Shifting the Human Rights Reporting Paradigm: From Description to Assessment of State Practices

RESPONSE MEMO

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Human rights treaty bodies should reframe reporting obligations as part of states’ duties to assess, and not just describe, their human rights situations on an ongoing basis. In contrast to the dominant model of state reporting, which is largely descriptive, an assessment-based model of state reporting is likely to produce information exchanges of higher quality, which are more consistent with domestic self-monitoring – and over the longer term, more closely associated with implementation and compliance.

Participation in human rights treaty systems is intended to promote implementation and compliance. For states with weak records of compliance, the public and long-term commitment to a treaty requires periodic exchanges of information and ongoing engagement with the treaty body. There is the possibility for incremental, often symbolic changes to result, exerting an indirect influence over time and reinforcing implementation. For states with stronger compliance records, treaty participation can support the strengthening and sustainability of domestic rights mechanisms. Treaty membership, in principle, matters.

At the heart of the system, is the requirement of reporting periodically to treaty bodies. State reporting is indeed a key monitoring tool for human rights treaties, complementing the individual complaints system. The system revolves around information flows, allowing states to communicate about implementation and compliance, and providing the treaty body and other actors with opportunities for input. Those on the receiving end of state reports can raise questions or issues of concern, as well as make comments, observations, or recommendations, with state parties subsequently following up in response. The process of state reporting thrives on this kind of discursive influence.

It is little wonder, then, that those evaluating state reporting obligations with human rights treaties often focus on certain measurable outcomes, such as rates of reporting, timeliness of reports, and delays in the review process. All point to a system whose success remains questionable or at best mixed. Relatively, it is true that reporting rates are fairly low, the review process is marked by long delays, and the precise value of state participation remains unclear. Given these apparently weak outcomes, it is perhaps unsurprising that recommendations to reform the treaty system have often focused on reducing the bureaucratic costs of preparing and submitting reports, including calls for more substantial overhauls in the form of streamlining or even consolidating reporting requirements. These steps seem essential, but they also may be partial if the goal is to enhance the quality of state reports, and not just the completion and submission of reports.

Descriptive vs. Assessment-Based Reporting

Reporting requirements are currently framed as obligations that states have to document their implementation of and compliance with a treaty. The requirements for state reporting in the Convention against Torture (CAT), for example, illustrate these expectations. Article 19 calls on the State Party to report “the measures they have taken to give effect to their undertakings under this Convention.” Then, every four years, they are to report “new measures taken.” The Committee responds with “general comments”; and the
State Party, in turn, responds with “any observations it chooses.” Some of this exchange appears in the Committee’s annual report.

This dominant reporting paradigm is descriptive, with important consequences. The purpose of state reporting, accordingly, is to require states to communicate with an external audience; indeed, to the extent that the state perceives benefits to reporting, they are largely external. Additionally, given the expectation that states will record the measures they have taken and challenges they have encountered, explanations or justifications tend to pervade state reports, which in turn can invite selectivity and constrain others’ responses. Under this model, reporting is viewed as a periodic requirement, offering limited incentives to collaborate, and the treaty body plays the role of external monitor.

Alternatively, according to an assessment-based model of state reporting, information exchanges can take a very different form. Reporting can be reframed as part of the state’s obligation to assess on an ongoing basis its human rights situation, recognizing that human rights implementation and compliance are most often realized progressively. The perceived benefits of assessment-based reporting are mostly internal, with reporting depicted as an opportunity to evaluate and improve. This model of state reporting encourages different kinds of information: future-oriented, detailing what needs to be improved, and outlining concrete strategies and next steps. The treaty body and others take the role of providing feedback and expertise, in what is considered an iterative process of engaging with both international and domestic actors.

### State Reporting Paradigms: Descriptive vs. Assessment-Based

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The shift implied by these two approaches may seem subtle, but it can be significant. Some evidence in fact exists that states that produce higher quality reports are following an approach that closely tracks an assessment-based model. For example, in a study of state reporting to the Committee for the Convention against Torture, published in *Human Rights Quarterly* (2015), Cosette Creamer and Beth Simmons define higher-quality state reports as those that acknowledge shortcomings, provide supporting data, and respond to committee comments — all things that would be consistent with assessment-based reporting. Their contention that the value of state reporting, moreover, may be to reinforce self-monitoring domestically is also consistent with assessment-based reporting.

As for variations in state reporting, Creamer and Simmons found that newer democracies, states with a national human rights institution (NHRI), and those in a region where reports were taken seriously were more likely to submit higher quality reports. Perhaps these are the mediating factors that help to account for why some states adopt a more assessment-based approach to reporting and submit higher quality reports. Newer democracies would seem more likely to focus on future improvements; and NHRIs, which are centrally charged with promoting treaty implementation and state reporting, are well positioned to socialize states into submitting reports that are more akin to assessment than pure description.

If assessment-based reporting reflects domestic and regional dynamics, there is even more reason to support a substantial reframing of international expectations about state reporting, in addition to reducing the bureaucratic burdens of reporting. The dominant paradigm encourages states to submit reports in what is
often a legalistic and fairly static exercise, checking off items, describing steps taken to align with the treaty's requirements, and documenting challenges. Assessment, which is pervasive across contemporary organizations, calls instead for states to evaluate and commit explicitly to a future course of action. While an assessment-based model does not guarantee a high quality of reporting, it does at least push states to take rhetorical responsibility for their policies and outcomes.

_Promoting Quality in State Reporting_

State reporting can facilitate gradual, institutional change, but it is time to begin paying attention to the quality of state reports, beyond rates of reporting or timeliness of reports. In this sense, treaty bodies should take two substantial steps. First, they should break free of the origins of the treaty system and dramatically reduce bureaucratic barriers to state reporting, considering options to streamline and consolidate requirements across treaties. Again, if the goal is to elicit higher quality information, which can facilitate more meaningful exchanges, these administrative hurdles must be overcome.

Second, given that states already vary in the quality of the reports they submit — with higher quality reports more closely resembling assessment-based reporting — reframing reporting obligations is well worth considering. States should be asked to submit reports that reflect a duty to assess their own human rights situations on an ongoing basis, including the obligation to identify concrete areas for improvement; specific steps they will take to improve; and how they will monitor the success of their efforts. Some states already do this, and international expectations should catch up to these best practices.

In a world where NHRI and domestic human rights mechanisms now exist, treaty bodies should reframe reporting as part of states’ duties to self-monitor, assessing and improving themselves on an ongoing basis.