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# THE TREATY BODY COMPLAINT SYSTEM

A survey of recent decisions by treaty bodies on individual complaints



Photo: Hilary Woodward

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The ability of individuals to bring complaints of violations of their human rights before United Nations treaty bodies is a cornerstone of the UN human rights treaty system. There are currently five human rights treaty bodies that can, in certain circumstances, receive individual complaints. They are the Committee on Civil and Political Rights (CCPR), Committee on the Elimination of Racial Discrimination (CERD), Committee against Torture (CAT), Committee on the Elimination of Discrimination against Women (CEDAW), and Committee on the Rights of Persons with Disability (CRPD).<sup>1</sup> Another four treaty bodies – the Committee on Migrant Workers (CMW), Committee on Enforced Disappearances (CED), Committee on Economic, Social and Cultural Rights (CESCR) and Committee on the Rights of the Child (CRC) – have individual complaint mechanisms as well but these mechanisms are not yet in force.

The complaint procedure is a quasi-judicial mechanism, which allows the relevant treaty body to assess whether the State in question's actions violated its treaty obligations. Remedies can include payment of compensation to victims,<sup>2</sup> the repeal of violating legislation,<sup>3</sup> and the release of prisoners.<sup>4</sup> Additionally, in some cases where urgent situations require immediate intervention, the treaty bodies will adopt interim measures in order to ensure the victim is not in harm's way before the individual case can be heard.<sup>5</sup> The resulting body of decisions provides a guide for States, NGOs, individuals and other stakeholders in the interpretation of relevant human rights treaty provisions.

During the second half of 2010, the various treaty bodies decided on 51 individual communications,<sup>6</sup> finding violations of one or more provisions of the respective treaty in 67 percent of the cases. This is a marked improvement from the 33 percent average rate since 1977 and 50 percent violation rate in the first half of 2010. The Human Rights Committee accounts for 84 percent of all cases, followed by the Committee against Torture, which accounts for 10 percent.

Unfortunately, the inadmissibility rate remains high with most unsuccessful complaints being rejected at the admissibility stage. The most common reason for inadmissibility remains non-exhaustion of domestic remedies, which highlights a lack of understanding of the basic premise of the complaints system. This well established admissibility criteria dictates that complaints will not be considered by treaty bodies if the complainant still has available and effective domestic remedies through which to pursue the complaint. Nevertheless, complaints that are inadmissible on the basis of non-exhaustion of domestic

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1 The Human Rights Committee may consider individual communications relating to States parties to the *First Optional Protocol to the International Covenant on Civil and Political Rights*; CEDAW may consider individual communications relating to States parties to the *Optional Protocol to the Convention on the Elimination of Discrimination Against Women*; CAT may consider individual communications relating to States parties who have made the necessary declaration under Article 22 of the *Convention Against Torture*; CERD may consider individual communications relating to States parties who have made the necessary declaration under Article 14 of the *Convention on the Elimination of Racial Discrimination*; and CRPD may consider individual communications relating to States parties to the *Optional Protocol to the Convention on the Rights of Persons with Disabilities*.

2 For example, Human Rights Committee, ICCPR, Communication No. 1377/2005 (19 July 2010), which says the State party must provide the victim with 'full reparation and appropriate compensation.'

3 For example, CEDAW, Communication. No. 18/2008 (16 July 2010), calling for the State party to remove any requirements by the legislation that sexual assault be committed by force or violence.

4 For example, Human Rights Committee, ICCPR, Communication No. 1390/2005 (25 October 2010), stating that the State party was under an obligation to provide an effective remedy, including but not limited to the victims release.

5 For example in the Human Rights Committee, such situations that fall under rule 86 of the Rules of Procedure of the Human Rights Committee.

6 CCPR 43; CAT 5; CERD 2; CEDAW 1.

remedies continue to be brought forth and fail. This further diminishes the already limited resources of the treaty bodies and prevents the process as a whole from being as effective as it could be. Furthermore, it could be considered a waste of time and resources for victims and their representatives and create a false hope of international justice.

While violations of the respective treaties have been found in about one-third of all cases brought before the treaty bodies,<sup>7</sup> the effectiveness of the individual complaint system has been questioned – particularly with regard to long processing times and lack of implementation of treaty body decisions by the States in question. There have been 2,593 cases brought before the treaty bodies since the first cases were decided in 1977 and 424 cases remain pending before four treaty bodies.<sup>8</sup> Of particular concern is the length of time the committees take to reach a decision on the individual complaints. Of the cases decided on in the last six months, the majority had been open for an average of more than four years,<sup>9</sup> with some cases lasting more than six years.<sup>10</sup> The significant lapse in time between the opening of a case and its conclusion illustrates the concern that the treaty bodies are under-resourced.

Another area of concern is that 39 percent of petitioners were not represented by counsel. Unrepresented petitions predominantly originated from Commonwealth of Independent States (CIS), accounting for 55 percent of such cases. While it is a worrying trend that so many people do not have access to legal aid in connection with treaty body petitions, the statistics from the second half of 2010 indicate this has limited effect on their success. Unrepresented petitions are slightly overrepresented in negative admissibility decisions (46 percent) and have a slightly lower success rate (65 percent). However, the statistical sample is too small to draw reliable conclusions and the nature of the unrepresented inadmissible petitions show a more concerning picture. These cases are usually rejected due to significant shortcomings in the petitions, such as non-exhaustion of domestic remedies, prolonged delays and totally unsubstantiated claims. To remedy this situation, it may be advisable for the Office of the High Commissioner for Human Rights' (OHCHR) petitions unit to encourage unrepresented petitioners to find representation and, if relevant, make reference to national or international NGOs undertaking such activities.

The vast majority of decisions in the second half of 2010 were decided by the Human Rights Committee and CAT. The majority of individual complaints brought before the Human Rights Committee concerned equal protection by the law without any discrimination, the right to fair trial, the risk of arbitrary

deprivation of the right to life, torture and non-refoulement, and arbitrary detention. These issues also accounted for the majority of the violations found. Reflecting what seems to be a general tendency of a relatively narrow geographical distribution of cases, 82 percent of complaints related to States from Western Europe and Others Group (WEOG), Eastern Europe or central Asia. Most of the cases brought before CAT concerned the prohibition of refoulement, with 100 percent of the complaints relating to WEOG.<sup>11</sup> Similar to the first half of 2010, the majority of cases related to Sweden and Switzerland.<sup>12</sup> Both cases brought before CERD in the second half of 2010 involved Denmark and concerned the right to an effective remedy against racist statements.

### Case study: Human Rights Committee reacts to repression in Belarus

On 19 December 2010 Belarus held elections, another in a long line of elections accused of lacking in freedom and fairness. The lead-up and aftermath of the elections were marked by incidents of repression against political opponents and others daring to speak out against Mr Alexander Lukashenko.

In the period leading up to the December elections, the Human Rights Committee issued a number of decisions that responded to some of the main methods being used to oppress political opponents in Belarus. In the second half of 2010, the Human Rights Committee issued five decisions, with four of the victims belonging to a party or group of political opposition.

In the case of Mr Mikhail Marinich<sup>13</sup> issues included the violent oppression of freedom of expression, violations of the presumption of innocence, cruel and inhumane punishment or degrading treatment, and poor conditions of detention of individuals. The case relates to a former high-level official who was a candidate for the presidential election in 2001. He claimed to have been arrested by the KGB, interrogated without legal assistance, and held in inhumane and degrading conditions both prior to his trial and after his conviction. Additionally, he claimed that a biased court had tried him on false charges. Despite becoming very ill during his imprisonment, he did not receive adequate medical treatment and suffered permanent damage to his health.

The Committee noted that States parties to the ICCPR are under an obligation to observe minimum standards in detention centers, including baseline provisions of medical care; Belarus had failed to meet its obligation. The Committee also found that the provision defining arbitrary

7 Out of the 2,593 cases, 787 have been found to be violations.

8 The total number of pending cases is 424, composed of the following: CCPR 309; CAT 102; CEDAW 9; CERD 4. At the time of writing, CRPD has not made decisions on individual communications.

9 41 months.

10 Communication No. 1344/2005 against the Russian Federation lasting 76 months, and Communication No. 1225/2003 against Uzbekistan lasting 82 months.

11 Cases related to Sweden, Switzerland, Canada, and Denmark.

12 Sweden and Switzerland accounted for three out of five cases brought before CAT.

13 Communication No. 1502/2006.

detention must be interpreted broadly to include 'elements of inappropriateness, injustice and lack or predictability'. Therefore, those in custody must be treated not only lawfully but also 'reasonably' under the circumstances. The Committee emphasised the required presumption of innocence, and noted that Belarus had violated this presumption when it aired information suggesting the victim's guilt prior to the end of the investigation and trial.

Three of the cases against Belarus involved non-violent oppression of the right to freedom of expression and association, particularly freedom to express viewpoints in opposition to the current political regime and to join opposing political parties. One case relates to Mr Vladimir Katsora,<sup>14</sup> who was a member of a minority political party and took part in the creation of an electoral bloc to challenge the Government's proposals for amending the Constitution. While the formation of electoral blocs is permitted under Belarusian law, State registration of political parties is mandatory. The Belarusian court found the victim guilty of engaging in activities on behalf of an unregistered political party and destroyed 14,000 leaflets expressing the views of the electoral bloc.

In the case of Mr Katsora, the Committee analysed two elements to conclude a violation of freedom of expression had occurred. Firstly, it assessed whether the law restricting political activism to State registered entities creates an obstacle regarding the exercise of the freedom to impart information. Secondly, the Committee looked at whether such obstacles were justified either due to (1) respect for the rights and reputations of others; or (2) for the protection of national security or public order. The Committee found that the victim's rights under articles 14 and 19 of the Covenant were violated because the restriction imposed by the State was not necessary for a legitimate purpose.

The Committee revisited the registration requirement in a later case involving the same author and two other individuals.<sup>15</sup> This time, the Committee held that the law stipulating the registration requirement does not meet the requirement of Article 22 in relation to the freedom of association. The Committee emphasised that in order for a State to restrict the right to freedom of association it must meet the following conditions: (1) it must be provided for by law; (2) it may only be imposed when it is necessary in the interest of national security, or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others; and (3) it must be 'necessary in a democratic society' for achieving one of these purposes. In this case, the Committee held that while the restriction was part of the law, the State party did not advance any argument as to why the restrictions were necessary and therefore found the law to be in violation of Article 22.

<sup>14</sup> Communication No. 1377/2005.

<sup>15</sup> Communication No. 1383/2005.

Similarly, the Committee found in the case of Mr Leonid Sudalenko,<sup>16</sup> that the restriction of the domestic law that allows the State to refuse a person's candidacy was overly broad and could be exploited to unreasonably restrict an individual's right to take part in or conduct public affairs, vote and be elected to a public office. In both cases, the Committee emphasised the need for narrowly tailored and necessary restrictions on the right to freedom of expression and cautioned against domestic laws that could be interpreted too broadly in practice.

## CONCLUSION

While the effectiveness of the treaty body complaint system seems to be improving compared to the long-term statistics and the situation in the first half of 2010, there is still progress to be made. The main concern should be to lower the frequency of complaints rejected at the admissibility stage and ensure victims have access to representation. Furthermore, as highlighted from the case examples from Belarus, where the Government continued to undertake denounced practices both before and after the December 2010 elections despite Human Rights Committee findings, there is still a significant implementation gap. These and many other issues are currently being actively debated in the context of the ongoing treaty body reform process. The consultative stage of this process is likely to be concluded by early 2012. ■

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<sup>16</sup> Communication No. 1354/2005.