

## Maximizing the Message: Lessons for Treaty Bodies from Human Rights Advocacy

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Most civil society actors take the ultimate goal of treaty body reform to be improving the respect for human rights by states parties, rather than streamlining, harmonizing or facilitating their operations *per se*. There is no doubt that efficiencies and economies can be achieved, and this could improve the attitude of many states towards filing their reports, responding to questions, and generally supporting the treaty bodies. But there is also no doubt that the entire U.N. human rights structure is woefully under-resourced, and that real reform will require real financial commitments if the exercise is not to be simply a screen for cost savings or worse, further malnourishment of the human rights mechanisms.

With this in mind, a key question seems to be what will yield greater impact on awareness, behavior and policies of states parties than the present system, without immense additional cost? This is not a bureaucratic question, but ultimately a political one. And while that makes it to some degree uncomfortable, it is at least quite familiar to human rights activists worldwide, who with little in the way of power or assets, pursue the goal of moving politicians and officials to better respect for the rights of people they may not like very much.

Human rights activists deploy many strategies—public campaigning, dialogue with government, professional or public education, litigation, reporting – just to name a few. But despite the proliferation of strategies, one of the most enduring and direct remains “naming and shaming” – reporting the facts of what happened to whom and who is responsible, in an effort to generate opprobrium and bring pressure for change onto the responsible authority. This may not be the best or only approach in every situation, but it is in various forms a core strategy.

Treaty bodies at first glance seem quite a bit different than activist groups – they are scholarly expert groups assembled by diplomatic process that function more like government bodies than cause movements. They consider and evaluate reports, pronounce on complaints, issue commentary and elucidate the law. These activities take place in UN assembly halls, or on paper. While some engage in fairly sharp and pointed dialogue with states, or consider particular human rights complaints, or review and parse difficult situations, their primary audience seems to be states, and their objective not so much shaming and triangulating pressure as directly engaging and persuading.

But as we well know, treaty bodies and the civil society of the states parties they review are intimately linked. None of the functions of treaty bodies can be successful without a steady flow of facts and information, and states are for various reasons not particularly forthcoming or detailed about their most serious problems with human rights; it is those

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dissatisfied with state performance who are the supply lines here. NGOs feed extensive information, often in the form of “shadow reports” and suggested questions, and broadcast the treaty bodies comments and reports back in detail to the field. In large part, it is this process of intermediation to the public that motivates state responses, and ensures that in the interim between reports, complaints and comments some pressure stays on. Civil society groups are not diplomats and can translate legal analysis or careful phrasing into terms that move the media and the public. But treaty bodies are uniquely situated, and from their elevated remove are able to plainly probe and criticize, sometimes more directly, more securely and to greater effect than can local experts. These bodies should do more to get their message out to critical audiences, and in a way that carries with it the imprimatur and prestige of their expert U.N. character.

Who are those critical audiences? While government and civil society are surely direct stakeholders, they are already in those assembly halls and reading the reports. To reach a wider net—such as activists in-country, officials and bureaucracies outside the diplomatic corps, legislators, litigators, the judiciary, educators, the media, and finally the general public—different approaches are needed.

Accessibility is a major hurdle, with few treaty bodies ever visiting the countries whose record they consider. Field visits create an occasion for media coverage, and for introducing the existence of treaty bodies to a wider audience. But even if travel is difficult to arrange or expensive, there are other ways of visiting, including by broadcast, teleconference, live-streaming of proceedings, virtual reality visits (either to the field or to Geneva), methods that are seldom used. Internet platforms that are designed for a particular country’s stakeholders, possibly enabling interactive features, could enable treaty bodies to remain “present” as well as to “visit.” While there are some confidentiality concerns in the complaints process, a great deal of the activity in other processes can be made more accessible to the public.

Speaking in terms and through media that can penetrate is another aspect of accessibility. Ideally, this would include translation into the local language, as the UN languages are often not accessible to those most marginalized, who are often the targets of human rights abuse. An interesting example of “translation” is the work of Inclusion Europe in translating the Committee on the Rights of Persons with Disabilities into “easy read”<sup>2</sup> format; a practice one can’t help thinking the committee should undertake itself for every report.

But language is hardly the only barrier. A quick glance on May 22, 2017 at the Human Rights Committee’s page on the OHCHR website<sup>3</sup> captures a dense, small-print forest of legal documents, state responses, civil society submissions, treaty links, schedules, etc.

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<sup>2</sup>Inclusion Europe, “United Nations checked the EU’s progress on disability”  
<https://www.google.com/search?q=inclusion+europe+committee+on+rights+of+persons+disabilities&oi=nclusion+europe+committee+on+rights+of+persons+disabilities&aqs=chrome..69i57.13093j0j4&sourceid=chrome&ie=UTF-8#>

<sup>3</sup> See <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>

The “news” at the top of the page is a January release announcing the death of Sir Nigel Rodley. It would be reasonable to assume that the website is for the convenience of U.N. bureaucrats. A recent press release<sup>4</sup> (accessed through a link to press releases located at the very bottom of the home page), on what might be a compelling topic—discussion of a new general comment on the right to life—is essentially dry minutes of a session, noted to resume two days in the future. It begins with the exciting news that “[t]he Human Rights Committee this morning continued its discussion on draft General Comment No. 36 on Article 6 on the right to life of the International Covenant on Civil and Political Rights.” Now it might be interesting to prisoners on death rows, not to mention the thousands of activists who campaign daily against the death penalty to learn that one point decided in that session was to stipulate that the death penalty “can never be imposed, if it was not provided by law” for the particular offence. But that’s buried in the fourth paragraph. Duly noted, however, was the committee rapporteur’s decision not to use simplified language for lay people but to term the rationale for this decision in the original Latin of *nulla poena sine lege*.<sup>5</sup> (And no, I didn’t make this up.)

Unfortunately, this is fairly typical of communications in the land of treaty bodies, written by lawyers for other lawyers with no effort to interest, much less inform anyone else. It would not be that difficult or onerous to produce materials that more effectively conveyed the essence of treaty body pronouncement to a broader audience, even while retaining the more scholarly and nuanced legal commentary or records of dialogue generated.

At my organization, we produce long, meticulously researched reports accompanied by legal and policy analysis. But we know relatively few people will read the whole report, so for more popular consumption we also compose press releases that summarize main points, videos, editorials, blog posts, slideshows and tweets. These are patterned on the message of our longer analytic pieces, but much more likely to be a gateway into them for a larger audience. We also translate our reports, not simply into the language of the place concerned, but into languages of other non-English places that may find the topic of interest (for example, our reports on the US are often translated into other languages). And we also now commission illustrations, cartoons and very brief videos that can easily be disseminated on social media.

This may strike some as beneath the dignity of these important bodies, but it is worth recalling what marketers know well, that many people get their information and news from social media, particularly via mobile phone,<sup>6</sup> and that visual material gets clicked on the most. Anecdotally, we have found for at least a decade that when meeting with policy

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<sup>4</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21441&LangID=E>

<sup>5</sup> Literally “no penalty without a law” or the principle that punishment cannot be imposed for a matter that was not prohibited by law.

<sup>6</sup> Some Special Rapporteurs have taken to Twitter as a way to disseminate their publications and react quickly to crises and developments; see David Kaye, U.N. Special Rapporteur on the promotion and protection of the right to freedom of expression @davidkaye and Maina Kiai, U.N. Special Rapporteur on rights to freedom of peaceful assembly and of association @MainaKiai\_UNSR.

makers, having audio-visual material as well as printed material increases attention, interest, and length of meetings. The other obvious fact is that repetition of a message tends to increase memory and internalization of it.

While I am not suggesting that treaty bodies now tweet instead of issue reports and comments, ignoring new media will greatly limit the impact of their work and the acceptance and internalization of international human rights law generally. Any given report can have a number of important determinations, often buried in the lengthy recitation of procedure, prior history and submissions, that could be reiterated in a variety of ways, and at appropriate junctures when they are relevant to developing news. Making treaty body pronouncements accessible to local media will encourage state response, and will likely produce more engagement than simply confining dialogue to the halls of the U.N. and the demurrals of diplomats.

Even if you believe that it is a distraction for treaty bodies to reach out to the media and public, and that they should focus their limited resources on jurists, diplomats and civil society groups, the status quo on organization and outreach is ineffective. With the possible exception of the General Comments, it is difficult to find particular issues in treaty body publications unless you know what you are looking for. For example, if you are interested in the latest reporting cycle of your country under a particular treaty, that is not too hard to locate, but if you wish to know whether treaty obligations survive transitions in sovereignty, good luck in finding the important statement<sup>7</sup> of the Chairman of the Human Rights Committee on 20 October 1995 relating to the consideration of the fourth periodic report of the United Kingdom in relation to Hong Kong. Not all treaty bodies have active complaint or inquiry procedures, and for those that do, the determinations are not easily searchable or well organized (not to mention quite prolix). From the point of view of making the law, and progressive, ongoing interpretation of the law, generally accessible, the presentation of treaty body pronouncement and decision is poor unless you are quite rich in time or research assistants.

Tackling these serious deficits in communication would take resources, but thanks to modern technology, not that much. The burden of outreach is common to all the treaty bodies, and could be more centralized. It can also be aided by third parties such as universities and civil society groups who already contribute heavily to the work. An ideal approach would be a comprehensive examination of what impact is sought, who the target audiences are, and how work might change to reach these audiences, both in terms of technology and communication products. This is the least that can be done towards the aim of making treaty bodies more effective in influencing our understanding of rights, public and professional expectations, and ultimately the behavior of states.

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<sup>7</sup> “Once the people living in a territory find themselves under the protection of the International Covenant on Civil and Political Rights, that protection cannot be denied to them by virtue of the mere dismemberment of the territory or its coming within the jurisdiction of another State or of more than one State.” Report of the Human Rights Committee Volume I General Assembly Official Records, Fifty-first Session Supplement No. 40 (A/51/40), para. 72 pp. 16-17, *available at* <http://www.refworld.org/pdfid/3f474adb4.pdf>.