

2014

The International Human Rights Treaty System: Impact at the Domestic and International Levels

Navi Pillay

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/hrbrief>



Part of the [Human Rights Law Commons](#)

Recommended Citation

Pillay, Navi. "The International Human Rights Treaty System: Impact at the Domestic and International Levels." *Human Rights Brief* 21, no. 1 (2014): 32-34.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Human Rights Brief by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

The International Human Rights Treaty System: Impact at the Domestic and International Levels

INTRODUCTION

On October 1, 2013, U.N. High Commissioner for Human Rights Navi Pillay visited the American University Washington College of Law to honor Dean Claudio Grossman, Chair of the UN Committee against Torture and recently elected Chair of the UN Human Rights Treaty Bodies. The following is a reproduction of Ms. Pillay's remarks, as well as an interview with Dean Grossman about his recent appointment.

HIGH COMMISSIONER FOR HUMAN RIGHTS NAVI PILLAY: REMARKS

Mr. Chairman, Dean Grossman, Members of the Advisory Council, Students, thank you very much for this opportunity to speak with you about the international human rights treaty system. After a long and hectic week in New York at the General Assembly, it is nice to be back in Washington and to speak with such a bright, young, and, somehow, much more focused audience. And it is especially nice not to have to worry so very much about minding my United Nations P's and Q's.

Our subject today is the United Nations Human Rights Treaty Body System. Treaty bodies are the committees of expert women and men, elected by states, who look after the nine core human rights treaties stemming from the Universal Declaration of Human Rights, and who review their implementation. Together these ten committees form the beating heart of the international human rights system. Their work reviewing treaty implementation provides redress to victims from all over the world who could not receive any from their domestic or regional courts.

I have three premises for you. One, our human rights treaty bodies can feel proud of a number of measurable achievements. But, two, the system is at great risk of faltering because growing demand for it is overwhelming the way it is currently designed. And three, beefing up the treaty body system while already under way, is overdue, and needs financial and logistical support from many different parties.

I shall start with the achievements. There is no question that the treaty bodies have been good for human rights. Their work affords victims proper access to justice and material redress for rights violations. Treaty bodies quicken the steps of governments towards full compliance with treaty provisions, whether towards better policies in Costa Rica to prevent human trafficking, or the repeal of the death penalty in the Philippines. And the obligatory review, public information, and reporting duties that ratifying states agree to can serve a preventive, early warning purpose.

At its most intimate level, the treaty body system enables ordinary citizens to submit claims of human rights breaches

directly to the relevant treaty bodies, and the results can be immediately palpable. *LNP vs. Argentina*, for example, was a recent case before the Human Rights Committee, the treaty body charged with monitoring the 1966 International Covenant on Civil and Political Rights. The case concerned the brutal rape of a young girl in Argentina, her subsequent degrading treatment by police and doctors, and the dismissal by a judge of the three young suspects. But the Committee found breaches of several articles of the Covenant, and their 2011 recommendations for redress for the girl had such clout that, a year later, the Argentine State granted her compensation of about \$ 53,000, a life pension and other benefits for her family.



*U.N. High Commissioner for Human Rights
Navi Pillay*

Another case in front of the Committee on the Elimination of Discrimination of Women involved a Hungarian woman of Roma origin who underwent sterilization without her informed consent during an emergency caesarean. In 2006, the Committee on the Elimination of Discrimination against Women, as keepers of the 1979 Convention on the Elimination of All Forms of Discrimination against Women, found that Hungary violated the woman's rights under the Convention, and recommended that Hungary, as a State Party to the Convention, award the woman compensation and review its legislation in light of modern international medical standards. In 2008, the Hungarian Health Ministry announced the amendment of legislation on informed consent and in 2009, the government, pushed hard by civil society, granted the woman compensation.

There is more to the work of treaty bodies than just helping individual victims. They also assist states to monitor and meet their formal human rights commitments by mandatory, regular reporting. Treaties obligate every State Party to periodically furnish a report to the treaty bodies on the implementation of the covenant or convention within the country. The reports must

show evidence of honest and rigorous self-assessment as well as serious dialogue with civil society. Unfortunately, some States Parties find all this too onerous and fail to report as required under the treaty. Despite instances of non-compliance, the record shows that regular reporting can help prevent human rights abuses and even serve as early warning of looming violations.

Prevention is of course notoriously difficult to measure, but the following example is instructive. In 2001, the Committee on Economic, Social and Cultural Rights indicated its concern about Japan's nuclear power program. The Committee, which tends to the International Covenant on Economic, Social and Cultural Rights, cited a lack of transparency, insufficient disclosure of safety-related information, and the absence of preparation at community and national levels for the prevention and handling of nuclear accidents. Had Japan more actively followed the Committee's recommendations for improving prevention, the population might have been better prepared for the recent nuclear tragedy in Fukushima and some of the worst effects might have been avoided.

Additionally, the treaty bodies, through their accumulated jurisprudence, have had direct impact on national and international courts. When I served on the bench of the International Criminal Tribunal for Rwanda (ICTR), we dealt with the case against the radio station *Mille Collines*. We had no precedents to rely upon – instead we looked to the work of the Human Rights Committee on freedom of speech and incitement. It is never easy to strike a balance between freedom of expression – which is one of our most precious and fundamental rights – and the equally vital need to protect individuals and communities from discrimination and violence. (For those interested in this, have a look at “*Rabat Plan of Action*,” which my office launched earlier this year.) But by looking to the studies and jurisprudence of the Human Rights Committee, the ICTR sentenced those responsible for the *Mille Collines* broadcasts to over thirty years in prison.

On that last item, some of you might recall the decision last year by the International Court of Justice in the case of Mr. Hissène Habré, Chad's infamous dictator from the 1980s. The follow-up to the case saw unprecedented international cooperation that resulted in the creation of a legal body in Senegal, West Africa, called the Extraordinary African Chambers. The Chambers are preparing to start Mr. Habré's trial next year on charges of crimes against humanity, war crimes, and torture. The procedural history contains fascinating turns and twists, and I urge all of you to read it. All I wish to do here is point out that behind all of this was another outstanding human rights treaty body, the Committee Against Torture, which decisively influenced the analysis of the International Court of Justice through their reports, jurisprudence, and advocacy.

And of course I am delighted to have someone at my side today who is far better qualified than I to speak of these matters,

Dean Claudio Grossman, a brave, stern, and principled Chair of the Committee Against Torture, which this year is marking the 25th anniversary of its creation. Over the last quarter-century, the work of your treaty body, Claudio, has made an enormous contribution to the prohibition and punishment of torture across the world. Its job is a staggering one: to hold 154 states parties to their obligations under the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee that you chair, Claudio, has, since 1988 received well over 500 individual complaints alleging state party violations of the Convention, and the Committee's reviews and findings have brought relief, redress, and justice into the lives of women, men, and children in many countries.

Let me pause here to pose a question: which country has been found to violate the Convention against Torture the

Had Japan more actively followed the Committee's recommendations for improving prevention, the population might have been better prepared for the recent nuclear tragedy in Fukushima and some of the worst effects might have been avoided.

in the Committee's jurisprudence on individual cases? The answer is Sweden, followed by Switzerland. This might come as a surprise – is torture that prevalent in those two countries? No, most of the cases are *non-refoulement* cases, and the reason Sweden and Switzerland top the list is that many lawyers who practice there are familiar with the recourse that the Convention offers, and are able to use them to effectively estop those countries from violating their *non-refoulement* obligations. I mention this to make a plea to all of you: as you leave this university and become practicing

lawyers, spread the word about the Conventions and their petition procedures. To prevent human rights violations and bring justice to victims all over the world, they must become better known, and lawyers must use these treaties to protect individuals and individual rights.

How have we done so far? Has the human rights system really led to systematic changes in the ways states behave? Obviously, we cannot claim that treaties and treaty bodies are the only agent of change. Change requires efforts by many actors – courts, civil society organizations, national human rights institutions, U.N. agencies, and parliamentary and inter-ministerial human rights committees all must play their role in moving treaties and treaty-body recommendations forward.

Empirical studies over the last ten years have explored the various impacts of the treaty system in areas such as reducing torture, promoting fair trials, increasing religious freedom, promoting child health, reducing child labor, or drafting the rights of women and children into national constitutions. Findings do suggest some positive and encouraging correlations between ratification and positive changes in state behavior, although the evidence is at times inconclusive. We are in urgent need of answers, answers that must be built into the reform and strengthening of the human rights treaty system that we must now undertake.

Here is the situation confronting us. The sheer number of states that have ratified human rights treaties has created an overwhelming workload for the treaty bodies and their

hard-pressed support staff in my office in Geneva. In fact, since my office was created in 1993, its workload has nearly tripled. In 1993, the seven treaties and protocols had received 742 ratifications by states; that number has now grown to over 2,000 state parties and eighteen treaties and protocols. New conventions and new ratifications demand more reporting and much more time for their review and the formulation of recommendations.

In addition, new optional protocols to the treaties enable citizens to directly petition to expert bodies regarding state violations. Five months ago, a groundbreaking new instrument entered into force: the Optional Protocol of the International Covenant on Economic, Social and Cultural Rights. This Protocol enables individuals to seek justice for violations of their economic, social, and cultural rights at the international level. As for the Convention on the Rights of the Child, I expect that soon the new Optional Protocol on a communications procedure will also enter into force.¹

These positive trends have also brought with them some challenges for the international human rights protection system, and we need to do something about this during the years ahead. The funding and resourcing of the treaty bodies have not kept up with the fast growth in the number of ratifications, and the system now risks collapse. If nothing is done to strengthen the system, in the case of one treaty body, the Committee on the Rights of Persons with Disabilities, a state will have to wait up to eight years for its reports to be reviewed by the relevant treaty body – effectively making the review meaningless.

In 2009, I launched a three-year consultation process with states, civil society, national human rights institutions, academics and U.N. partners, resulting in my 2012 report that comprised a series of recommendations to strengthen the system. Chief among them was a recommendation to introduce a simplified reporting procedure, and an extension of the reporting cycle to every five years. The recommendations, if followed, should permit states to know in advance when treaty bodies will consider their next reports and also allow other stakeholders to prepare their inputs according to a predictable and transparent calendar of meetings. Other recommendations dealt with strengthening the independence and expertise of the Committee members, enhancing treaty-body visibility and accessibility, and strengthening national-level capacity to implement treaties.

Since last year, the U.N. General Assembly has been considering how to move forward. Discussions will resume soon,

¹ The Optional Protocol will enter into force after the tenth state ratification. There are currently forty-three signatories and eight ratifications.

in February next year in New York, on a range of recommendations, many drawn from my report. The General Assembly is considering a significant increase in meeting time and human resources to support the work of the Committees. This would be a crucial step towards eradicating the backlogs and achieving a more transparent and predictable reporting procedure in the future. Dean Grossman and I have both urged the General Assembly to move quickly in February to act on current proposals, to strengthen the treaty body system, and thus secure the essential passage from treaty ratification to real implementation for all states parties. And here the treaty body system must look to its partners. Even with a strengthened treaty body system, treaty implementation will only be as effective as the network of actors prepared to work together for the improvement human rights performance on the ground.

The U.S. will soon submit its own human rights record to scrutiny. In March 2014, the Human Rights Committee in Geneva will begin its review of the fourth periodic report of the U.S., under the International Covenant on Civil and Political Rights. The dialogue promises to be a feast for law aficionados, covering issues such as the powers of the National Security Agency and the right to privacy, administrative detention in Guantanamo, the application of the Covenant in times of conflict and in the context of the fight against terrorism. You can all follow it on our live webcast, and you may

also wish to take a look at the Human Rights Committee's concluding observations once they are finalized.

Before concluding, I have another question for you: There are only three countries in the whole world that have not yet ratified the Convention on the Rights of the Child. Do you know which ones? They are Somalia, South Sudan, and the United States. Somalia and South Sudan surely have better excuses than the U.S. to explain why their legislative bodies still have not gotten around to ratifying the Convention. In addition, the U.S., which was so instrumental in the adoption of the U.N. Convention on Rights of Persons with Disabilities, still has not ratified it. 137 other States were faster. I mention all this as a call to the U.S. to ratify more international human rights treaties, while I am here in D.C., where it matters.

And let me in conclusion call on you to use your energy and vitality to try your very best to raise awareness of human rights in your different fields of work. In this way, you will do your part to help the international human rights treaty system connect where it counts for most – at home.

Thank you so much.