galand and V. Azarova, 'Right to Individual Petition Before UN Human Rights Treaty Bodies: The Softly Spoken Enforcer of Human Rights Treaties?', Koç University Blog, 25 May 2017, <https://kuremer.ku.edu.tr/en/right-individual-un-human-rights-treaty-bodies-softly-spoken-enforcer-human-rights-treaties>

### 3. HOW TO IMPROVE INDIVIDUAL COMMUNICATION PROCEDURES

Improvements are necessary for the treaty body complaint procedures to achieve their full potential. The order in which the various challenges are examined below does not imply a hierarchy in their importance.

#### A. CHALLENGE 1: ENHANCING ACCESSIBILITY AND VISIBILITY

##### 1. ACCESS TO INFORMATION ON THE PROCEDURES

Access to ICPs depends on legal criteria as the state concerned must have accepted the competence of the treaty bodies to review individual communications. Practical aspects also need to be considered, in particular access to information on the procedure. Even when a state has accepted the ICPs, people are not necessarily aware that they can access it, nor do they know how. It is challenging for an individual who is not familiar with the OHCHR website to find the relevant information on how to submit a communication under these procedures. There is no centralized online platform with practical information on all ICPs and how to use them. There is no direct link on the treaty bodies' main webpage and navigation through several pages and multiple paragraphs is required to find the right 'click here' link. Finding the information necessary for potential complainants should be more straightforward and user/victim/state friendly.

Information on the number of communications received is also far from transparent. In this respect, the publication for the first time in October 2018 of the amount of correspondence received and registered cases represents a positive development.<sup>67</sup> Besides, the list of cases pending review by the treaty bodies is neither easily accessible nor up to date. Tables of pending cases only indicate a few key words about the subject matter of the communications.<sup>68</sup> It has been mentioned that a summary similar to those provided by the ECtHR would be useful.

It has also been reported by various stakeholders that the parties – author of the communication and state party alike – are not always kept informed of the stage their complaint is at while it is being processed. It has been suggested that an online platform could be made accessible to the authors of communications to submit their complaint and keep both parties informed of the process, as is the case,

67 See OHCHR, *Weekly Update: News and Events in the UN Human Rights Treaty Body System and other UN Activities*, Issue 38 (29 October to 4 November 2018).

68 See, e.g., CRPD, 'Table of Pending Cases', <https://www.ohchr.org/en/hrbodies/crpd/pages/tablependingcases.aspx>; CESCR, 'Table of Pending Cases Before the Committee on Economic, Social and Cultural Rights', <https://www.ohchr.org/en/hrbodies/cescr/pages/pendingcases.aspx>; HRCtee, 'Table of Registered Cases 2017', <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/TableRegisteredCases.aspx>.

for instance, at the IACHR.<sup>69</sup> This would require aligning complaint forms across the relevant treaty bodies.

Options for improvement that came out of the consultations:

- Improve access to information on the ICPs on the OHCHR website, for example with a link to a 'How to complain under the treaty body procedures' information page on the treaty bodies' home page
- Improve the complaint form on the website
- Improve access for the authors to information on their own communication throughout the process, with a dedicated online platform
- Set up a portal for both parties to submit information and be kept updated throughout the process
- Ensure that all registered cases are publicly listed online, regularly updated and provide a summary of cases
- Continue to publicize on a regular basis statistics on the number of communications received and registered

##### 2. ACCESS TO TREATY BODY JURISPRUDENCE

Additionally, accessing treaty body jurisprudence remains a challenge for all stakeholders – victims of human rights violations, states, treaty body members, national and regional human rights mechanisms and human rights researchers. A database that is readily accessible, up to date, comprehensive and word-searchable in all UN official languages has been called for by many stakeholders.<sup>70</sup> The new public jurisprudence database (<http://juris.ohchr.org>) is more user friendly than the previous one. However, some treaty body members have mentioned that they still have little access to the views of other committees internally, which makes aligning jurisprudence across treaty bodies difficult. Case-law briefs on important issues and provisions would also make treaty body jurisprudence more accessible and understandable to stakeholders.<sup>71</sup>

69 IACHR, 'Individual Petition System Portal', <http://www.oas.org/en/iachr/portal/>

70 See, inter alia, Geneva Academy, *Regional Consultation for Northern America*, p 13, <https://www.geneva-academy.ch/joomlatools-files/docman-files/Report%20-%20Regional%20Consultation%20for%20Northern%20America.pdf>; Geneva Academy, *Second Regional Workshop, Eastern Europe Moscow*, §2.1, [https://www.geneva-academy.ch/joomlatools-files/docman-files/Report\\_Regional%20Consultation%20for%20Eastern%20Europe.pdf](https://www.geneva-academy.ch/joomlatools-files/docman-files/Report_Regional%20Consultation%20for%20Eastern%20Europe.pdf); Geneva Academy, *Regional Consultation for Latin America and the Spanish-Speaking Caribbean*, pp 8–9, [https://www.geneva-academy.ch/joomlatools-files/docman-files/Report\\_Regional%20Consultation%20for%20Latin%20America.pdf](https://www.geneva-academy.ch/joomlatools-files/docman-files/Report_Regional%20Consultation%20for%20Latin%20America.pdf); Geneva Academy, *Regional Consultation for Africa*, p 5, <https://www.geneva-academy.ch/joomlatools-files/docman-files/Report%20-%20Regional%20Consultation%20for%20Africa%20.pdf>.

71 Analyses of the HRCtee jurisprudence available on the OHCHR website are prepared to complement annual reports. These documents are very detailed but merely compile decisions on certain procedural and substantive issues, without any explanation as to how they relate to other decisions (see, e.g., HRCtee, Consideration by the Human Rights Committee at its 117th, 118th [sic] and 119th Sessions of Communications Received Under the Optional Protocol to the International Covenant on Civil and Political Rights, UN doc CCPR/C/119/3, 6 October 2017). In comparison, the ECtHR factsheets are presented thematically and are much more concise. See ECtHR, 'Factsheets', <https://www.echr.coe.int/Pages/home.aspx?p=press/factsheets&c>



Modern technology and social media offer solutions to increase visibility, some of which have been explored. Dedicated pages could be kept on social media platforms for example. This would make treaty body work better known to larger audiences and allow committees to provide timely updates, whilst prompting interest among followers. In comparison, the Human Rights Council is more visible on social media and its activities are easier to follow.

Moreover, despite the fact that, in most decisions, the state concerned is requested to publish the views and have them widely disseminated in all official languages of the state party, dissemination at the national level is not as effective as it should be. This is notwithstanding the important role played by CSOs and other non-state actors in raising awareness about treaty body procedures and disseminating their views on the ground.

Finally, the visibility of treaty body views also depends on how these documents are drafted. At the moment, views are long and repetitive due to their structure, with the facts and proceedings being presented in chronological rather than thematic order. Some treaty bodies are currently working on a different drafting template for their views that would make these clearer.

### 3. HIGHLIGHTING THE POSITIVE IMPACT OF THE COMMUNICATION PROCEDURES

More generally, the positive impact of ICPs on the victims and on human rights could be more visible. For example, it has been suggested that OHCHR's website could highlight lessons learned and best practices, and provide examples of positive outcomes. Victims of human rights violations would be encouraged to use ICPs if cases where the very fact of introducing a communication has resulted in remedies being provided by the state were publicized. Increasing the visibility of key cases on the treaty body website to highlight the positive effects of ICPs on human lives would also make them better known to victims as a useful tool to redress human rights violations.

In tens of cases, HRCttee views led to the release of wrongfully detained persons. For example, Australia released refugees who had been placed in indefinite detention due to adverse security assessments.<sup>72</sup> In a communication concerning a detained person in Uzbekistan who had been sentenced to death and tortured in prison, the state commuted the death penalty prior to the committee's decision and subsequently reduced the sentence and released the victim.<sup>73</sup>

<sup>72</sup> See HRCttee, *F. K. A. G. et al v Australia*, Comm no 2094/2011, UN doc CCPR/C/108/D/2094/2011, 28 October 2013; HRCttee, *M. M. M. et al v Australia*, Comm no 2136/2012, UN doc CCPR/C/108/D/2136/2012, 28 October 2013. See also Fox Principi, 'United Nations Individual Complaints Procedures', supra fn 40, 14.

<sup>73</sup> See HRCttee, *Siragev v Uzbekistan*, Comm no 907/2000, UN doc CCPR/C/85/D/907/2000, 18 November 2005. See also Fox Principi, 'United Nations Individual Complaints Procedures', supra fn 40, 15.

In famous extraordinary rendition cases, HRCttee and CAT decisions resulted in the victims being released and returned to the country they had left or been expelled from. They were also granted permanent residence in a country of asylum and compensation.<sup>74</sup> In some instances, the states parties were requested to refrain from resorting to or accepting diplomatic assurances,<sup>75</sup> or from removing or extraditing the person to the country of origin.<sup>76</sup>

In its decisions, the CESCER recommends specific remedies in relation to the victims. In a case where a family of four had been evicted without being provided with alternative housing by the authorities, the committee found a violation of the right to adequate housing and recommended that the authorities grant the family 'public housing or any other measure enabling them to enjoy adequate accommodation'.<sup>77</sup>

In a number of cases, the state remedied the situation prior to a decision by a committee. For example, in *Kaldarov v Kyrgyzstan* adopted on 18 March 2010, the state amended its Code of Criminal Procedure during the proceedings and before the HRCttee adopted its decision to include a new article under which the placement in custody requires a court decision and is not left to the sole public prosecutor any more.<sup>78</sup>

In its only decision so far, the CED developed the reasoning behind the concept of 're-victimization' to recognize the status of siblings of a disappeared person as victims. The Committee considered that 'that the anguish and suffering experienced by the authors owing to the lack of information that would allow clarification of what happened to their brother have been exacerbated by the de facto failure to acknowledge their status as victims, which thus becomes a cause of re-victimization'.<sup>79</sup>

Beyond individual redress, treaty body jurisprudence contributes to the development of international human rights standards as already stated above. It also provides valuable input for the work of OHCHR in the field. Therefore, it has been suggested that this important contribution to human rights worldwide should be more visible and highlighted.

<sup>74</sup> See HRCttee, *Alzery v Sweden*, Comm no 1416/2005, UN doc CCPR/C/88/D/1416/2005, 10 November 2006; CAT, *Agiza v Sweden*, Comm no 233/2003, UN doc CAT/C/34/D/233/2003, 24 May 2005. See also Fox Principi, 'United Nations Individual Complaints Procedures', supra fn 40, 17.

<sup>75</sup> See, e.g., CAT, General Comment no 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, UN doc CAT/C/GC/4, 4 September 2018, §§19–20.

<sup>76</sup> See, e.g., CAT, *Y. H. v Switzerland*, Comm no 747/2016, UN doc CAT/C/61/D/747/2016, §11.

<sup>77</sup> See CESCER, *Ben Djazia and Bellili v Spain*, Comm no 5/2015, UN doc E/C.12/61/D/5/2015, 21 July 2017.

<sup>78</sup> See HRCttee, *Kaldarov v Kyrgyzstan*, Comm no 1338/2005, UN doc CCPR/C/98/D/1338/2005, 10 May 2010.

<sup>79</sup> See CED, *Estela Deolinda Yrusta and Alejandra del Valle Yrusta v Argentina*, Comm no 1/2013, UN doc CED/C/10/D/1/2013, 12 April 2016, §10.8.

The CEDAW has adopted important decisions on matters relating to gender equality that have led states parties to amend their legislation. Following two decisions adopted on 4 August 2009, France amended its legislation regarding the transmission of family names to children, even though both communications were declared inadmissible.<sup>80</sup> These concerned French women who claimed that France's legislation was discriminatory and violated CEDAW (Art 16) by prohibiting the transmission or change of family name to the mother's family name only.

The Netherlands amended their legislation relating to paid maternity leave to ensure self-employed women also benefit from it following a decision adopted on 17 February 2014.<sup>81</sup>

Further CEDAW cases where the implementation of the views have set an example to follow:

- In three cases against Bulgaria – namely *V. K. v Bulgaria*, *Jallow v Bulgaria* and *V. P. P. v Bulgaria*<sup>82</sup> – following the adoption of the Committee's views, the authors received between 2,500 and 5,000 EUR as compensation for the harm suffered. All three cases concerned domestic and gender-based violence.

- In a case against Spain – *Gonzales Carreño v Spain*<sup>83</sup> – following a judgement of the Spanish Supreme Court of August 2018, which ruled that the CEDAW's views are binding and the state party has to pay a compensation in this case, the author received an unprecedented compensation payment of 600,000 EUR. The case related to the murder of the author's baby girl by her former, violent husband who committed suicide afterwards, in spite of repeated complaints by the author to the authorities.

- In a case against Peru – *L. C. v Peru*<sup>84</sup> – the victims received the equivalent of 33,635 EUR and 176,620 EUR respectively following the adoption of the Committee's views. The case concerned the authorities' refusal to carry out an abortion of a girl who became pregnant in the context of sexual abuse, in spite of the grave risks for the mother.

- In a case against Brazil, *Pimentel v Brazil*,<sup>85</sup> a friendly settlement was reached among the parties following the adoption of the Committee's views. The compensation, in addition to a series of general measures taken by the state authorities, amounted to around 100,000 USD. The case related to a maternal death due to inadequate and unavailable medical care.

80 See CEDAW, *Groupe d'Intérêt pour le Matronyme v France*, Comm no 12/2007, UN doc CEDAW/C/44/D/12/2007, 4 August 2009; CEDAW/Ctee, *Dayras et al v France*, Comm no 13/2007, UN doc CEDAW/C/44/D/13/2007, 4 August 2009. In 2013, France finally lifted the reservation to Art 16, CEDAW.

81 See CEDAW, *Elisabeth de Blok et al v The Netherlands*, Comm no 36/2012, CEDAW/C/57/D/36/2012, 24 March 2014.

82 CEDAW, *V. K. v Bulgaria*, Comm no 20/2008, UN doc CEDAW/C/49/D/20/2008, 27 September 2011; CEDAW, *Jallow v Bulgaria*, Comm no 32/2011, UN doc CEDAW/C/52/D/32/2011, 28 August 2012; CEDAW, *V. P. P. v Bulgaria*, Comm no 31/2011, UN doc CEDAW/C/53/D/31/2011, 27 November 2012.

83 CEDAW, *Gonzales Carreño v Spain*, Comm no 47/2012, CEDAW/C/58/D/47/2012, 15 August 2014.

84 CEDAW, *L. C. v Peru*, Comm no 22/2009, UN doc CEDAW/C/50/D/22/2009, 4 November 2011.

85 CEDAW, *Pimentel v Brazil*, Comm no 17/2008, UN doc, CEDAW/C/49/D/17/2008, 10 August 2011.

In a recent decision, the CESCR tackled an issue of global relevance, namely the link between unpaid care work and gender equality in terms of access to social security and pensions, which disproportionately affects women around the world. Ms Trujillo had spent 14 years without any pension and was unemployed, impoverished, divorced and facing serious health problems. The Committee found that she had been a victim of discrimination and recommended, inter alia, that Ecuador should grant her the benefits she should have been entitled to, but also more generally that it adopt legislation and administrative measures to prevent similar violations in the future.<sup>86</sup>

## B. CHALLENGE 2: SUPPORTING STAKEHOLDERS' PARTICIPATION

### 1. THE ROLE OF INDIRECT STAKEHOLDERS IN INDIVIDUAL COMPLAINTS PROCEDURES

'Indirect stakeholders' are not directly concerned with the ICPs as they are not a party to the case. Nevertheless, civil society actors are instrumental in raising awareness of treaty body communications procedures, and also engage in them directly at different stages.

#### a. Awareness raising

To increase access to treaty body procedures, NGOs and national human rights institutions (NHRIs) have a role to play in encouraging states to ratify the core human rights treaties and recognize the competence of the committees to receive and examine individual complaints.<sup>87</sup> Also, ensuring that victims of human rights violations are aware of the procedures is essential. One challenge is that in some parts of the world, victims of human rights violations and even local NGOs do not even know that treaty body procedures exist.

#### b. Legal advice

NHRI engagement in assisting individuals to use the complaint procedures appears to be low. The main reason is that many NHRIs do not have the mandate to bring complaints to courts and quasi-judicial bodies.<sup>88</sup> On the other hand, some NGOs specializing in human rights litigation participate in the communication procedures by assisting and providing legal advice to petitioners. Sometimes, they also represent the petitioner in the proceedings or co-author the communication.<sup>89</sup>

86 See CESCR, *Trujillo Calero v Ecuador*, Comm no 10/2015, UN doc E/C.12/63/D/10/2015, 14 November 2018.

87 See, e.g., Campaign by the International Coalition Against Enforced Disappearance (ICAED) on ratification of the CED Convention (ICAED, 'Country by Country Ratification Campaign, <https://www.icaed.org/the-campaign/>).

88 OHCHR, Common Approach to Engagement with National Human Rights Institutions, UN doc HRI/MC/2017/3, 9 June 2017, §33. See also Global Alliance of National Human Rights Institutions, *National Human Rights Institutions and United Nations Treaty Bodies*, GANHRI Background Paper, May 2016, p 19.

89 Few NGOs engage in litigation for a number of reasons that include insufficient resources and/or expertise, but also because of strategy and policy choices. Those who do usually rely on pro bono legal advice from major international law firms to work on submissions.



Another option mentioned by several stakeholders would be to develop the possibility for CSOs to submit *amicus curiae* briefs to treaty bodies, as is the case with regional human rights courts. This would give CSOs the opportunity to provide legal insight on the issues at stake in a given state, or enlighten the committees on comparative jurisprudence, for example. At the moment, this option is limited. It has been proposed that all treaty bodies should adopt clear guidance on third-party interventions, as developed by the CESCR.<sup>90</sup>

The confidentiality of the procedure represents another challenge. Greater access to information on pending communications would facilitate CSO participation, including in bringing specific issues to the attention of the committees.<sup>91</sup> Sometimes, a general description of the subject matter of the communication can be found in the list of pending communications.<sup>92</sup> However, when NGOs do not have access to this information or to the author of the complaint, there is no way for them to know which issues are being submitted to the committees.

### c. Follow-up and dissemination of decisions

Once the treaty bodies have adopted decisions, CSOs can contribute to their follow-up and dissemination at the domestic level. To promote states' implementation of treaty body views, CSOs can hold states to account. They can target the relevant authorities according to the remedies indicated by the committee, for example parliament when the committee requests law amendments. However, CSOs face several challenges at this stage. One is to find the relevant state authority, which is not always clear. Another is for CSOs to identify and have access to the victim and/or his/her counsel, given the confidential nature of the procedure. In this respect, NGOs that have assisted the complainant in the procedure are better placed to follow up on treaty body decisions and check whether the state has implemented them.

CSOs also contribute to the dissemination of views by making them publicly available online. Some specialized NGOs have their own treaty body decisions database and prepare case-law briefs.<sup>93</sup> CSOs can also give additional information on implementation to the committees, especially as the follow-up procedures provide for their contribution at this stage, although there is no systematized practice.

90 CESCR, Guidance on Third-Party Interventions, <https://www.ohchr.org/Documents/HRBodies/CESCR/Guidance3rdPartyInterventions.doc>

91 See ESCR-Net's Strategic Litigation Working Group, *Key Proposals Regarding the Follow-Up on Views by UN Human Rights Treaty Bodies*, supra fn 53, p 11.

92 See, e.g., CRPD, 'Table of Pending Cases', supra fn 68; CESCR, 'Table of Pending Cases Before the Committee on Economic, Social and Cultural Rights', supra fn 68; HRCtee, 'Table of Registered Cases 2017', supra fn 68.

93 See, e.g., the database and case-law briefs on the jurisprudence of the HRCtee available on the Centre for Civil and Political Rights (CCPR Centre) website, <http://ccprcentre.org/database-decisions/>; the database hosted by TRIAL INTERNATIONAL, with cases searchable by 'judicial body', including the UN treaty bodies, <https://trialinternational.org/latest/cases/>; and the compilation and summaries of CRPD cases prepared by the International Disability Alliance, 'CRPD's Views on Individual Communications Under the Optional Protocol', <http://www.internationaldisabilityalliance.org/crpd-committee-interpretation>.

## 2. THE ISSUE OF REPRISALS IN THE ICP CONTEXT

### a. Scope

Reprisals against victims of human rights violations, their organizations and/or their legal advisers for cooperating with the UN human rights system represent an increasing challenge to the UN human rights system as whole, including treaty bodies. In a statement issued on 1 June 2018 to mark the twentieth anniversary of the UN Declaration on Human Rights Defenders, treaty body experts reaffirmed that '[t]he Treaty Bodies consider any interference, intimidation, abuse, threat, violence, reprisal or undue restrictions against human rights defenders as constituting violations of States parties' obligations towards the realization of rights set out in the Treaties.<sup>94</sup> Treaty provisions address this issue, some requesting states parties to take protection measures.<sup>95</sup>

Since 2010, the UN Secretary-General has published annual reports compiling cases of reprisals and intimidations.<sup>96</sup> However, these reports are not comprehensive. Whilst presenting the latest report to the Human Rights Council in September 2018, the Assistant Secretary-General for Human Rights emphasized that the cases detailed in the report and its annexes were 'merely the tip of the iceberg'.<sup>97</sup> Treaty bodies' annual reports also provide information on reprisals for engagement with them, or those that are reported to them.

Faced with an alarming situation, several UN bodies, including the treaty bodies, have looked for solutions to protect and enable civil society's participation.

### b. Measures taken by the UN

The Human Rights Council has addressed the issue since 2009<sup>98</sup> and its special procedures have developed a framework to deal with reprisals. Other parts of the organization have also tackled the issue. A specific email address ([reprisals@ohchr](mailto:reprisals@ohchr).

94 OHCHR, 'Joint statement on the UN Defenders Declaration', <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23173&LangID=E>

95 Art 15, OP-CAT stipulates that '[n]o authority or official shall order, apply, permit or tolerate any sanction against any person or organisation for having communicated to the Subcommittee on Prevention of Torture or to its delegates any information, whether true or false, and no such person or organisation shall be otherwise prejudiced in any way'; Art 11, OP-CEDAW '[r]equires a State Party to ensure the protection of those submitting communications'; Art 13, OP-ICESCR commits States parties to taking 'all appropriate measures to ensure that individuals under its jurisdiction are not subjected to any form of ill-treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol'; Art. 4 OPIIC provides that a 'State party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to any human rights violation, ill-treatment or intimidation as a consequence of communications or cooperation with the Committee'.

96 Reports prepared in accordance with HRC Res 12/2, 1 October 2009. All reports by the Secretary-General are available at OHCHR, 'Acts of Reprisal for Cooperation With the Special Procedures', <https://www.ohchr.org/EN/HRBodies/SP/Pages/Actsofintimidationandreprisal.aspx>

97 OHCHR, 'Reprisals: Targeting Human Rights Defenders', <https://www.ohchr.org/EN/NewsEvents/Pages/ReprisalsReport.aspx>

98 See OHCHR, 'The Role of Key UN Human Rights Mechanisms in Addressing Intimidation and Reprisals for Cooperation With the UN in the Field of Human Rights', <https://www.ohchr.org/EN/Issues/Reprisals/Pages/RoleOfKeyUNHRMechanisms.aspx>.

org)<sup>99</sup> has been created to receive information on alleged cases of intimidation or reprisals for cooperation with the UN human rights system. In October 2016, the Secretary-General designated the Assistant Secretary-General for Human Rights to lead efforts to tackle intimidation and reprisals against those cooperating with the UN human rights system.

### c. Measures taken by the treaty bodies

In June 2015, treaty body chairpersons adopted the San José Guidelines against Intimidation or Reprisals.<sup>100</sup> Rapporteurs and focal points have also been appointed to protect individuals and groups against reprisals.<sup>101</sup> They handle communications with the individuals affected and the states concerned to prevent risks and ensure national protection of the individual or group alleging intimidation or reprisals by the relevant state party. They may request the state party to provide information and follow up on the implementation of protection measures.

The secretariat has adopted a common checklist for processing the allegations of reprisals addressed to treaty bodies, and has launched a joint treaty body website on reprisals.<sup>102</sup> The goal is to provide all partners, particularly CSOs and victims, with an easier way to access information about how treaty bodies address cases of intimidation and reprisals and how to report such cases. It also comprises a list of contact details of all the treaty body focal points and the secretariat.

As in other areas, procedures established by the treaty bodies vary.<sup>103</sup> CAT has appointed two rapporteurs on reprisals, one regarding cases related to the reporting procedure, the other for cases concerning those who engage in the ICP.<sup>104</sup> A dedicated webpage has also been set up where all reprisals letters sent to and received from states, as well as public statements on the issue are publicly available.<sup>105</sup> The CMW is the only treaty body to mention the name of the focal point on reprisals on their dedicated webpage.<sup>106</sup> For its part, the CED in its Rules of Procedure<sup>107</sup>

99 Concerns have been raised by victims that exchanges through this channel may not be encrypted, which is critical in some national contexts.

100 OHCHR, Guidelines Against Intimidation or Reprisals ('San José Guidelines'), UN doc HRI/MC/2015/6, 30 July 2015.

101 See OHCHR, 'Acts of Reprisal for Cooperation With the Special Procedures', supra fn 97 and 100.

102 See OHCHR, 'Acts of Intimidation and Reprisal for Cooperation With the Treaty Bodies', <https://www.ohchr.org/EN/HRBodies/Pages/Reprisal.aspx>.

103 See International Service for Human Rights (ISHR), *Ending Reprisals Against Those Who Cooperate With the United Nations Treaty Bodies: Submission to Meeting of Treaty Body*, June 2014, [https://tbinternet.ohchr.org/Treaties/CHAIRPERSONS/Shared%20Documents/1\\_Global/INT\\_CHAIRPERSONS\\_NGO\\_26\\_22100\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CHAIRPERSONS/Shared%20Documents/1_Global/INT_CHAIRPERSONS_NGO_26_22100_E.pdf).

104 See CAT, Statement of the Committee against Torture, Adopted at Its Fifty-First Session (28 October–22 November 2013), on Reprisals, UN doc CAT/C/51/3, 16 December 2013.

105 See CAT, 'Reprisal Letters', <https://www.ohchr.org/EN/HRBodies/CAT/Pages/ReprisalLetters.aspx>.

106 See CMW, 'Information on the Reprisal Procedure', <https://www.ohchr.org/EN/HRBodies/CMW/Pages/Reprisals.aspx>.

107 CED, Rules of Procedure, UN doc CED/C/1, 22 June 2012.

mentions the issue with regard to all aspects of its work, including individual communications and urgent actions.<sup>108</sup> This non-exhaustive list shows the attempts by treaty bodies to remedy the situation.

However, such variety calls for harmonization in the form of more systematic and visible processes to ensure that potential victims of reprisals are aware of existing processes to protect them when cooperating with the treaty bodies, including when engaging in the communication procedures.

Finally, it has also been suggested that states should appoint focal points at the national level to deal with this issue and liaise with the relevant international human rights bodies.<sup>109</sup>

## C. CHALLENGE 3: TOWARDS UNIVERSAL USE OF INDIVIDUAL COMPLAINTS PROCEDURES

ICPs are not used universally, and treaty bodies receive more communications from some states parties than others, notably Western countries.<sup>110</sup> The higher number of registered communications concerning these countries nonetheless contrasts starkly with the low rate of decisions in which treaty bodies conclude that there has been a violation of treaty provisions.<sup>111</sup>

Some stakeholders interviewed for this report have suggested that one reason for these figures is that treaty body communications procedures are better known in some parts of the world than others. In some Western countries, CSOs are better supported and informed, thus more familiar with the UN human rights system and its mechanisms. Local support networks that accompany complainants throughout the process are also unevenly distributed across the globe. This is an important factor to take into account as data analysis shows that in most instances leading to the adoption of views by treaty bodies, the author of the communication is represented by a lawyer and/or an NGO.<sup>112</sup> Generous legal aid systems also make a difference. In

108 See also CED, The Relationship of the Committee on Enforced Disappearances With Civil Society Actors, UN doc CED/C/3, 30 December 2013.

109 O. de Frouville, 'Protecting Civil Society Space and Preventing Reprisals: Recent Developments and Next Steps', speech, Palais des Nations, Geneva, 19 September 2014: '[I]t is so important that states consider the possibility of appointing national focal points on this issue', [http://www.frouville.org/Publications\\_files/ISHR%20Parallel%20Event%20on%20REPRISALS.pdf](http://www.frouville.org/Publications_files/ISHR%20Parallel%20Event%20on%20REPRISALS.pdf).

110 E.g. high numbers of petitions also concern states that are covered by a regional human rights system, such as Denmark, the Netherlands, Spain, Sweden or Switzerland. Communications before the HRCtee, as of March 2016: Denmark (168), Netherlands (111), Spain (124); before CAT, as of August 2015: highest numbers from Switzerland (169), Sweden (135) and Canada (124); before the CEDAW as of 9 August 2018: Denmark (39), followed by the Netherlands (10) and the Russian Federation (8).

111 In the case of Canada, for example – the country most subject to communications before the HRCtee (218 as of March 2016) – the Committee found a violation in 21 cases only. Before CAT, of the 124 communications registered as of August 2015 against that same state, the Committee found a violation in 8 cases. The contrast is also sharp concerning Denmark before the HRCtee (31 violation decisions out of 168 communications), or Switzerland before the CAT (16 violation decisions out of 168 communications).

112 62% of cases concluded in 2016, as analysed by Universal Rights Group (Limon, *Reform of the UN Human Rights Petitions System*, p. 23).

the particular case of Denmark, which has accepted the competence of six committees and is the subject of high rates of complaints, another factor to take into account is that individuals submitting a complaint to a treaty body may be eligible for legal aid partly or fully covered by public funding. However, overall, many victims are not aware that they have rights and can bring their claim before the treaty bodies.

Another reason that was given is that many communications deal with non-refoulement and the countries of asylum are often Western countries, hence the large number of communications submitted concerning those countries.

In addition, authors and experts interviewed for this report mention the broad interpretation of forum conflict<sup>113</sup> adopted by the committees as well as 'evidence that complainants choose to withdraw their complaints before the regional human rights courts so that their case may instead be addressed by one of the UN treaty bodies'.<sup>114</sup> Divergences on certain issues lead to forum shopping, where authors of communications believe there is a better chance of success before the treaty bodies.<sup>115</sup>

## D. CHALLENGE 4: TACKLING STRUCTURAL DIFFICULTIES

### 1. MODERNIZATION OF THE SUPPORT STRUCTURE

Given their broad scope and the small number of communications received from authors, the ICPs appear to be under-utilized. Yet, figures show an important and increasing backlog.<sup>116</sup> Moreover, the number of individual communications is likely to increase as awareness of treaty body output and procedures increases. An accumulated backlog creates lengthy delays that undermine the purpose of the procedures for victims of human rights violations.<sup>117</sup>

<sup>113</sup> Treaty bodies have admitted communications despite an apparent jurisdictional conflict when the other human rights procedure did not examine the 'same matter'. See, inter alia, HRCtee, *Aarass v Spain*, Comm no 2208/2010, UN doc CCPR/C/111/D/2008/2010, 30 September 2014; CAT, *Kirsanov*; CEDAW, *X and Y*, already quoted before.

<sup>114</sup> Çali, Skander Galand and Azarova, 'Right to Individual Petition Before UN Human Rights Treaty Bodies'.

<sup>115</sup> A.-S. Faivre le Cadre, 'La France « condamnée » par l'ONU dans l'affaire Baby-Loup? Une affirmation à nuancer', *Le Monde*, 29 August 2018, [https://www.lemonde.fr/les-decodeurs/article/2018/08/29/la-france-condamnee-par-l-onu-a-la-suite-de-l-affaire-baby-loup-une-affirmation-a-nuancer\\_5347415\\_4355770.html](https://www.lemonde.fr/les-decodeurs/article/2018/08/29/la-france-condamnee-par-l-onu-a-la-suite-de-l-affaire-baby-loup-une-affirmation-a-nuancer_5347415_4355770.html). HRCtee, *F. A. v France*, Comm no 2662/2015, UN doc CCPR/C/123/D/2662/2015, 24 September 2018. The HRCtee considered that France did not provide persuasive explanations as to what specific harm would be averted by preventing the children or parents from being exposed to a veiled staff member, or why her dismissal would be a proportionate response. The Committee found that her treatment was not based on reasonable and objective criteria. See, in a similar case, ECtHR, *Ebrahimian v France*, Judgment App no 64846/11, 26 November 2015: the ECtHR considered that there had been no violation of the employee's right to respect for private life, finding that the French authorities had not exceeded their margin of appreciation.

<sup>116</sup> UNGA, Status of the Human Rights Treaty Body System, supra fn 58, §46: 'The increase in the backlog of individual communications was due to the significant increase in the number of communications received and registered for consideration by the treaty bodies and the fact that the increase could not be absorbed within the existing resources owing to the already high workload.'

<sup>117</sup> 'For cases concluded in 2016, for example, it took the relevant committees, on average, three and a half years to reach their final Views' (Limon, *Reform of the UN Human Rights Petitions System*, p. 25. See also NGO letter to the UN High Commissioner for Human Rights, 30 October 2018, [https://www.ishr.ch/sites/default/files/documents/letter\\_to\\_hc\\_on\\_indiv\\_complaints\\_to\\_tbs\\_final.pdf](https://www.ishr.ch/sites/default/files/documents/letter_to_hc_on_indiv_complaints_to_tbs_final.pdf)

### a. Limited support capacity

One of the reasons for the current situation seems to be limited resources and a managerial challenge for the Secretary-General who fully relies on OHCHR to service the treaty bodies. All treaties establishing a treaty body provide that the 'Secretary-General shall provide the necessary staff and facilities for the effective performance of the functions of the Committee'.<sup>118</sup> Nonetheless, insufficient staff resources have consistently been highlighted by the secretariat and other stakeholders, including during interviews conducted for this report.

The Petitions and UA Section's capacity to handle this workload is key to treaty bodies being able to carry out their quasi-judicial activity. Activities undertaken by the Petitions and Urgent Actions Section throughout the process include:

- Handling and screening of all incoming correspondence

In 2018, the Petitions and UA Section received 24,053 emails. In addition to emails, it also receives communications sent by post, for example from prisoners who do not have access to the internet. These figures were provided by OHCHR during a meeting in April 2019.

- Communication with states parties and others, for example to request additional information
- Summarizing information for a preliminary assessment, even if the case is not registered in the end
- Analysing and making recommendations on interim measures requests<sup>119</sup> introduced by complainants
- Analysing and making recommendations on requests from states parties to have interim measures lifted
- Analysing and making recommendations on requests for urgent actions under the CED
- Managing registered cases including processing parties' submissions, taking action on split (as explained above) and suspension requests in consultation with the committee, issuing reminders, updating the status of pending cases, preparing and updating a list of priority cases ready for examination
- Preparing the draft decisions submitted to the committees
- Revising draft decisions according to feedback received from treaty body members
- Providing support during working group and plenary sessions of the committees
- Once a decision has been taken, informing the parties

<sup>118</sup> See, inter alia, Art 36, ICCPR. In the case of the CESC, see ECOSOC Res 1985/17, 28 May 1985.

<sup>119</sup> On interim measures, see Section 2.A.4. Unlike the Inter-American system, an individual communication has to be registered for a treaty body to grant interim measures.

- Communicating with both parties regarding follow-up
- Maintaining the jurisprudence database
- Training lawyers and colleagues on the procedures

**Composition of the Petitions and Urgent Actions Section (As of March 2019)**

- 24 qualified lawyers and 3 administrative assistants to cover 8 committees and 3 procedures
- 1 P5-grade staff member: Chief of Section – under recruitment
- 3 P4-grade staff members
- 15 P3-grade staff members
- 1 P2-grade staff members
- 2 associate human rights officers
- 4 administrative assistants<sup>120</sup>

The Petitions and UA Section has grown little by little. However, this growth has not been commensurate with the increase in the number of conventions and activities such as individual communications, inter-state communications and urgent actions under the CED.

**Evolution of cases registered by committee, 2017 v 2018\***

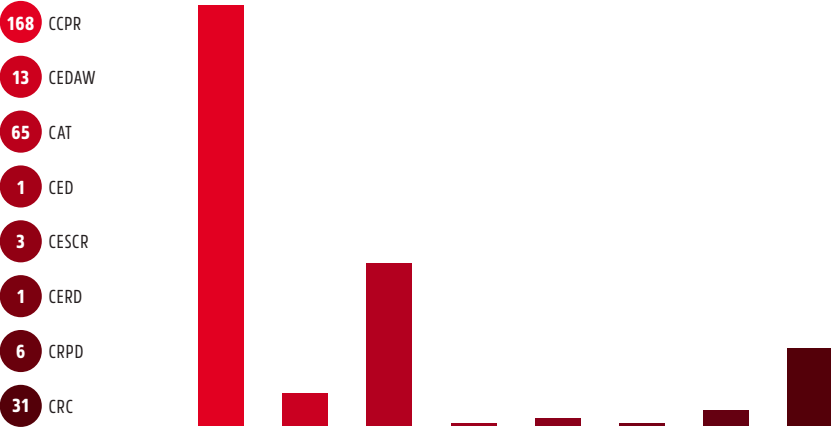
Committee name	Evolution
CCPR	+13.10%
CEDAW	+23%
CAT	-24.60%
CED	-
CESCR	+2133%
CERD	+500%
CRPD	+100%
CRC	+3.20%

\* Figures provided by OHCHR during presentation in April 2019

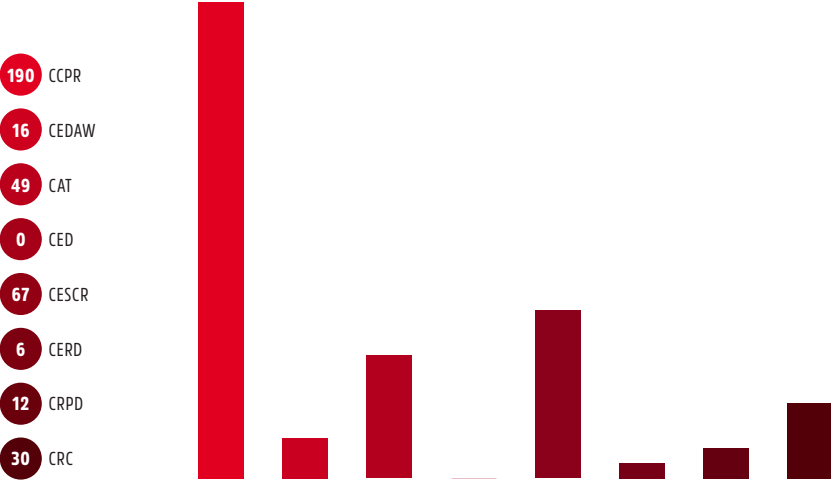
<sup>120</sup> The lawyers deal with substantial work, the more senior staff being in charge of coordinating individual communications and urgent actions processes. Administrative assistants are responsible for administrative duties, including handling correspondence and editing documents.

**Individual complaints registered per committee, 2017 v 2018**

**Cases registered in 2017**



**Cases registered in 2018**



In 2017, the committees adopted a total of 222 decisions.<sup>121</sup> Since 2014, the system has registered more than 200 new communications every year,<sup>122</sup> in addition to the 560 urgent actions before the CED and the three inter-state communications

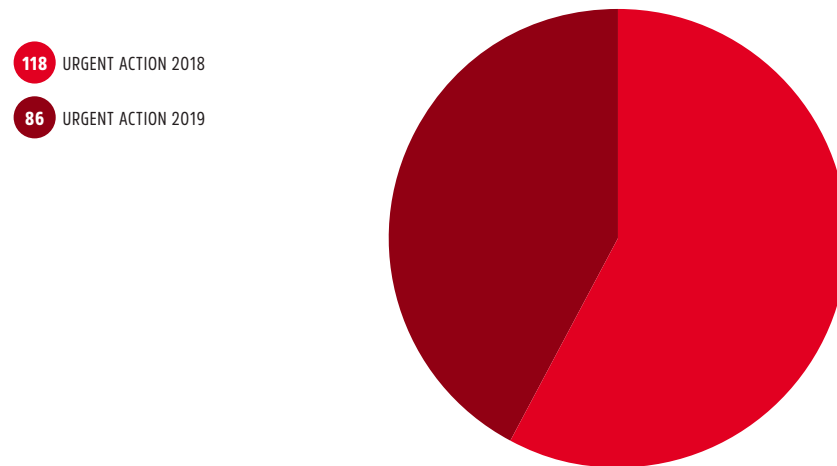
<sup>121</sup> UNGA, Status of the Human Rights Treaty Body System, Report of the Secretary General, Supplementary Information: 24 Statistical Annexes, UN doc A/73/309/Annexes, 6 August 2018, Annex VII, 'Communications Pending Review', p 16.

<sup>122</sup> 288 in 2014, 307 in 2015, 314 in 2016, 287 in 2017, 370 in 2018. Figures provided by OHCHR.

before CERD.<sup>123</sup> From 2015 to 2017, the number of individual communications pending review increased by 28 percent from 769 to 977. By the end of 2017, the individual communications pending review were by far the greatest for the HRCtee (693 communications, i.e. 71 percent). Overall, the Petitions and Urgent Actions Section processes several thousand complaints every year.

The improved follow-up procedures have also had an impact on the staffing situation. In order to achieve implementation and change on the ground, adequate and dedicated resources should be devoted to all the eight committees with ICPs.

#### Urgent Actions registered, 2017 v 2018



Year	Registered UA
2017	86
2018	118
Total as of 31/12/2018	560 registered UA
Evolution	out of which 41 closed. 37.20%

In addition to individual communications, the Petitions and Urgent Actions Section is in charge of the follow-up of the more than 560 urgent actions sent to the CED.<sup>124</sup> Under this procedure, the CED requests the state party to immediately take all necessary measures to search for and locate a disappeared person and investigate the disappearance. The CED can also request protection measures by the state party, mainly in favor of family members of the disappeared. To reduce the Petitions and Urgent Actions Section's workload and enable it to concentrate on communications, some stakeholders have suggested that this additional responsibility

<sup>123</sup> No additional resources have been allocated for dealing with the three inter-state communications, which are complex and require specialized knowledge and dedicated staff.

<sup>124</sup> Urgent actions are a different sort of individual communications aimed to find disappeared persons. See Art 30, ICED.

could be transferred to the CED secretariat. Other interlocutors believe that the Petitions Urgent Actions Section is the best prepared to handle urgent actions as it benefits from the necessary technical expertise. Indeed, following up on urgent actions requires specific skills to follow the investigations, make technical and legal recommendations and interact with diplomatic missions.

Apart from the number of staff members, it has also been mentioned that the Petitions Urgent Actions Section's professional staff would greatly benefit from ongoing legal training to be kept up to date on legal developments, including on procedures in the countries they work with, but also on important jurisprudence at the domestic, regional and international levels. However, limited resources are only part of the problem.

#### b. Creating a registry?

More generally, to strengthen OHCHR's capacity to provide legal and administrative support to the treaty bodies in handling individual communications, one of the main proposals that emerged from the discussions is to create a professional registry on the basis of the existing Petitions and Urgent Actions Section. In other words, the proposition concerns the strengthening and modernization of the current structure.

The work required to process individual communications is highly technical, akin to that of a court. Therefore, legal expertise and excellent knowledge of the procedures and relevant jurisprudence is essential. To ensure continuity, reliable levels of expertise, consistent case law and the need for permanent, expert staff in sufficient numbers have been highlighted during interviews conducted for this report. Even though the existing Petitions and UA Section already performs similar functions, the current workload could not have been foreseen. Current shortcomings include backlog, lack of stability, insufficient human resources and insufficient modernization to support case management.

The creation of a registry functioning as a legal service to support the ICPs has been presented during consultations as a suitable solution to the shortcomings identified. From a structural perspective, it has been suggested that this successor to the Petitions and Urgent Actions Section might benefit from enhanced management. It has also been highlighted that this new entity should be granted a special regime and an exemption from rotation to ensure the stability and continuity that its mandate requires.

Notwithstanding the creation of a professional registry, various stakeholders have suggested introducing a set number of rounds of written observations that can be exchanged between the parties with time limits, so as not to prolong the proceedings. Parties involved in the procedure – states parties and litigator NGOs alike – have mentioned that they 'keep receiving and sending observations' without any predictability as to their number and delays for the procedure. This additional burden on the Petitions and Urgent Actions Section has been highlighted as, most of the time, parties reiterate the same arguments instead of bringing in new elements. In comparison, the ECtHR registry follows a set procedure, whereby written observations are first requested from the respondent state within a time



limit. The applicant's lawyer is then invited to reply, still within a particular time-frame.<sup>125</sup> The HRCttee has recently introduced this rule in its Rules of Procedure, whereby the author may submit a reply to the state party's first submission, and the state party a rejoinder.<sup>126</sup>

Furthermore, from an administrative point of view, information technology (IT) could be better used to modernize the registration and processing of individual communications. Frustration in this respect has been expressed by complainants and state agents alike, who explain that they are not kept informed throughout the process. Better use of IT would allow basic improvements that would greatly contribute to the modernization of the ICP support structure, from the scanning of incoming correspondence to immediate access to the information submitted by all parties involved, and the maintenance of a more user-friendly database. An electronic, secure and encrypted portal would also allow the registry to exchange information securely with the state and complainant, as is the case with the ECtHR and Inter-American system. Templates for observations could also be designed and made available through the secure portal.

It has also been mentioned that linking the UN Official Document System (ODS) and the treaty body jurisprudence database would save a lot of time and staff resources. At the moment, the jurisprudence has to be uploaded manually by the Petitions and Urgent Actions Section once a decision is adopted. Due to the increasing workload, many of the committees do not have the updated information on the jurisprudence database.

## 2. OPTIMIZING THE EFFICIENCY OF PART-TIME BODIES

Treaty bodies are part-time bodies that can only meet for a number of weeks each year – another reason for the backlog and delays in examining communications. Several options have been suggested to optimize their efficiency and allow them to examine more cases during their meeting time. These include the development of fast-track procedures to deal with repetitive cases. The HRCttee has also started to examine communications in chambers. Many issues related to the procedure remain to be defined. However, such an option definitely has a lot of potential in terms of enabling committees to tackle their backlog, as long as the Petitions and Urgent Actions Section has the capacity to prepare enough drafts for examination by the respective committees. Finally, to ensure that newly elected treaty body members are fully operational as soon as they join their committee, it has been mentioned that informal training sessions would be very beneficial. These could be run by more experienced treaty body members and facilitated either by OHCHR or external partners.

<sup>125</sup> ECtHR, Rules of Procedure, Rule 38; IACHR, Rules of Procedure, Art 38; IACtHR, Rules of Procedure, Arts 40, 41 and 43.

<sup>126</sup> See HRCttee, Rules of Procedure, supra fn 23, Rule 92(5–11).

## 3. ENHANCING IMPLEMENTATION

Domestic implementation of treaty body views is a complex process that is hard to measure and translate into numbers, which makes its assessment challenging. However, all stakeholders agree that improving the implementation rate of treaty body decisions remains a major issue.<sup>127</sup>

Treaty bodies have developed procedures and practices to induce compliance and encourage states to cooperate and engage in a dialogue. In extreme cases, if a state party refuses to cooperate with the relevant committee to implement its decisions,<sup>128</sup> this translates into a low grade in the follow-up grading system. Some committees such as the HRCttee and CAT raise the issue during the review of periodic reports and in their concluding observations. The committees can also suspend the dialogue.<sup>129</sup> It has been suggested that treaty body decisions to suspend the dialogue in such extreme cases should be publicized. Likewise, experts have also recommended that the reasons why cases that have been discontinued prior to the examination phase because the situation has already been remedied should also be stated in clear terms to highlight the positive impact of ICPs for victims.

The 'invisibility' of treaty body views has also been mentioned as a serious obstacle to implementation. It is notably challenging to mobilize CSOs on the ground if they are not aware of treaty body decisions.

Another reason for the low implementation rate lies in the nature of remedies recommended by the committees. Decisions providing guidance to states as to the specific measures that are required to redress the treaty violation(s) are more likely to be implemented effectively. Identifying the relevant authorities at the state level can also prove challenging. It has been recommended that treaty bodies should request states to identify the authorities that are responsible for implementing the decisions at the domestic level. Including timeframes for the adoption of remedies would also allow the committees to monitor implementation more closely.<sup>130</sup>

<sup>127</sup> Kate Fox Principi has found 'a rate of around 23% with respect to the combined good responses from all of the treaty bodies' (Fox Principi, 'United Nations Individual Complaints Procedures', supra fn 40, §21). The HRCttee reported 22% 'satisfactory' and 32% 'partially satisfactory' responses from states in its Follow-Up Progress Report on Individual Communications, UN doc CCPR/C/118/3, 15 February 2017. In its 2017 annual report, CAT indicated that 42% of violations decisions (55/131) had been given a satisfactory or partially satisfactory answer by the state concerned (CAT, Report of the Committee against Torture, UN doc A/72/44, §87. This higher rate is due to the fact that most cases relate to the issue of non-refoulement and are more easily complied with.

<sup>128</sup> E.g. on Belarus's persistent non-compliance and non-cooperation with the HRCttee regarding repetitive communications claiming violations of freedom of expression and assembly, see I. Crivet, 'The Challenge of Systemic Non-Compliance and Non-Cooperation with the Human Rights Committee's Views: The Case of Belarus', Koç University Blog, 30 December 2017, <https://kuremer.ku.edu.tr/en/challenge-systemic-non-compliance-and-non-cooperation-human-rights-committees-views-case-belarus>

<sup>129</sup> The elements for a common follow-up procedure identified by the treaty body chairpersons mention the possibility of suspending the dialogue 'in the case of persistent refusal by the State party to implement and/or refusal to pursue the dialogue' (OHCHR, Procedures of the Human Rights Treaty Bodies for Following Up on Concluding Observations, Decisions and Views, UN doc HRI/MC/2018/4, §12(j)(i)).

<sup>130</sup> See *Joint submission by REDRESS, the CCPR Centre, Trial International and the Human Rights Implementation Centre to the HRCttee on the follow-up procedure concerning views on individual communications*, p 4 on [www.redress.org](http://www.redress.org)



However, treaty body authoritative output is increasingly acknowledged as it penetrates international and domestic legal systems. A few states have even adopted enabling legislation to ensure implementation of treaty body decisions.<sup>131</sup> These are positive examples that can be drawn upon.

Finally, it has been suggested that all parts of the UN human rights system should contribute to ensuring implementation of treaty body decisions. Complainants are already allowed to contact the relevant treaty body via the secretariat or special procedures if the decision remains unimplemented, and often do so. Moreover, it has been proposed that the Human Rights Council Universal Periodic Review (UPR) could be used as a follow-up mechanism to treaty body views via state reports that are prepared by OHCHR anyway. Thus, no additional resources would be needed.

#### How to enhance implementation

- States should spontaneously keep treaty bodies informed on the follow-up and the relevant authorities responsible for the domestic implementation of treaty body decisions.
- States should adopt legislation and set up national mechanisms to facilitate implementation of treaty body decisions.
- Treaty bodies should continue to recommend specific remedies that are more likely to be implemented than general measures to provide relief to victims.
- Treaty bodies should set timeframes for the adoption of remedies to be respected by all states parties in good faith.
- Treaty bodies should give more publicity to extreme cases of non-cooperation and subsequent decisions to suspend the dialogue with the concerned state.
- The Human Rights Council UPR mechanism should take part in the follow-up of treaty body views, together with the Petitions and Urgent Actions Section and OHCHR field presences.

### 4. COORDINATION AND HARMONIZATION

#### a. Harmonization of procedures and working methods

Treaty bodies were established at different times and have adopted methods of work and rules of procedure independently. This confusing situation makes it harder to use and engage with the system. Treaty bodies and the secretariat have made efforts to coordinate procedures and working methods, which is an important challenge in a system composed of 172 independent experts from diverse back-

<sup>131</sup> In Colombia, Law 288/96 adopted in 1996 provides a procedure for implementation of the HRCttee and IACtHR decisions. In Slovakia, enabling legislation was enacted in 2000. Other states have adopted legislation to allow reopening of criminal proceedings as remedy following treaty body decisions: Norway, Poland and Hungary. See more details on the procedures in R. van Alebeek and A. Nollkaemper, 'The Legal Status of Decisions by Human Rights Treaty Bodies in National Law', in H. Keller and G. Ulfstein (eds), *Human Rights Treaty Bodies: Law and Legitimacy*, Cambridge University Press, 2012.

grounds.<sup>132</sup> Annual meetings of chairpersons seem to be one of the relevant forums despite slow progress. Harmonization of working methods has been on the agenda since 2008 and various issues have been identified and discussed, including remedies and follow-up.<sup>133</sup> The harmonization of procedures and practices to deal with reprisals could also be considered.

Regarding follow-up procedures, at the moment, timings and grading systems are not fully harmonized,<sup>134</sup> which undermines their efficiency. Aligning them would increase the visibility of the procedures and their outcome. It would make it easier for stakeholders, including CSOs, to contribute to the implementation of treaty body views at the domestic level. Mindful of this challenge, treaty body chairpersons have identified options to align the various procedures,<sup>135</sup> which are currently under consideration.

#### b. Harmonization of jurisprudence

Harmonization of jurisprudence is a major issue to avoid the fragmentation and weakening of international human rights law standards, as well as forum shopping by complainants. It is also essential to ensure greater judicial authority and consistency of treaty body output. Some treaty body members have highlighted that even when a committee adopts a decision that is not in line with another body, they would like to be aware of it.

In this respect, the Petitions and Urgent Actions Section, as the central and common unit to all treaty bodies, has an essential role to play in harmonizing the jurisprudence within the treaty bodies, but also between treaty bodies and international jurisdictions. When preparing decisions, the Petitions and UA Section is in a position to bring landmark cases to the attention of treaty body members. Moreover, it has been suggested that the secretariat should make a comprehensive, up-to-date, word-searchable database available to treaty body members so they are not reliant on the Petitions and UA Section to provide relevant jurisprudence.

It has been noted that cross-referencing is becoming more common in views adopted by the committees. Third-party interventions (*amicus curiae*) represent another solution to provide treaty bodies with valuable comparative analysis. It has also been suggested that the secretariat should be provided with a case-management tool that would identify the relevant related jurisprudence.

In addition to ensuring a steady and substantial flow of information, institutional exchanges have also proved fruitful. Treaty body chairpersons have thus held meetings, for example, with the Inter-American human rights mechanisms (both

<sup>132</sup> See UNGA, Status of the Human Rights Treaty Body System, *supra*, §52-54.

<sup>133</sup> OHCHR, Identifying Progress Achieved in Aligning the Working Methods and Practices of the Treaty Bodies, UN doc HRI/MC/2018/3, 23 March 2018.

<sup>134</sup> Two other committees have adopted the HRCttee's simplified grading system, namely the CRPD and CED.

<sup>135</sup> OHCHR, Procedures of the Human Rights Treaty Bodies for Following Up, *supra*, §12.

the Court and the Commission) in Costa Rica in 2015<sup>136</sup> and with African regional human rights mechanisms in Ethiopia in 2012.<sup>137</sup> Individual committees have also organized meetings to share experiences on issues of common interest. For example, CAT held a joint meeting with judges and secretariat from the ECtHR and the Inter-American Court of Human Rights (IACtHR) to discuss procedural matters and jurisprudence.<sup>138</sup> HRCttee members had an informal meeting with judges from the IACtHR.<sup>139</sup> Treaty bodies have also organized ad hoc joint meetings. Indeed, the HRCttee held meetings with the CED to discuss the right to life, with the CEDAW on abortion and with CAT on non-refoulement. In 2018, an informal staff exchange between the Petitions and Urgent Actions Section and the IACHR took place. This contributed to improving the mutual understanding of the functioning of both institutions, and allowed the sharing of best practices, particularly in relation to case management. Formalizing and expanding mutual exchanges and staff rotation between regional courts and treaty bodies would be very beneficial.<sup>140</sup> Based on positive past experiences, it was suggested that treaty body members should meet their regional counterparts on a regular rather than ad hoc basis.

Annual meetings of treaty body chairpersons constitute another opportunity to discuss issues of common interest. Likewise, meetings involving members of all treaty bodies have allowed fruitful discussions, notably on harmonization issues.<sup>141</sup> It has also been suggested that a focal point on jurisprudence be established in each committee to survey relevant jurisprudence from other treaty bodies and human rights jurisdictions. Alternatively, it has been proposed that an intersessional inter-committee working group be set up, composed of the special rapporteurs on communications from all relevant treaty bodies who would meet annually to discuss cases. Members of the working group would then go back to their committee to present the outcome of the discussions with a view to harmonizing jurisprudence.

136 OHCHR, Report of the Chairs of the Human Rights Treaty Bodies on Their Twenty-Seventh Meeting, UN doc A/70/302, 7 August 2015, §§53–55.

137 Report of the Chairs of the Human Rights Treaty Bodies on Their Twenty-Fourth Meeting, UN doc A/67/222, 2 August 2012, §§26–28.

138 Meeting held on 1 December 2017. The AfCHPR was also invited but its representative could not attend the meeting. CAT, Report of the Committee against Torture, UN doc A/73/44, 2018, §64.

139 HRCttee, Report of the Human Rights Committee, *supra*, §57.

140 This has been proposed by at least two experts. See S. Cleveland, 'Enhancing Human Rights Connectivity for the Treaty Body System', Contribution to the Geneva Academy Platform on 2020 Treaty Body Review, 2016; E. Decaux, 'La perspective internationale au regard des organes de traités sur les droits de l'homme des Nations Unies', in J. Andriantsimbazovina, L. Burgorgue-Larsen and S. Touzé (eds), *La protection des droits de l'homme par les cours supranationales*, Pedone, 2016.

141 See the workshops organized by the Geneva Academy in collaboration with OHCHR, involving members of all treaty bodies, to discuss, notably, key harmonization issues, <https://www.geneva-academy.ch/news/detail/191-the-treaty-body-members-platform-in-2018>.

## 4. WAYS TOWARDS SUSTAINABLE CHANGE

Consultations held by the Geneva Academy for the purpose of this report have resulted in a series of ideas aimed to improve individual communication procedures. These are hereby presented in order to trigger a substantial and constructive debate, hopefully followed by operational measures.

Suggestions have been divided into short-term critical measures that could be implemented within a year or a year and a half and medium-term measures for the coming two to three years. Short-term measures are implicitly addressed to states parties, treaty bodies and the secretariat. Medium-term measures are mainly aimed at OHCHR.

### A. SHORT-TERM CRITICAL MEASURES

#### Access to information on the procedures:

- Build a new platform to improve access to information on the ICPs on the OHCHR website, for example with a link to a 'How to complain under the treaty body procedures' information page on the treaty bodies' home page, and provide a new standard complaint form
- Set up a dedicated secure online platform (portal) for the relevant stakeholders (author of the communication, state party concerned and treaty body members) to submit information and be kept informed throughout the process
- Create an easily accessible gateway to all registered cases that is regularly updated, and provide a summary of cases
- Continue to publicize on a regular basis statistics on the number of communications received and registered

#### Access to treaty body jurisprudence

- Make sure the treaty body jurisprudence database is readily accessible, up to date, comprehensive and word-searchable, notably by providing regular updates on decisions released through the UN ODS
- Make sure all treaty bodies, especially special rapporteurs and members of working groups on ICPs are made aware of new decisions, in particular those concerning non-repetitive cases
- Prepare case-law briefs on important issues and provisions and landmark cases<sup>142</sup>

142 For a potential model, see the ECtHR's case-law guides series presenting the major judgments by article, <https://www.echr.coe.int/Pages/home.aspx?p=caselaw/analysis/guides&c=#>.

- Improve dissemination of treaty body decisions at the national level, including through outreach to national media, national actors including CSOs and UN country teams (UNCTs)
- Draft views in a more structured way to make them more comprehensible and implementable

#### Highlight positive impacts of the procedures

- Highlight the positive impacts of ICPs on victims, for example by presenting key cases, publicizing discontinued cases in which the introduction of a communication has resulted in the situation being remedied, and stating the reasons for the discontinuance. This could be done, for instance, through dedicated OHCHR media releases.
- Highlight the positive impact of ICPs on human rights worldwide, from the development of human rights standards and jurisprudence to their input into the work of OHCHR in the field
- Provide regular training for lawyers and practitioners on treaty body jurisprudence, including at country level (with the support of the UN Development Programme and UNCTs, as relevant)
- Enhance treaty bodies' visibility on social media

#### Support stakeholders' participation

- Support better-informed CSOs in organizing workshops to make treaty body procedures better known to local NGOs, counsels and potential complainants, notably in countries from which no or very few communications are submitted
- Raise awareness in countries from which few or no individual communications originate by supporting CSOs and bar associations that train and assist their counterparts at the local level
- Support NGOs and lawyers who assist and provide legal advice to stakeholders in those countries
- Develop legal aid systems to bring cases before an international body in the same way that it is available for domestic court cases according to the good practice identified in several states
- Ensure greater access to information to facilitate CSO participation in bringing specific issues to the attention of treaty bodies, for example by publishing a summary of cases as soon as they are registered on the OHCHR website, or at minimum a list of all cases pending review before the various treaty bodies
- Develop the possibility for CSOs to submit *amicus curiae* briefs, and adopt clear rules and guidance across treaty bodies

#### Fight against reprisals

- Harmonize and streamline processes to protect potential victims of reprisals
- Promptly react to allegations and monitor the situation closely by requesting information from the concerned state and UN field presence where relevant or warranted<sup>143</sup>
- With express consent from the victim or their lawyer, make alleged cases and all relevant information public on the treaty body general website, rather than on each particular treaty body webpage, to increase visibility and make systematic use of the treaty body generic website on reprisals
- Make use of the relevant protection measures<sup>144</sup>
- Appoint a dedicated person in the committees – rapporteur or focal point – and publicize their name on a dedicated webpage on reprisals
- Committees that have not already done so, should endorse the San José Guidelines against Intimidation or Reprisals.

#### Optimizing the efficiency of the Petitions and Urgent Actions Section

- Strengthen the structure with permanent (not submitted to rotation), expert staff in sufficient numbers to handle the increasing workload, and support them with relevant legal training
- Provide modern technology and dedicated IT support to facilitate and streamline the registration and processing of communications
- Provide a case-management tool that identifies the relevant related jurisprudence
- Extend to all committees the new practice of the HRCttee of fixed number of rounds of written observations exchanged within time limits so as to not prolong the procedure
- Provide clear guidance to all treaty body members on the role and functioning of the Petitions and UA Section ('who does what and when')

#### Optimizing the efficiency of treaty bodies

- Continue to develop 'fast-track' techniques to process repetitive cases
- Sit in groups and internal chambers to examine more communications, or in parallel with the review of state reports
- Consider internal informal training sessions for newcomers by experienced treaty body experts on how to deal with communications. This could be facilitated by the OHCHR and/or external partners.

<sup>143</sup> See NGO letter to the Petitions and UA Section and treaty body chairpersons, *supra* fn 48.

<sup>144</sup> See section 3.B.2.c.

### Foster coordination and harmonization

- Harmonize procedures and working methods, including on follow-up, reprisals, third-party intervention, oral hearings and publication of cases under review
- Improve access to comparative jurisprudence, notably by regularly updating the jurisprudence on decisions released through the UN ODS
- Take other treaty bodies' and relevant courts' jurisprudence into account on a more systematic basis when examining communications
- Encourage and develop staff exchanges between relevant bodies
- Institutionalize joint meetings among treaty bodies, and treaty bodies and regional courts and mechanisms

#### The top 5 suggestions from the consultations

1. Enhance the visibility of treaty body output through a more user-friendly website and a readily accessible, up-to-date, comprehensive database
2. Digitize the registration of new complaints based on strict criteria
3. Give autonomy to both parties through an online, secure portal where both the author of the communication and the state party concerned can submit information and be kept informed of the proceedings
4. Harmonize working methods related to individual communications across treaty bodies
5. Continue to develop in all committees 'fast-track' techniques, and work in groups and internal chambers to speed up the process and deal with the backlog of cases

## B. MEDIUM-TERM MEASURES

In the longer term, structural changes could improve the efficiency of the procedures. It has thus been suggested that a follow-up sub-unit of the Petitions and Urgent Actions Section be set up, which would be in charge of liaising with states parties but also internally with the relevant UN entities, especially field presences and UNCTs. This would allow a more close follow-up on how states parties implement treaty body decisions, thus increasing their efficiency and visibility. At the moment, collaboration between the Petitions and UA Section and UN field presences and UNCTs operate on an ad hoc basis. Institutionalizing this collaboration would greatly enhance the follow-up of treaty body decisions.

The creation of a registry on the basis of the existing Petitions and UA Section has been proposed as another structural, sustainable solution to several challenges identified during this research, mainly the increasing backlog, insufficient human resources and staff turnover. The registry would function as a legal service sup-

porting the ICPs. Provided it is adequately staffed with permanent, expert agents in sufficient numbers, this entity would ensure continuity and reliable levels of expertise. It has thus been suggested that the registry should be granted a special regime and an exemption from staff rotation to ensure stability and efficiency. In terms of structure, it has been suggested that the new entity would benefit from enhanced management. Although the Petitions and UA Section already performs similar functions, a proper registry that could off-load some of the time-consuming administrative tasks could concentrate on case management.

In short, the main idea consists of transforming the treaty body secretariat dealing with ICPs into a more efficient structure supporting the exponential increase in the number of communications. This move requires a combined action: an internal-external assessment of the situation and of the numbers of communications versus staff; a prospective vision of future developments; a managerial vision of needs, and to corroborate these efforts, an adequate resource statement. States parties to the relevant treaties could allocate their support more directly towards funding these mid-term measures, by possibly directly funding treaty body activities. But this has to be studied carefully.

As this is a serious, integrated effort, requiring the participation of all stakeholders, and a convening power to connect them all, we recommend a careful mid-term strategy, with the help of all parties involved, as well as adequate external help, to concretize this reform.

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978-2-9701253-3-4



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