

II

Monitoring human rights treaties

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The United Nations (UN) has human rights as one of its central ideals. The Preamble of the UN Charter seeks 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small'. In pursuing this goal UN member states have concluded seven major human rights treaties which establish human rights standards in a variety of different areas.

However, while states have been willing to agree human rights treaties, they have not been as enthusiastic about the monitoring of their own compliance with such agreements. This has produced a monitoring system that relies on the voluntary co-operation of states parties rather than one that induces or can compel compliance through incentives and/or disincentives.

Nonetheless each of the main human rights instruments does have its own committee to monitor its implementation. This allows the international community to become aware of breaches; sends a signal to victims that they are not alone; can result in perpetrators being held accountable, politically and in some cases legally; and can be a catalyst for change. Such monitoring is essential, as victims are often unable to hold their governments accountable due to a lack of democracy, shortcomings in the rule of law or the absence of independent domestic monitoring or enforcement bodies.

This chapter will analyze the monitoring arrangements for the main UN human rights treaties, focussing on the role of their corresponding committees. It will introduce the committees, describe the way in which they operate, consider criticisms of their work and discuss proposed reforms to their operation individually and collectively.

Custom and treaties

There are two main sources of international human rights law—custom and treaties.¹ Customary international law develops through the emergence of a general, uniform, consistent and settled practice which is joined by a sense of legal obligation. Such norms are considered to be applicable to all. While there is no consensus among commentators on the extent and scope of human rights norms under customary international law, it is accepted that some do exist. These include protection from slavery, genocide and torture. Treaties, meanwhile, are negotiated and agreed by states and only bind those states which become party to them.

Table 1 Principal human rights treaties			
Treaty	Date adopted	Entry into force	Current signatories/parties*
International Convention on the Elimination of all Forms of Racial Discrimination (CERD)	21 Dec. 1965	4 Jan. 1969	7 signatories 169 parties
International Covenant on Economic, Social and Cultural Rights (ICESCR)	16 Dec. 1966	3 Jan. 1976	7 signatories 149 parties
International Covenant on Civil and Political Rights (ICCPR)	16 Dec. 1966	23 Mar. 1976	8 signatories 152 parties
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	18 Dec. 1979	3 Sep. 1981	1 signatory 177 parties
Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	10 Dec. 1984	26 June 1987	12 signatories 136 parties
Convention on the Rights of the Child (CRC)	20 Nov. 1989	2 Sep. 1990	2 signatories 192 parties
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW)	18 Dec. 1990	1 July 2003	10 signatories 26 parties

Note * As at 18 August 2004.
Source Office of the United Nations High Commissioner for Human Rights (OHCHR), www.ohchr.org.

The two main sources of international law are not mutually exclusive. Many rights now embodied in human rights treaties were previously established as norms under customary international law.

The seven core human rights treaties listed in table 1 cover a range of rights, including the right to life,² the right to equality before the law,³ the right to equal pay for equal work,⁴ the rights of self-determination,⁵ the right to work⁶ and the right not to be subjected to discrimination.⁷ As of 18 August 2004 every state had ratified at least one of the treaties, and 161 states (84 per cent) had ratified four or more.⁸

Monitoring mechanisms

The key means of monitoring implementation of, and compliance with, human rights within the UN system is the main human rights committees (see table 2).

The work of these committees is essential because of the unique character of human rights law. Although concluded by states, human rights treaties principally govern not the relationship between states parties but the relationship between governments and individuals and among groups and individuals within states.

Moreover, many states have no independent internal mechanism to guarantee adherence to standards that govern the treatment of individuals. International monitoring is therefore vital to ensure that human rights are fully realized. Each human rights committee may only consider the rights established in the relevant treaty and can only relate these rights to states that are party to the treaty. Hence it is important for the international community to strive for universalization of the core human rights treaties.⁹

The committees have many features in common. They are made up of state party nominees who are expected to act in their personal capacity. Each state party may nominate an individual for election to a committee. Election to each committee is by secret ballot. To ensure balanced geographical representation each state may only have one of its nationals on a committee at any one time.¹⁰ As with any election in the UN system, elections to the human rights committees are subject to political considerations.

Each state party is required to submit reports to the relevant committee, although the reporting frequencies differ. Each committee reports annually to the UN General

Table 2 UN human rights committees	
Treaty	Committee
International Convention on the Elimination of All Forms of Racial Discrimination	Committee on the Elimination of All Forms of Racial Discrimination (CERD Committee)
International Covenant on Economic, Social and Cultural Rights	Committee on Economic, Social and Cultural Rights (CESCR)
International Covenant on Civil and Political Rights	Human Rights Committee (HRC)
Convention on the Elimination of All Forms of Discrimination Against Women	Committee on the Elimination of Discrimination against Women (CEDAW Committee)
Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment	Committee Against Torture (CAT Committee)
Convention on the Rights of the Child	Committee on the Rights of Child (CRC Committee)
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	Committee on Migrant Workers (ICMW Committee)

Assembly, except for the Committee on Economic, Social and Cultural Rights (CESCR), which reports to the UN's Economic and Social Council (ECOSOC).

At least four of the committees permit the submission of complaints by individuals about a violation of a treaty right. A state party must, however, first elect to recognize the competence of the committee to consider such complaints. Individuals, for their part, must show that they have exhausted all effective domestic remedies before a committee will consider their communication. The committee's proceedings are not meant to be an appeal process against national decisions, but rather an independent assessment. Although most committees only allow individual persons to lodge complaints, the Optional Protocol to the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has broadened this to groups of individuals.

Below is a brief introduction to each committee and its monitoring role. As the 1990 International Convention on the Protection of the Rights of All Migrant

Workers and Members of their Families (ICMW) only entered into force on 1 July 2003 and its committee has only recently started work it will not be considered further here.

Committee on the Elimination of All Forms of Racial Discrimination

The Committee on the Elimination of All Forms of Racial Discrimination (CERD Committee) is made up of 18 experts of 'high moral standing and acknowledged impartiality'. It has three means of monitoring. First, it examines reports submitted by states parties. Second, it may receive communications from a state party or parties alleging that another party is not fulfilling its obligations under the convention. Finally, it can receive individual communications. The committee meets for two sessions of three weeks each year.

Committee on Economic, Social and Cultural Rights

Established by ECOSOC in 1985¹¹ to monitor implementation of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), the CESCR is the only body not established by the treaty that it monitors. It meets twice yearly for three-week sessions. Its membership consists of 18 people who are 'experts with recognized competence'. The CESCR examines states' reports on their implementation of the convention. While it does not have the ability to hear communications from individuals or groups on complaints about specific breaches, a draft optional protocol is currently being considered by a working group of the Commission on Human Rights¹² in Geneva, Switzerland, that will allow the committee to do so.

Human Rights Committee

The Human Rights Committee (HRC) has 18 members, 'persons of high moral character and recognized competence in the field of human rights', who must be nationals of states parties. It meets three times a year for a session of three weeks. Its three principal activities are: reviewing states' reports; issuing General Comments that clarify states' obligations and interpret the substantive provisions of the 1966 International Covenant on Civil and Political Rights (ICCPR); and handling communications from individuals as allowed under the treaty's First Optional Protocol. The HRC may also hear a complaint from a state party that another

party is not fulfilling its obligations under the convention. This process only applies to states parties which have made a declaration accepting the competence of the committee in this regard. As with the other interstate complaint procedures, this process has never been utilized.

Committee on the Elimination of Discrimination against Women

The Committee on the Elimination of Discrimination against Women (CEDAW Committee) is composed of 23 experts. In electing them, attention is paid to the representation of 'different forms of civilization',¹³ as well as the principal legal systems. Its main monitoring tool is the examination of reports submitted by states parties. It can also formulate general recommendations to states parties that elaborate on the nature of the rights contained in CEDAW. While the convention does not provide for a communications procedure, its Optional Protocol allows for complaints to be heard from individuals or groups of individuals and for the CEDAW Committee to inquire into systematic violations of the treaty. The inquiry mechanism is only applicable if a state party has recognized the competence of the committee.

The Committee Against Torture

The Committee Against Torture (CAT Committee) consists of 10 members. A state party must report to the committee on its compliance one year after the entry into force of the convention for the state party concerned. Thereafter reports must be submitted every four years. The committee examines the reports and issues 'concluding observations' comprising 'main findings' and recommendations to the state party. The convention establishes three other mechanisms through which the CAT Committee performs its monitoring functions—the inquiry procedure, examination of interstate complaints and examination of individual complaints. As with the interstate complaint process under the ICCPR and the 1965 International Convention on the Elimination of all Forms of Racial Discrimination (CERD), this only applies to states parties which have accepted the committee's competence.

The inquiry procedure is available only to the CAT and CEDAW Committees. Pursuant to Article 20 of the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the committee may

conduct an inquiry if it receives reliable information which appears to it to contain ‘well-founded indications that torture is being systematically practiced in the territory of a State Party’. As in the case of CEDAW, a state party may decline to recognize the competence of the committee to carry out such an inquiry, by making a declaration to that effect. Another radical development under the CAT is found in its Optional Protocol. When this comes into force, it will create a sub-committee that will allow in-country inspections of places of detention.

Committee on the Rights of the Child

States parties must submit an initial report to the Committee on the Rights of the Child (CRC Committee) two years after joining and then every five years thereafter. The committee also publishes its interpretation of the content of human rights provisions, known as General Comments, and General Recommendations on thematic issues or its methods of work. The committee currently has 18 members selected on the basis of ‘high moral standing and recognized competence in the field covered by the convention’.

The committees’ monitoring methods

The current UN system of human rights treaty bodies is not well equipped to carry out the more stringent monitoring, verification and compliance functions found in other types of international agreements, such as in the field of arms control and disarmament. The reporting system, when working effectively, allows states to demonstrate their compliance, but is inadequate in detecting and/or in deterring non-compliance.

States may be found to be in breach of human rights norms as evidenced by the comments of a committee, including an opinion given pursuant to an individual communication. However, determination of a breach does not automatically produce a change in behaviour or practice since there is nothing to compel a state to adopt a committee’s findings, although international embarrassment and political pressure from other states may induce it to do so. Steps are being taken to overcome this problem. The HRC, for instance, now designates a member to follow up individual communications, including by conducting on-site visits.¹⁴

The detection of violations is also problematic. Some states fail to report, while others report sporadically and poorly. The committees do not have their own fact-finding processes to verify the content of reports. Even the HRC has not used on-site visits at the evidence-gathering stage. Committees have attempted to overcome this problem by using other sources of information, including international organizations and non-governmental organizations (NGOs). For example, the CRC Committee has a close working relationship with the United Nations Children's Fund (UNICEF), permitted under Article 45 of the 1989 Convention on the Rights of the Child (CRC), that provides a regular flow of empirical information. NGOs are also used by the CRC Committee to supplement reports.¹⁵

There has been much criticism of the performance of the UN monitoring system. Yet 50 years ago the concept of committees of states parties' nominees being able to hear individual communications or to issue reports on the human rights records of states parties was unheard of. The pre-eminence of the doctrine of state sovereignty left state practice towards their own citizens largely quarantined from international relations. This has been slowly eroded by many factors, including the development of human rights norms, advances in telecommunications, pressure on governments from civil society and hard evidence of human rights abuses. The work and role of the human rights committees have now been accepted as a norm in international relations and a model that should be used for future treaties.

Reporting

Reporting by states parties is the main mechanism by which monitoring is currently carried out. Each report is supposed to contain information on the measures adopted by a state party to give effect to the rights enumerated in each treaty, progress made in the enjoyment of those rights, and any factors and difficulties affecting the fulfilment of the treaty's objectives. The central purpose of the reporting system, to promote compliance by states parties with their obligations, is achieved in a variety of ways, including by:¹⁶

- a state carrying out a comprehensive review of its national legislation, administrative rules, procedures and practices in implementing the treaty;
- ongoing monitoring by a state of its actual situation with respect to each of the rights through regular reporting;

- the use of feedback on reports to make states aware of the extent to which the various rights are or are not being enjoyed by all individuals within their territory or jurisdiction; and
- the identification of factors inhibiting implementation of the treaty.

States are asked to investigate their own human rights practices and to file a self-critical public report. When reports are examined, representatives of the state party are given the opportunity to meet with the committee. The usual practice is for a day-long session: committee members raise questions in the morning and states parties respond in the afternoon. This clearly does not allow states parties to always prepare detailed responses to the issues raised, diminishing the prospect of a constructive dialogue.

The reporting requirements for the different committees vary. Most require an initial report within one year of the treaty entering into force for the state party. The CERD and the CRC, however, require an initial report after two years. The timing of subsequent reports also differs: every two years (the CERD Committee), four years (the CAT Committee, the CEDAW Committee and the HRC) or five years (the CRC Committee and the CESCR).

The shortcomings of the reporting system are considerable. They include late reporting by states parties or complete failure to report; the lack of substantive content; and a backlog in the work of the committees themselves. Opinions on the value of the system range from the view that it is an empty diplomatic ritual that should be disbanded, at one extreme, to the opposite view that, while the system is not flawless, it is a valuable tool in ensuring implementation.¹⁷ Table 3 summarizes the situation.

The reasons states parties give for not submitting reports include their being overburdened by the number of reports required and the lack of human and financial resources and capacity to complete them. However, of the 200 initial reports currently overdue, 46 are required from states parties that are classified by the World Bank as high- or upper-middle-income countries. It is therefore doubtful that the lack of reporting is only attributable to resource constraints.

The fact that none of the committees can oblige states to submit reports that are overdue or provide further information where reports are incomplete is a major failing of the current process. The only inducement available, besides political

Table 3 Parties' compliance with human rights reporting requirements

	No. of parties that have not complied with reporting obligations for more than 5 years	No. of reports more than 5 years overdue*	Percentage of non-reporting parties from high- and upper-middle-income categories
CEDAW Committee	70	121	27%
CRC Committee	66	59	18%
CESCR	57	78	25%
CERD Committee	54	216	24%
HRC	44	68	21%
CAT Committee	34	51	18%

Note * Includes cases where the state party has more than one overdue report for the same treaty.
Source Office of the United Nations High Commissioner for Human Rights (OHCHR), treaty bodies database, March 2003, www.unhcr.org/english/bodies/docs/RatificationStatus.pdf.

pressure, is that of embarrassing states parties by compiling an annual list of reports overdue. Reminders are sent to the defaulting states parties and in some cases meetings are arranged to discuss the reasons for the delay. Only some of the committees allow for a state party to be examined in the absence of its report. The CERD Committee in 1996 decided to conduct reviews on the basis of any prior reports submitted by the state, any information supplied by the state to any other UN body, and any information on the state prepared by UN organs.¹⁸

Another issue facing the reporting system is the lack of substantive content in most reports. Some states parties submit reports simply in order to be given credit as having reported. This again presents a difficulty for the committees. While they do not want to discourage states parties from submitting reports by insisting on rigorous standards, they also do not want the system undermined by parties carrying out a box-ticking exercise without ever providing substantive information. A balance needs to be struck to allow effective monitoring. Guidelines on the content of the reports have been issued by the committees, for example by the HRC.¹⁹

The committees are currently under-funded, only meet for a limited number of sessions a year and can only consider a certain number of reports. The resulting

backlog means considerable delay between reports being submitted and being examined, rendering many out of date by the time they are considered. It has been suggested that reports should be updated immediately prior to being examined, but this would only increase the burden on states parties and might result in further delays as committees wait for updates. The delays in examining reports need to be addressed at the same time as the issue of overdue reports.

Paradoxically, the delay between reporting and examination will worsen if the level of reporting improves. The committees therefore need either to streamline their procedures or to increase the number of sessions per year. Only then will reports be examined in a meaningful way, with relevant and up to date information.

Committee procedure

The current failings of the reporting system are not all attributable to states parties. The inefficiencies of the committees themselves contribute. Committees reportedly waste time on procedure and minor issues, resulting in important issues being avoided or neglected. The CEDAW Committee's proceedings have been criticized thus: 'Each member seems to feel compelled to repeat congratulatory remarks and to reiterate questions already posed by a colleague. An even worse tendency is to associate one's self with the question of another, often at greater length than the initial question.'²⁰ Other criticisms include premature praising of governments' efforts, failure to insist on satisfactory answers in cases of wrong, incomplete or inadequate responses to committee enquiries, and the lack of depth of oral inquiries.²¹ Committee recommendations have been criticized as too vague or impractical.

Committee expertise

The lack of expertise of committee members is another important factor that affects the success of the system. The membership is loaded with foreign ministers, serving or retired ambassadors and other officials.²² The close relationship of some committee members to their governments has an impact on their ability to be impartial. It has been suggested by an inter-chairman meeting that, in order to avoid conflicts of interest, committee members should refrain from participating in any aspect of consideration of the reports submitted by their own country.²³

The communications procedure

Four of the treaty bodies provide for individual complaints to be heard by each committee. These serve at least three functions:²⁴

- providing an effective and timely remedy to the person whose rights have been violated;
- bringing about changes in law and practice in the respondent state which will benefit others in a similar position to the complainant, now and in the future; and
- the elaboration of a jurisprudence for the relevant treaty, providing guidance to states parties and others on the content of the guarantees contained in the treaty and the measures needed to protect those rights.

There has been much debate about whether the communications procedure does manage to carry out the three functions to the same degree. A former member of the HRC maintains that the individual complaints procedure ‘can do little’ to protect an individual’s rights as it ‘starts too late, takes too much time, does not lead to binding results and lacks any effective enforcement’.²⁵ There is some merit in this, but it does not mean that the system should be abandoned. Rather, it should be improved.

An additional tool available to the committees under the communications procedure is interim measures. The HRC, the CERD Committee and the CAT Committee have the power to request a state party to take such measures pending consideration of a complaint. This goes some way towards dealing with the delay between communications being submitted and their consideration by a committee.

Recommendations made by a committee are non-binding and there is no enforcement mechanism to ensure that implementation. Under the ICCPR, if a communication is found to be admissible, the HRC will forward its ‘views’ to the state party concerned and to the individual, but neither the ICCPR nor the Optional Protocol shed light on the status of such views.

One issue that needs to be examined is the lack of correlation between the frequency of complaints and the state of human rights compliance in a given country. In many countries where human rights violations are prevalent, individuals are not aware of the existence of the treaty bodies and their right to submit a

communication. The absence of communications concerning a state party is not therefore an indication that it has a flawless human rights record.

The role of civil society in monitoring

NGOs have an increasing role to play in the UN human rights system, especially in the reporting process. Their information can give the committees a more complete picture of the situation, highlight breaches of human rights and help the committees in determining non-compliance. However, the role of NGOs in respect of the reporting procedure needs to be carefully handled. They may not, for instance, have access to the same information as states parties. They may also have hidden agendas.

The committees do not all involve NGOs to the same extent. The CERD Committee's rules of procedure make no reference to NGOs being able to participate in its work by attending committee meetings or producing reports, in contrast with Article 45 of the CRC, which allows its committee to ask any bodies it considers appropriate to provide it with expert advice.²⁶ The HRC's rules of procedure invite NGOs to provide written reports containing country-specific information and to give oral statements at committee meetings.²⁷

The lack of specific reference to NGOs in the CERD Committee's rules of procedure does not altogether preclude their participation. Members can meet with NGOs prior to state reports being considered and can take part in side-events during committee sessions.

NGOs, however, have additional parts to play in promoting human rights and awareness of the avenues available to individuals to address their grievances. NGOs also provide assistance to individuals wanting to use the procedure and may play an important role after states' reports have been examined. While there remains a lack of follow-up of reports by the committees, NGOs can continue to lobby and campaign to ensure that any changes suggested by committees are implemented.

Reforms

While the system has matured over the years, there are many issues that still need to be resolved and reforms to be considered.

Reporting

The consensus among human rights experts is that reform of the current reporting system is needed. In 2002 a report by UN Secretary-General Kofi Annan proposed two measures to help alleviate current shortcomings:²⁸

- a more coordinated approach to the committees' activities and standardization of their varied reporting requirements; and
- allowing each state to produce a single report summarizing its implementation of the full range of provisions of the human rights treaties to which it is party.

A brainstorming meeting on reform of the human rights treaty bodies, organized jointly by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the government of Liechtenstein, was held in Geneva, Switzerland, from 4–7 May 2003. The meeting, agreeing that there was a need to improve coordination and cohesion of the system, produced several consensus recommendations.²⁹

The meeting agreed that there was a need to harmonize reporting guidelines to govern the technical and formal elements of reports. They should provide guidance as to the length, format and modalities of submissions and the information that should be included in respect of each treaty. It was suggested that the UN Secretariat prepare draft guidelines for consideration by the committees.

All participants, however, rejected the idea of a single report. Reasons included practical considerations such as the need for the treaties to be amended to allow for a single report and the unmanageable length of such a report. More substantive arguments included the potential for specific issues to be marginalized and the danger of such a report becoming a mere summary. Treaty-specific reports were considered useful for building national constituencies around particular issues and identifying lacunae in domestic legislation, policies and programmes. The lack of focus of a single integrated report could lead to less transparency in relation to states parties' actions as specific rights were skimmed over.

It was noted that states parties are already able to submit a so-called core report to reduce the burden of reporting, but that not all were aware of this possibility. Few of the parties that had submitted a core report had subsequently updated it, thereby diminishing its advantages.

Another suggested reform is the development of a follow-up procedure by the committees. If a committee has made a specific request for information, this should be provided before the next full report by that state party is submitted. Failure of a state party to do this should be noted in the committee's annual report.

If one of the aims of the reporting system is to influence state behaviour, the way in which states parties' reports are examined also needs to be reconsidered. More time needs to be spent on preparation prior to examination of reports to permit more meaningful dialogue. Justice Elizabeth Evatt of Australia suggests the need for a comprehensive, progressive analysis of the situation in each state prior to the examination of a report.³⁰ In the context of the HRC, Evatt suggests that the process should start with a written study by a country rapporteur. This would include, at a minimum, the details of areas where reporting was inadequate and a summary of the significant issues to be covered in the dialogue. This study would go before a working group of the committee for approval. This request would then be sent to the state party at least one session before a report is to be examined by the committee. The benefits of this process include the focusing of the dialogue and the presentation of a clear analysis of the human rights situation in a country.

As monitoring of human rights under the UN treaty system is based on the consideration of reports and communications, one apparent solution to the current problem of delays would be to increase the resources available to each committee. However, no substantial injection of resources for the system is currently likely.³¹

A novel reform suggested for the CAT Committee is for members to conduct visits to states parties where reports have not provided enough information, allowing for a range of views to be heard through interviews with officials and citizens. The experience of monitoring committees established to assess compliance with UN Security Council arms embargoes has been that state visits are more effective than relying solely on examination of reports.³²

This new role would also allow committees to obtain early warning of potential breaches. While this would increase the already huge scheduling and financial pressures on committees, the benefits would be great. While there are numerous NGOs that carry out fact-finding missions and provide reports on actual and potential human rights breaches, the committees' status as treaty-monitoring bodies would bring credibility to their reports.

Another possible reform is the use of different reporting schedules for states depending on their level of development. This practice is currently implemented under the 1992 United Nations Framework Convention on Climate Change.³³ However, this must be carefully implemented so that states with reduced reporting requirements are not allowed to assume that their reports are less important than others'.

The communications procedure

The long delay between submission of a complaint and its consideration undermines the effectiveness of the communications procedure. For example, in relation to the final decisions adopted by the HRC between 1995 and 1999, the average length of time from submission of the communication to the final committee decision was three and a half years, the shortest was three months and the longest was six years and three months.³⁴

Some commentators have suggested that oral presentations, in addition to the current written submissions, would be beneficial. However, this would need to be carefully considered, especially if individuals were not legally represented. Oral arguments may result in an imbalance between states parties and individuals, with governments having the upper hand because of the greater resources available to them. But some cases may be suitable for oral arguments and this should allow for cases to be considered faster.

Another possible reform relates to the way in which decisions are rendered. Because committee members come from countries with different legal systems, the reasoning behind decisions is not always clear. A clearly reasoned decision is beneficial both for the case being decided and so that potential future petitioners can see why a decision has been made and whether the decision is applicable to their own situation

There is currently no international legal aid to help individuals finance their participation in the process. However, the OHCHR does give guidance on the submission of individual complaints.³⁵

Coordination between committees

While there is already an annual meeting of chairpersons, possible further coordination measures include having some members sit on a number of committees

and having members of committees observe others' sessions. Observation would permit sharing of information and would give members better insight into the overall situation in the countries being considered. However, common membership could reduce the number of states involved in the committees, leading to the exclusion of some geographical regions.

Improving expertise

Improving the expertise of committee members by appointing members for longer terms and on a full-time basis, could also increase effectiveness. A more radical approach is for the United Nations High Commissioner for Human Rights to establish a Group of Eminent Persons from which committee members would be elected.³⁶ The High Commissioner would receive nominations from any person, group or organization, taking into account their experience in the human rights field.

Conclusion

While some of the suggested reforms to the human rights monitoring process can be implemented at minimal cost, others are far-reaching and will require widespread change and revision of the treaties themselves. But states cannot be left to regulate themselves. While the current system has its shortcomings, there is no other viable alternative at present. There are regional bodies that also monitor human rights, but they should not become an alternative to an international system lest the implementation of human rights depend on regional location.

In addition to increased funding, many of the necessary reforms require greater co-operation and transparency from states parties. Ultimately, states need to be more active in promoting the monitoring process, including by submitting better, more timely reports. States should implement recommendations from committees that arise from an examination of reports or from individual communications procedures. Compliant states parties should bring pressure to bear on fellow states that submit late or incomplete reports. All of these measures, if combined with procedural reforms and increased funding, should result in a significantly more effective human rights monitoring system.

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Endnotes

- 1 Less traditional sources of international human rights law include general principles of law from domestic jurisdictions and judicial decisions.
- 2 Article 6, 1966 International Covenant on Civil and Political Rights.
- 3 Article 15, 1980 Convention on the Elimination of All Forms of Discrimination Against Women.
- 4 Article 7, 1966 International Covenant on Economic, Social and Cultural Rights.
- 5 Article 1, 1966 International Covenant on Civil and Political Rights and Article 1, 1966 International Covenant on Economic, Social and Cultural Rights.
- 6 Article 6, 1966 International Covenant on Economic, Social and Cultural Rights.
- 7 Article 2, 1965 International Covenant on the Elimination of All Forms of Racial Discrimination.
- 8 See UN, Office of the United Nations High Commissioner for Human Rights (OHCHR), 'Status of ratifications of the principal international human rights treaties', as of 18 August 2004, at www.unhcr.org/english/bodies/docs/RatificationStatus.pdf.
- 9 While the committees may not be in a position always to monitor the observance of customary international law, the UN has other mechanisms to promote and even enforce such law. These include the inclusion of human rights programmes in the civilian component of peacekeeping and related field missions, and the use of humanitarian intervention in the case of gross violations of human rights.
- 10 While this rule is not been made explicit in the case of the CESCR, it has been implied in committee practice.
- 11 Economic and Social Council (ECOSOC) resolution 1985/17.
- 12 The principal multilateral human rights body in the UN system, comprising 53 states elected by ECOSOC. It is mandated to examine, monitor and publicly report on human rights situations in specific countries or on thematic human rights issues worldwide. See www.unhcr.ch/html/menu2/2/chr.htm.
- 13 Article 17, 1979 Convention on the Elimination of All Forms of Discrimination Against Women.
- 14 For a discussion of this see Joan Fitzpatrick, 'Human rights fact-finding', in Anne F. Bayefsky (ed), *The UN Human Rights Treaty System in the 21st Century*, Kluwer Law International, The Hague and Boston, 2000, p. 72.
- 15 Fitzpatrick, pp. 92–93.
- 16 Jane Connors, 'An analysis and evaluation of the system of state reporting', in Bayefsky (ed), p. 7.
- 17 Connors, p. 4.
- 18 UN, *Report of the Committee on the Elimination of Racial Discrimination*, A/51/18 (1996), para. 22.
- 19 UN, Human Rights Committee, *Guidelines regarding the form and contents of periodic reports from state parties*, CCPR/C/20/Rev.2, 28 April 1995, [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/01038df528e56e72802566120035cd69?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/01038df528e56e72802566120035cd69?Opendocument).
- 20 Robert Jackson, 'The Committee on the Elimination of Discrimination against Women', in Philip Alston (ed), *The United Nations and Human Rights: A Critical Appraisal*, Clarendon Press, Oxford, 1992, p. 461.
- 21 Roland Bank, 'Country-orientated procedures under the Convention against Torture: towards a new dynamism', in Philip Alston and James Crawford (eds), *The Future of UN Human Rights Treaty Monitoring*, Cambridge University Press, Cambridge, 2000, p. 151.
- 22 Scott Leckie, 'The Committee on Economic, Social and Cultural Rights: catalyst for change in a system needing reform', in Alston and Crawford (eds), p. 131.
- 23 Connors, p. 12.
- 24 Andrew Byrnes, 'An effective complaints procedure in the context of international human rights law', in Bayefsky (ed), p. 142.
- 25 See Bernhard Graefrath's comments in Byrnes, p. 143.
- 26 Article 45, 1989 Convention of the Rights of the Child.

- 27 UN, Human Rights Committee, 'Rules of procedure of the Human Rights Committee', CCPR/C/3/Rev.7, 4 August 2004, [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.S.Rev.7.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.S.Rev.7.En?Opendocument).
- 28 UN, 'Strengthening of the United Nations: an agenda for further change', A/57/387, 9 September 2002, <http://ods-dds-ny.un.org/doc/UNDOC/GEN/No258326/PDF/No258326.pdf?OpenElement>.
- 29 UN, OHCHR, 'Report of a brainstorming meeting on reform of the human rights treaty body system', HRI/ICM/2003/4, 10 June 2003, www.ohchr.org/english/bodies/icm-mc/documents.htm.
- 30 Elizabeth Evatt, 'The future of the human rights treaty system: forging recommendations', in Bayefsky (ed), p. 290.
- 31 James Crawford and Philip Alston, 'The UN human rights treaty system: a system in crisis?' in Alston and Crawford (eds), p. 6.
- 32 'Under the spotlight: monitoring implementation of small arms measures', *Small Arms Survey 2004: Rights at Risk*, Oxford University Press, Oxford, 2004, pp. 248–275.
- 33 Article 12(5), 1992 United Nations Framework Convention on Climate Change.
- 34 Crawford and Alston, p. 146.
- 35 See www.ohchr.org/english/about/publications/docs/fs7.htm.
- 36 For a discussion of this proposal see Craig Scott, 'Bodies of knowledge: a diversity promotion role for the UN High Commissioner for Human Rights', in Alston and Crawford (eds), pp. 423–426.