

Strengthening and Enhancing the Effective Functioning of the UN Human Rights Treaty Body System Individual Complaint Mechanisms

Recommendations from Members of Academia and Civil Society in View of the 2020 UN Human Rights Treaty Body Review

With [Resolution 68/268 of 2014](#) the United Nations (UN) General Assembly decided 'to consider the state of the human rights treaty body system' by 9 April 2020 and 'to review the effectiveness of the measures taken in order to ensure their sustainability, and, if appropriate, to decide on further action to strengthen and enhance the effective functioning of the human rights treaty body system.'

The Centre for Fundamental Rights, Hertie School, Berlin, Germany; PluriCourts University of Oslo, Norway; and the University of Hamburg, Germany convened a workshop on 15 November 2019. This workshop brought together academics, non-governmental organisations (NGOs), and UN Treaty Body members to contribute to the 2020 reform process. The workshop focused on one specific aspect of the UN human rights treaty body system, namely: further action to strengthen and enhance the effective functioning of the individual complaints mechanisms. This policy recommendation report is the outcome of this workshop.¹

¹ This report is written by Başak Çalı and Alexandre Skander Galand, Centre for Fundamental Rights, Hertie School. We thank Andreas von Staden and Andreas Ullmann, University of Hamburg, Andreas Føllesdal, Antoinette Scherz and Geir Ulfstein, PluriCourts, University of Oslo, Martin Scheinin, European University Institute, Alain Zysset, University of Glasgow, Irina Crivet, Koç University, Vincent Ploton, International Service for Human Rights, Anna Katrin Holmlund, Amnesty International, Betsy Apple, Open Society Justice Initiative, Khadidja Nemar, MENA Rights Group and Anne-Katrin Wolf for their invaluable input to, and their endorsement of this report. We also thank Gloria Dragic and Hannah L. Leach for their help in assembling materials for this report.

State of play: The UN treaty body individual complaint mechanisms leading up to 2020

Eight of the ten existing UN treaty bodies currently have active competence to deliver views on individual communications. These are the Human Rights Committee (HRC), the Committee on the Elimination of Racial Discrimination (CERD), the Committee against Torture (CAT), the Committee on Elimination of Discrimination against Women (CEDAW), the Committee on the Rights of Persons with Disabilities (CRPD), the Committee on Enforced Disappearances (CED), the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Rights of the Child (CRC). The Committee on Migrant Workers (CMW) will be competent to address individual communications once the threshold of ten States Parties making a declaration accepting the individual complaint procedure is met.

The UN treaty bodies review individual communications in light of their treaty provisions. In the case of CED, there is an explicit provision requiring it, in the discharge of its mandate, to 'consult other treaty bodies instituted by relevant international human rights instruments, in particular the Human Rights Committee instituted by the International Covenant on Civil and Political Rights, with a view to ensuring the consistency of their respective observations and recommendations.'

Views are based upon binding international norms. They are authoritative interpretations and applications of the UN human rights treaties to individual cases that aim to offer remedies to complainants and to guarantee the non-repetition of similar violations in the future. To that effect, treaty bodies monitor the implementation of their Views by States Parties.

The increase in the number of UN treaty bodies that are able to examine individual communications in recent decades has been accompanied by a rise in states' voluntary acceptance of the individual complaint mechanisms. In the period [2016-2017](#) alone states issued 32 new ratifications of the optional protocols, or declarations recognizing the competence of a UN treaty body to consider individual communications.

| State Acceptance of the Competence of UN Treaty Bodies to Examine Individual Communications As of Jan 7th 2020 | |
|---|-----|
| CCPR | 116 |
| CEDAW | 113 |
| CRPD | 95 |
| CAT | 70 |
| CERD | 59 |
| CRC | 46 |
| CESCR | 24 |
| CED | 21 |

The increase in the acceptance of individual complaint mechanisms by states has further led to an increase in the launch of complaints by individuals before UN treaty bodies globally. The number of petitions registered to UN treaty bodies [increased](#) from 170 in 2013 to 314 in 2016. A backlog of 977 cases was [reported](#) in 2017. On 31 October 2019, this backlog [reached](#) 1,587 cases.

As early as 2006, the then UN High Commissioner for Human Rights, fearing the risk created by the proliferation of UN treaty bodies (at the time seven treaty bodies had competence to rule on individual communications), [proposed](#) the establishment of a single unified treaty body. Other proposals have also been put forward (the [World Court of Human Rights](#), for example) to, inter alia, improve the handling of individual communications and alleviate the risk of the fragmentation of international human rights law. Yet, these structural reforms have not, to date, received the necessary support. The individual complaint mechanisms, therefore, remain formally fragmented.

Individuals, communities, groups or NGOs around the globe require significant amounts of knowledge and expertise to access individual complaint mechanisms. The same is true for end-user communities, be they domestic judges, NHRIs, parliaments, members of civil society, regional human rights courts and commissions and other United Nations human rights mechanisms, and the United Nations family as a whole. Whilst individual views are available online what prescriptions follow from the UN human rights case law as whole is hard to identify and digest. This potentially undermines their impact to push for human rights reforms and inform judicial decision-making at domestic and regional levels.

Short, medium and long-term practical reforms are needed. Such reforms need to ensure that the individual complaint mechanisms deliver their full potential. This is all

the more significant as, even in their current form, there are positive examples of Views of UN treaty bodies successfully enabling redress for victims of human rights violations and bringing about human rights reform. The jurisprudence of the UN treaty bodies contributes significantly to the protection of human rights. Any roadmap should improve the system for victims of human rights violations and for end-user communities.

Here, recommendations to improve the system of the UN individual complaint mechanisms in an effective manner are presented by following the chronology of the life of an individual complaint before the treaty bodies. It focuses first on basic knowledge required to access the system; second, on communication with and flow of information to complainants during the examination of a complaint; third, on coherence in interpretation of substantive law; fourth, on coherence in the delivery of remedies; fifth, on effectiveness of follow up of Views; and, sixth, on the effective dissemination of Views. Finally, the report makes structural recommendations for the improvement of the UN Office of the High Commissioner for Human Rights (OHCHR) Petitions and Urgent Action Section (PUAS) as a cross-cutting issue for all stages in the life of an individual complaint.

Recommendation 1: Improve basic and essential knowledge for victims of human rights violations to effectively access the complaint mechanisms before the UN human rights treaty bodies

Although the individual UN treaty bodies provide information about how to launch a complaint on their respective websites, and there is a 'frequently asked questions' [document](#) hosted on the website of the OHCHR PUAS, sufficiently useful information and resources for victims of human rights violations and their representatives are lacking. Crucially, differences that exist across the various treaty bodies in terms of access are not clearly laid out for victims of human rights violations. There is an urgent need to produce and disseminate information that lays out not only procedures for each treaty body but also core differences amongst them to enable victims of human rights violations to make informed choices as to the most adequate forum when bringing individual complaints. This is all the more significant as most states have accepted more than one individual complaint mechanism.

A comprehensive factsheet on how to launch a complaint must be provided. This must include rules on the admissibility of a complaint (including who has standing before the various committees), rules concerning exhaustion of domestic remedies across different treaties, and explain other jurisdictional limitations. A collective or a group of victims should also be provided with a clear understanding as to whether they can submit a complaint to the UN treaty bodies, and to which ones and on what basis.

Transparent information should be available as to the rules for demanding provisional measures across all treaty bodies.

All UN treaty bodies should adopt clear and easily accessible guidelines on third-party interventions.

Recommendation 2: Improve communication with complainants during the examination of the complaint

Some complaints are of an urgent nature due to individual circumstances (such as *non-refoulement*, freedom from torture or right to life complaints). The OHCHR PUAS has a policy of responding to urgent requests for interim measures in 48 hours. However, there are no criteria for speeding up the process and adjudication of the most important, serious and urgent complaints. There is, therefore, a need for the treaty bodies to establish and communicate a clear prioritization policy to complainants.

Individuals or groups taking cases before the UN treaty bodies should know how long the processing of a complaint takes. UN treaty bodies should communicate the realistic time required to process a complaint across the treaty bodies.

In some cases, victims of human rights violations receive no confirmation that their individual communications have been received for months or years after submission. This, alongside lengthy proceedings, may result in re-victimization. The OHCHR should establish a secure online system for the parties to record and follow their submissions. It should allow the complainant to see at what stage of the process their individual communication is, and should enable the complainant to upload required documents. It is understood that the establishment of such an online system is envisaged by the OHCHR PUAS.

Recommendation 3: Improve coherence, transparency and quality of views on individual complaints

A coherent and transparently communicated approach to the interpretation of procedural rules and substantive rights leads to predictability and reasonable expectations. A [review](#) of the Views of the UN treaty bodies reveals that there are trends to form such a coherent approach, in particular through the use of cross-citations of their case law, where relevant.

The treaty bodies should adopt a common position on the cross-citation of their jurisprudence and outline why there may be justifiable differences in interpretation across UN treaty bodies.

A recurrent concern expressed by commentators is that treaty bodies do not sufficiently detail their reasoning. This lack of detail in reasoning makes it difficult for the end-user communities, particularly domestic judges, to effectively use the case law of the treaty bodies. UN treaty bodies consistently ask states to provide evidence of the use of UN human rights treaties by domestic courts. Given this overarching aim, the reasoning sections of the Views should be more prominent and easily accessible and identifiable.

Recommendation 4: Improve coherence, and clarity on the remedies recommended by UN human rights treaty bodies

When a right enshrined in a UN human rights treaty is found to have been violated, a treaty body has the competence to recommend to the State party to undertake measures to provide effective remedies to the victim. However, there is a wide discrepancy across the treaty bodies (and also sometimes within the same treaty body) on how individuals remedies and measures of non-repetition are identified.

The Human Rights Committee's [Guidelines on Measures of Reparation under the Optional Protocol to the International Covenant on Civil and Political Rights](#) is a positive step towards a coherent approach to remedies.

The Human Rights Committee's Guidelines must be followed systematically and should be extended to all treaty bodies.

The measures to be undertaken to provide full reparations to the victim and the general measures to guarantee non-repetition should be specified as much as possible to enable effective follow up by the treaty bodies as well as by state and civil society representatives.

Recommendation 5: Improvement to follow up procedures to the Views

The majority of UN treaty bodies have a follow up procedure to their Views. These are sometimes accompanied by a grading system. Such procedures are essential for implementation follow up, not only for victims, but also for state authorities.

Given that follow up to Views of different UN treaty bodies may raise similar issues for measures of non-repetition for a single state, follow up on the implementation of Views and the grading system should be harmonized across all UN treaty bodies. This should help states implement the recommendations arising from the Views better. The status of the implementation of Views should be accessible for each state receiving violation decisions. The harmonization of information on follow up would significantly aid those states with limited capacities to engage with UN treaty bodies.

In the reparations section of the View, the treaty bodies should request the submission of an implementation plan. This is currently done by CAT with respect to concluding observations on State Reports. UN treaty bodies should also openly seek information from national human rights institutions/entities and civil society concerning the implementation of measures of non-repetition.

The review of State Reports by UN treaty bodies should have a dedicated section on the implementation of measures of non-repetition arising from the Views. This should enable state authorities and civil society to provide input as to the implementation of general measures arising from Views as part of its cyclical review process.

Submissions concerning the implementation of Views by state authorities, authors and submissions by other entities (or summaries of the submissions) should be made publicly available on the UN treaty body website for interested parties.

The Views, especially the level of domestic compliance, should be a more prominent part of the Universal Periodic Review.

Recommendation 6: Ensure effective dissemination of views to end-user communities

The [OHCHR database](#) on the case law of treaty bodies is a useful tool. Nonetheless, it should be redesigned with the end-user communities more strongly in mind. Doing so would increase the effective use of the Views in domestic human rights judicial and policy decision making. Furthermore, information on follow up and grades when relevant should be included in the database and made easily accessible. The HUDOC website of the European Court of Human Rights can provide a model for making the [UN Treaty Body Database](#) more user friendly with the ultimate aim of maximizing the impact of UN Human Rights Views.

There is a need for an effective strategy for the dissemination of Views in a timely way. Whilst recent use of social media platforms, such as Twitter, has improved access to information to disseminate Views, there is much room for improvement. The OHCHR could, for instance, maintain and regularly update a dedicated Twitter account only for Views. Alternatively, each treaty body could, like the [UN Committee on Migrant Workers](#), maintain their own account where they could share decisions and Views. In any case, a strategy needs to be built and followed.

Recommendation 7: Urgently improve funding of the UN Petitions Unit and Urgent Action Section to ensure the highest levels of expertise in handling individual complaints

Due to their success in achieving significant numbers of state opt-ins and the rise in the use of complaints mechanisms by individuals across the globe, the treaty bodies have accumulated a case backlog that has led to [a significant crisis](#). The OHCHR PUAS staffing has not significantly increased to properly sustain and support the work of the UN treaty bodies.

GA [Resolution 68/268 of 2014](#) provided 20 additional weeks of meeting time (an increase of 30%) for the treaty bodies members, which have led between 2013 and 2017 to a 24% decrease in the backlog relating to the review of State Reports. It could be hoped, as [pointed out](#) by International Service for Human Rights, that the increase in meeting time will help reduce the backlog of individual communications pending review. Yet, there [seems](#) to be an imbalance between the number of weeks it takes

to prepare an individual communication and the amount of staff time available to do this.

In order to avoid the current backlog crisis worsening further, the OHCHR PUAS urgently needs appropriate resources to be allocated to it. This includes an increase in the number of staff serving the processing of individual complaints.

Alongside the clear and urgent need to increase the allocation of human resources, a [recent report](#) from the Geneva Academy of International Humanitarian Law and Human Rights recommends the creation of a Registry to effectively handle the administration of individual communications. We fully endorse this. The treatment of individual complaints from the launch of the complaint to the follow up of the individual remedies requires the appropriate amount of staff with adequate expertise in handling individual communications. A Registry is also necessary to ensure that the collective institutional memory of the individual complaint mechanisms is maintained and passed on to new Treaty Body Members, who are not only exceptionally large in size as a collective, but also are subject to recurrent change due to completion of their terms.

We urge all stakeholders involved in devising and implementing further action to strengthen and enhance the effective functioning of the UN Human Rights Treaty Body System individual complaint mechanisms to ensure that the victim-centered perspective and the end-user community perspectives are fully incorporated in all efforts to improve the system. Doing so is necessary to ensure the continued relevance of the UN Human Rights treaties.

Publisher

Hertie School
Centre for Fundamental Rights
Friedrichstraße 180
10117 Berlin
+49 (0)30 259 219-0
info@hertie-school.org
hertie-school.org/en/fundamental-rights/

Leadership of the School

Chairman of the Supervisory Board: Bernd Knobloch
Chairman of the Board of Trustees: Frank Mattern
Academic Director: Prof. Dr. Henrik Enderlein
Managing Director: Dr. Axel Baisch

Trade Register

HRB 97018 B, Local Court, Berlin-Charlottenburg

Value Added Tax Identification Number

DE 241828668

Responsible

Prof. Dr. Henrik Enderlein
President and Professor of Political Economy
Hertie School GmbH
Quartier 110 • Friedrichstraße 180
10117 Berlin
Germany

© Hertie School | Centre for Fundamental Rights –
Berlin, 2020.