

# Towards a common institutional trajectory? Individual complaints before UN treaty bodies during their 'Booming' years

Citation for published version (APA):

Çalı , B., & Galand, A. S. (2020). Towards a common institutional trajectory? Individual complaints before UN treaty bodies during their 'Booming' years. *International Journal of Human Rights*, 24(8), 1103-1126. <https://doi.org/10.1080/13642987.2019.1709447>

**Document status and date:**

Published: 13/09/2020

**DOI:**

[10.1080/13642987.2019.1709447](https://doi.org/10.1080/13642987.2019.1709447)

**Document Version:**

Publisher's PDF, also known as Version of record

**Document license:**

Taverne

**Please check the document version of this publication:**

- A submitted manuscript is the version of the article upon submission and before peer-review. There can be important differences between the submitted version and the official published version of record. People interested in the research are advised to contact the author for the final version of the publication, or visit the DOI to the publisher's website.
- The final author version and the galley proof are versions of the publication after peer review.
- The final published version features the final layout of the paper including the volume, issue and page numbers.

[Link to publication](#)

**General rights**

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal.

If the publication is distributed under the terms of Article 25fa of the Dutch Copyright Act, indicated by the "Taverne" license above, please follow below link for the End User Agreement:

[www.umlib.nl/taverne-license](http://www.umlib.nl/taverne-license)

**Take down policy**

If you believe that this document breaches copyright please contact us at:

[repository@maastrichtuniversity.nl](mailto:repository@maastrichtuniversity.nl)

providing details and we will investigate your claim.



## Towards a common institutional trajectory? Individual complaints before UN treaty bodies during their 'Booming' years

Başak Çalı & Alexandre Skander Galand

To cite this article: Başak Çalı & Alexandre Skander Galand (2020) Towards a common institutional trajectory? Individual complaints before UN treaty bodies during their 'Booming' years, *The International Journal of Human Rights*, 24:8, 1103-1126, DOI: [10.1080/13642987.2019.1709447](https://doi.org/10.1080/13642987.2019.1709447)

To link to this article: <https://doi.org/10.1080/13642987.2019.1709447>



Published online: 14 Jan 2020.



Submit your article to this journal [↗](#)



Article views: 696



View related articles [↗](#)



View Crossmark data [↗](#)



# Towards a common institutional trajectory? Individual complaints before UN treaty bodies during their ‘Booming’ years

Başak Çalı<sup>a,b</sup> and Alexandre Skander Galand<sup>c,d</sup>

<sup>a</sup>Hertie School of Governance, Berlin, Germany; <sup>b</sup>Center for Global Public Law, Koç University, Istanbul, Turkey; <sup>c</sup>European University Institute, Fiesole, Italy; <sup>d</sup>Centre for Fundamental Rights, Hertie School, Berlin

## ABSTRACT

The expanding number of UN treaty bodies with competence to rule on individual complaints as well as the increasing amount of complaints lodged before these bodies trigger the question whether they are capable of acting as a unified institution when dealing with individual complaints or whether they remain as a fragmented institutional site. In this article, we comparatively analyse the case law of all treaty bodies between 2013 and 2016 with the aim of assessing whether UN treaty bodies are moving towards a common institutional trajectory. We find that despite textual differences, the treaty bodies’ case law displays both early signs of a common institutional trajectory and risks of institutional fragmentation. The most significant common institutional trends are access friendliness; self-referential citations, a preference for implicit harmonisation; and case by case activism with respect to individual remedies. Yet, we also identify lack of systematic and explicit cross treaty-fertilization and diverging approaches to specifying general remedies as risks that may undermine the formation of a common institutional trajectory. We argue that the early signs of informal collective institutionalisation may be capable of fostering a common institutional identity in the years to come, if risks of fragmentation are acknowledge and mitigated.

## ARTICLE HISTORY

Received 28 June 2019

Accepted 22 November 2019

## KEYWORDS

UN treaty bodies; comparative international human rights law; human rights remedies; fragmentation; UN treaty body reform

## 1. Introduction

Since 1976, when the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) entered into force, the UN treaty bodies (or Committees as they are also known) have proliferated and expanded their capacity to receive and handle individual communications.<sup>1</sup> The UN treaty body system now comprises of nine core human rights treaty bodies. At the time of writing, eight of these bodies have the active capacity to review individual petitions against States that have opted into individual complaints mechanisms under the relevant provisions of international human rights treaties.<sup>2</sup> The only treaty body that does not have an active individual complaints mechanism is the

**CONTACT** Başak Çalı  [alexandre.s.galand@hotmail.com](mailto:alexandre.s.galand@hotmail.com)

This article has been republished with minor changes. These changes do not impact the academic content of the article.

© 2020 Informa UK Limited, trading as Taylor & Francis Group

Committee on Migrant Workers (CMW) – the threshold of ten States parties making a declaration accepting the individual communication procedure has not been reached yet.<sup>3</sup>

Parallel to the rise in the ability to receive individual complaints, there has also been a steady increase in the number of States that have accepted the right to individual petition before the Committees.<sup>4</sup> Furthermore, the Committees are not short of cases. Between 2013 and 2016, the Committees experienced a ‘boom’, with an 85 per cent increase in the number of registered individual communications.<sup>5</sup>

Despite the large body of case law generated by eight treaty bodies, the institutional features with respect to how the Committees approach the handling of individual complaints has, thus far, lacked rigorous comparative examination. The majority of the literature on the treaty bodies focuses either on how each of the Committees have developed substantive rights individually or in comparison to regional courts and commissions,<sup>6</sup> or on the process of reform of the UN treaty bodies.<sup>7</sup> This literature identifies the risks of conflicting and fragmented jurisprudence on substantive rights in the proliferation of individual complaints handled by treaty bodies as a central concern. In 2006, Louise Arbour, then UN High Commissioner for Human Rights, proposed the establishment of a single unified treaty body because

[t]he existence of seven treaty bodies acting independently ... raises the possibility of diverging interpretations which may result in uncertainty with respect to key human rights concepts and standards, which threatens a holistic, comprehensive and cross-cutting interpretation of human rights provisions.<sup>8</sup>

Others proposal, such the World Court of Human Rights, have also been put forward to alleviate the risk of fragmentation at the level of substantive norms.<sup>9</sup>

This article complements this literature by shifting the attention from substantive analysis of case law to a comparative examination of whether the Committees share a common institutional trajectory when handling individual complaints. We investigate this by examining 1) approaches to admissibility criteria; 2) modalities of cross-fertilisation; and 3) approaches to remedies.<sup>10</sup> Approaches to admissibility show whether there is a common institutional culture concerning access by individuals to the Committees. Modalities of cross-fertilisation help us to assess how individuals are expected to argue their cases before UN treaty bodies, what authorities they are expected to cite, and in turn, whether the treaty bodies are developing as self-contained regimes or as sites of systemic integration.<sup>11</sup> Approaches to remedies allow us to determine whether individuals can expect similar remedial results before different treaty bodies.<sup>12</sup> Taken together, the comparative analysis of these institutional features allows an assessment of whether treaty bodies are developing a common institutional trajectory, raising similar expectations amongst individuals appearing before them despite their formal standing as separate institutions.

This article surveys the case law of all UN treaty bodies from 2013 to 2016. This time-frame allows for a comprehensive comparison of the institutional trajectories of all eight active treaty bodies. We find that despite textual differences, the treaty bodies’ case law displays both early signs of a common institutional trajectory and risks of institutional fragmentation. The most significant common institutional trends are access friendliness; self-referential citations, a preference for implicit harmonisation; and case by case activism with respect to individual remedies. Yet, we also identify lack of systematic and explicit cross treaty-fertilization and diverging approaches to specifying general remedies as risks that may undermine the formation of a common institutional trajectory. In what

follows we support these findings through case law analysis and discuss their implications for the future development of the system in the light of ongoing reform discussions of UN treaty bodies in 2020 and the rise in the popularity of UN treaty body petitions amongst individuals and communities across the globe.

## 2. Admissibility

UN treaty bodies are access friendly. Cases reviewed between 2013 and 2016 reveal four common trends in support of this: 1) broad constructions of scopes of jurisdiction; 2) the consolidation of the exhaustion of effective judicial remedies rule; 3) the rejection of non-judicial barriers to exhaust domestic remedies; and 4) the refinement of the no forum principle.

### 2.1. Broad constructions of jurisdiction

The broad construction of jurisdiction can be seen with respect to how treaty bodies approach the definition of victim status, rules of non-retroactive application of treaties and the temporal scope of victimhood. In principle, to have standing before all the treaty bodies ‘an individual has to be actually and directly, personally affected’.<sup>13</sup> While victims can group their communications, legal entities are usually not entitled to file public interest communications.<sup>14</sup> Standing is more broadly formulated before the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Elimination of Discrimination Against Women (CEDAW) and the Committee on Economic, Social and Cultural Rights (CESCR), whose founding instruments allow for ‘petitions from individuals and groups of individuals’.<sup>15</sup> In *TBB-Turkish Union in Berlin/Brandenburg v Germany*, however we find that CERD has embraced a broad notion of direct victim status that includes associations.<sup>16</sup> In this case, CERD held that the TBB-Turkish Union could be a legitimate victim within the scope of its founding instrument, even if it was a legal entity.<sup>17</sup> CERD came to this conclusion even though the link between the racist speech made by a Berlin based politician and the hate emails the TBB-Turkish Union received following the speech could not be causally connected. The Human Rights Committee (HRC) adopted a similar approach in *Rabbae v The Netherlands*. It held that despite the fact that its jurisdiction could not be seized by an *actio popularis*, the authors were members of a particular group targeted by a Dutch politician’s racist speech.<sup>18</sup> The HRC noted that the racist statements had specific consequences for the petitioners, by creating discriminatory social attitudes against the Muslim community of which they were members. The notion of direct victim status has been expanded before both Committees beyond direct and targeted harm. We thus find that the notion of direct victim status has been enlarged before Committees, both those that have legal jurisdiction over legal entities, and those that do not.

A related but different development took place with respect to widening of the scope of victim status. The Committee on the Rights of Person with Disabilities (CRPD), for example, widened the definition of disability to include ‘illness’ in the case of *S.C. v Brazil*.<sup>19</sup> In *M.W. v Denmark* CEDAW found that a communication regarding gender-based discrimination in custody proceedings, which eventually involves the best interest of the child, could also be made on behalf of the author’s male child before CEDAW.<sup>20</sup>

Treaty bodies also exhibit leniency towards the temporal application of their treaties. In the case of *A.F. v Italy*, the CRPD relaxed the principle of non-retroactivity, by providing that an

'instantaneous act with enduring effects' after the entry into force of the CRPD would be admissible.<sup>21</sup> This was a further exception to the already established continuing violation principle.<sup>22</sup> In *I.D.G. v Spain*, the CESCR considered that although the alleged violations occurred before the entry into force of the Optional Protocol for the State party in question (i.e. 5 May 2013), the communication was admissible because the Constitutional Court's decision of 16 October 2013 rejecting the applicant's claims meant that the possibility of a violation of the author's rights existed at that time.<sup>23</sup> In a number of cases, the HRC has found that people who have already been deported continue to have victim status under the ICCPR.<sup>24</sup>

Overall, this case law demonstrates that over the years the Committees have broadened their personal, material and temporal jurisdiction. Besides allowing more communications to reach the merits stage, such development may be taken as a signal to petitioners of the Committees openness to receiving more communications.

## **2.2. Reasonableness and effectiveness of domestic remedies**

The second trend is the consolidation of the exhaustion of effective domestic remedies rule across the treaty bodies. This is the case both with respect to the treaty bodies' individual assessments of the exhaustion of domestic remedies requirement and with regard to the objective evaluation of the effectiveness of the remedies. With respect to the former, various Committees have highlighted the importance of the reasonableness of the exhaustion requirements imposed by States. In *E.S. v United Republic of Tanzania*, CEDAW asserted that the requirement of the exhaustion of domestic remedies was met in situations where domestic proceedings are unreasonably prolonged.<sup>25</sup> In *X v Argentina*, CRPD found that the author had made a sufficient effort to bring his complaints before the national authorities and that the extraordinary remedies in place for the processing of the complainant's application would excessively prolong the process.<sup>26</sup> In *Carreño v Spain*, CEDAW found that since Spain did not inform the complainant that there were other legal remedies available, the alleged victims were deemed to have exhausted domestic remedies because they had no knowledge of the other available options.<sup>27</sup> In *R.A.Y. v Morocco*, the Committee Against Torture (CAT) held that the applicant was only required to exhaust remedies that were directly related to the risk of torture.<sup>28</sup>

With respect to the objective assessment of effective domestic remedies, the HRC underlined that the exhaustion requirement only applies where there are *effective* remedies that have a reasonable chance of success.<sup>29</sup> In three cases against Nepal, the HRC clarified that non-judicial bodies and future transitional justice mechanisms do not constitute remedies that need to be exhausted.<sup>30</sup> Indeed, the HRC in the case of *C.L.C.D. v Colombia*,<sup>31</sup> as well as the Committee on Enforced Disappearance (CED) in *Yrusta v Argentina*, affirmed that in cases of serious violations a judicial remedy is required.<sup>32</sup> Hence, we find that the criteria of reasonableness and effectiveness have increasingly guided the treaty bodies in their assessment of which domestic remedies really needed to be exhausted for a communication to be admissible.

## **2.3. Extra-judicial barriers to the exhaustion of domestic remedies**

The third trend concerns the openness of the Committees to take into account well-substantiated non-judicial barrier arguments for the exhaustion of domestic remedies. In

*Sankhé v Spain*, CEDAW held that domestic remedies would have been exhausted if the applicant had shown why she could not afford a lawyer to appear before the Constitutional Court.<sup>33</sup> In *Y.B. v Russia*, the HRC held that it would consider a claim admissible under Article 14(1) of the ICCPR if the respondent State Party had raised a financial barrier which would de facto have prevented the complainant from accessing the court.<sup>34</sup> In *Omo-Amenaghawon v Denmark*, the HRC found that whilst the author did not successfully exhaust domestic remedies due to technical reasons relating to her place of residence, the fact that Denmark did not challenge this failure to exhaust all domestic remedies allowed it to examine the case.<sup>35</sup> Non-judicial barriers are not taken as a valid justification for failing to exhaust domestic remedies, unless they reach the level of rendering the remedies de facto unavailable or the State does not challenge admissibility on these grounds.

#### **2.4. The ‘no other forum’ principle**

The fourth trend we identify is the refinement of the ‘no other forum’ requirement. The international human rights law treaties granting the right of individual communications to CAT,<sup>36</sup> CEDAW,<sup>37</sup> CRPD,<sup>38</sup> CESC<sup>39</sup> and the Committee on the Rights of the Child<sup>40</sup> contain *electa una via* clauses. As soon as a proceeding is initiated before another forum, no other proceedings, either parallel or subsequent, will be admissible. The HRC,<sup>41</sup> CERD,<sup>42</sup> and CED<sup>43</sup> are limited by *lis alibi pendens* clauses which bar multiple concurrent proceedings.<sup>44</sup> However, some States have entered *electa una via* reservations to limit the jurisdiction of the HRC, CERD, and CED over subsequent proceedings as well.<sup>45</sup>

Despite the observed textual differences and reservations, the treaty bodies exhibit a common understanding with respect to accepting complaints that have been submitted to, but not substantively addressed, by regional courts. Indeed, the Committees consider that as long as the other procedure was dismissed on procedural grounds without examining the merits, it does not preclude them from examining the case.<sup>46</sup> In *A.G.S. v Spain*, the HRC underlined that despite the *electa una via* reservation by Spain, an inadmissibility decision without any reasoning from the European Court of Human Rights (ECtHR) could not be considered to have been ‘examined’ in the sense of Article 5(2) of the Optional Protocol to the ICPPR.<sup>47</sup> In *T.N. v Denmark*, CEDAW followed the HRC approach and held that even though the same matter had been brought before the ECtHR, the Court’s decision only related to procedural matters and admissibility criteria. Thus, CEDAW examined the case on the basis that it did not contravene the ‘no other forum’ principle.<sup>48</sup> CAT in *Guerrero Larez v Venezuela*<sup>49</sup> and CESC<sup>50</sup> in *Sierra v Spain*<sup>50</sup> came to the same conclusion. In *Mariano Eduardo Haro v Argentina*, CAT held that the subsequent withdrawal of an application from the Inter-American Commission on Human Rights before a communication was lodged with CAT did not infringe the ‘no other forum’ principle.<sup>51</sup> The HRC adopted the same reasoning in *N.S. v Russia* where the author withdrew his application to the ECtHR after his request for interim measures was rejected.<sup>52</sup> It is interesting to note that in several cases where the regional court found the application inadmissible, the concerned Committee found a violation under its applicable treaty.<sup>53</sup>

Furthermore, treaty bodies also offered expansive interpretations of what ‘same matter under examination’ means for the ‘no other forum’ principle to apply. In *Aarrass v Spain* the HRC indicated that it was not precluded from considering a communication pertaining to different violations than those previously alleged in an application to the ECtHR or based on provisions that are not fully congruent with the provisions of the European Convention on Human Rights (ECHR) and its Protocols, even though applications concerned the same facts.<sup>54</sup> In *X and Y v Georgia* CEDAW found that notwithstanding the similarity of the two petitions, they did not relate to the ‘same matter’ as they involved different substantive rights. In the communication to CEDAW, the authors had invoked their right to equality and non-discrimination, while those allegations had not been invoked before the ECtHR.<sup>55</sup> In general, the Committees have narrowly constructed the scope and object of applications previously rejected by regional human rights courts.

Finally, the treaty bodies have also delivered views that clarify the relationship between themselves and those UN Human Rights Council mechanisms that accept individual petitions. In *Aarrass v Morocco*, CAT held that such procedures and mechanisms do not generally constitute an international procedure of investigation or settlement.<sup>56</sup> In *Niyonzima v Burundi*, CAT clarified the status of a communication that was also pending before the Working Group on Arbitrary Detention (WGAD).<sup>57</sup> It held that since the WGAD’s mandate only encompasses arbitrary detention and not torture, this case did not infringe the ‘no other forum’ principle. In *Shikhmuradova v Turkmenistan*, the HRC found that a case submitted to the Working Group on Enforced or Involuntary Disappearances (WGED) did not preclude the HRC from examining the communication.<sup>58</sup> It held that bodies whose mandates are to examine and report publicly on human rights situations in specific countries or territories, or in cases of widespread human rights violations worldwide, are not covered by the ‘no other forum’ principle.

### 3. Modalities of cross-fertilization

In the period under review, we find self-referential development of case law is a dominant trend. For example, the HRC has seized the opportunity brought by new cases to reaffirm its case law related to freedom from arbitrary detention,<sup>59</sup> freedom of expression and assembly,<sup>60</sup> the principle of non-refoulement,<sup>61</sup> enforced disappearance,<sup>62</sup> and the duty to investigate non-state actors for enforced disappearances.<sup>63</sup> In the case of CAT, the obligation to proceed to a prompt and impartial investigation,<sup>64</sup> the obligation to verify that statements included in court proceedings have not been obtained by torture,<sup>65</sup> the measures contemplated by the right to obtain redress,<sup>66</sup> the requirement of a foreseeable, real, and personal risk of torture for the application of the non-refoulement principle,<sup>67</sup> point to self-referencing as a core dynamic of interpretation. CEDAW also follows this trend. CEDAW has reconfirmed on a number of occasions the interpretive standards it uses in determining the extra-territorial reach of the CEDAW convention in non-refoulement cases.<sup>68</sup> It has done the same on other issues, including no assumption of consent when rape is not resisted,<sup>69</sup> the principle of due diligence in domestic violence cases,<sup>70</sup> and the duty to combat gender stereotyping.<sup>71</sup>

There has, however, been limited explicit inter-treaty body cross-fertilisation on interpretive standards. Between 2013 and 2016, CEDAW has referred to the case law of other

treaty bodies the most. The body of jurisprudence that is most explicitly referred to by other Committees on the other hand is that of CAT. Non-refoulement cases, the most common type of case across all treaty bodies, is where we see the highest number of references to CAT case law, in particular by CEDAW<sup>72</sup> and the HRC.<sup>73</sup> CEDAW has also made use of the HRC jurisprudence on the ‘no other forum’ principle and the exhaustion of domestic remedies to clarify its access rule<sup>74</sup> as well as to HRC standards relating to the right to the free assistance of an interpreter, as a fundamental fair trial guarantee.<sup>75</sup> Explicit citations of other treaty body case law, however, remain far and few in between. CAT has referred to the HRC on the status of complaints before extra-conventional UN mechanisms.<sup>76</sup> CESCR referenced the views of the CRPD when deciding the rules on the non-retroactivity of their respective Optional Protocols.<sup>77</sup> CRPD has referred to the jurisprudence of CAT and CED when emphasising the special position of States to safeguard the rights of persons deprived of their liberty.<sup>78</sup> CED in *Yrusta v Argentina* – its first and only view issued during the surveyed period – also referred to CAT jurisprudence on this point.<sup>79</sup>

What is more common is implicit harmonisation. This has notably been the case in relation to standards of review and the fourth instance doctrine. Between 2013 and 2016, the HRC repeatedly underlined that it is the role of the domestic appellate courts, not the HRC, to evaluate the facts of a case.<sup>80</sup> For example, in *N v Denmark*, the HRC decided not to assess the facts and evidence in the case unless it could be sure that the assessment made by the domestic authorities was clearly arbitrary or amounted to a denial of justice.<sup>81</sup> We find echoes of this approach in the case law of CEDAW, CRC and CRPD. In *T.N. v Denmark*, CEDAW held that it would only assess the facts and evidence of the case if the assessment of domestic authorities was clearly arbitrary or a denial of justice.<sup>82</sup> Similarly, in *A.F. v Italy*, CRPD confirmed that it is generally for States to evaluate the facts and evidence in a particular case, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.<sup>83</sup> In *A.A.A. v Spain*, CRC found that this deferential approach to domestic courts in relation to the facts and evidence in a particular case was a general rule.<sup>84</sup> The reiteration of the same formula by all Committees, culminating with the CRC affirmation that such standard of review is a general rule, shows how harmonisation – although implicit – does indeed take place.

### **3.1. UN treaty body jurisprudence within the broader context of international human rights law**

We find that the treaty bodies are generally reluctant to use judgments from regional human rights courts to support their findings. Despite petitioners recurrently referencing regional jurisprudence to support their claims,<sup>85</sup> the Committees appear to prefer referencing their own jurisprudence, or that of other treaty bodies.

Notable exceptions include, *M.N.N v Denmark*, *M.E.N. v Denmark* and *A. v Denmark* where CEDAW abstractly refers to ECtHR and Inter-American Court of Human Rights (IACtHR) jurisprudence in finding that gender-based violence and abuse can be tantamount to torture.<sup>86</sup> These are however the only cases in the period under review where one of the treaty bodies used regional human rights courts case law to support its interpretation of existing law.

Where the jurisprudence of regional human rights courts has been cited by the treaty bodies this is not in relation to discussion of substantive points of law. For example, in

*Jasin v Denmark*, the HRC stated that ECtHR case law demonstrates that there was not a systematic failure on the part of Italy to provide support or facilities for asylum seekers.<sup>87</sup> However, it neglected to refer to the same case law when finding that it is incumbent on the deporting State to seek assurances that the authors would be received in conditions compatible with their asylum seeker status.<sup>88</sup> Similarly, in *Guerrero Larez v Venezuela*, CAT referred to a report of the Inter-American Commission on Human Rights (IACommHR) in which Venezuela was called upon to adopt measures to prevent prisoner-on-prisoner violence, violence against prisoners by prison personnel and to ensure independent inspections of prisons.<sup>89</sup> While the work of the IACommHR is referenced to show the general state of prisons in Venezuela, the CAT omitted to cite the well-known case law of the IACtHR to support its definition of enforced disappearance.<sup>90</sup>

There are more instances of reference to regional human rights bodies solely to establish matters of fact. In *S.I.D. v Bulgaria*, the HRC referred to *Yordanova v Bulgaria* in which the ECtHR recognised the problem of a lack of legal security for the Roma in Bulgaria.<sup>91</sup> In *I.D.G. v Spain*, CESCR took cognisance of a judgment from the Court of Justice of the European Union which held that Spanish law provided insufficient and incomplete protection to borrowers in mortgages enforcement proceedings.<sup>92</sup> In *Ramirez Martinez v Mexico*, CAT called on the State party to amend its Military Criminal Code to comply with decisions of the IACtHR.<sup>93</sup> While *Ramirez Martinez* is the only case where we find a reference to the obligation to comply with the case law of a regional human rights court in the remedial part of a decision, we also observe that this case law is not relied on to add weight to the interpretative standard adopted by the treaty bodies. On the basis of our findings, we note that the Committees generally cite the jurisprudence of the ECtHR, the Inter-American system, or the EU to support their factual findings or provide an evaluation of the human rights situation in a specific State.<sup>94</sup>

In contrast, substantive issues of law discussed by the regional courts are often reflected upon explicitly in concurring and dissenting opinions.<sup>95</sup> For example, our review demonstrates that when expounding a new legal argument or expressing a missed opportunity some HRC Committee members very much rely upon regional jurisprudence.<sup>96</sup> In *A.A.I v Denmark*, HRC member Yadh Ben Achour criticised the majority for not having drawn upon the findings of the ECtHR in *Tarakhel v Switzerland* when addressing the deportation of a Somalian family to Italy under the EU Dublin II Regulation.<sup>97</sup> In *B.L. v Australia*, HRC members Gerald L. Neuman and Yuji Iwasawa referred to the ECtHR case law to maintain that the internal relocation alternative does not violate the principle of non-refoulement.<sup>98</sup> In *M.T. v Uzbekistan*, HRC members Sarah Cleveland and Olivier de Frouville referred to CEDAW and ECtHR case law when finding that violence committed against a person on the basis of their sex or gender amounts to discrimination.<sup>99</sup>

De Frouville, in *Rabbae v The Netherlands*, urged the HRC to look at the CERD case law to find the appropriate way to implement the positive obligation deriving from the prohibition to incite discrimination, hostility or violence.<sup>100</sup> In *Mihoubi v Algeria*, HRC members Fabian Savioli and Victor Rodriguez-Rescia referred to the case law of the main regional human rights bodies to support their claim that the principle of *iura novit curia* is applicable before international bodies.<sup>101</sup> Yuval Shany is one member of the HRC who frequently relies on regional jurisprudence, in particular the ECtHR, in his opinions. In his partly dissenting opinion in *Basnet v Nepal*, Shany referenced the

findings of the ECtHR in *Selmouni v France* with regards to the exhaustion of domestic remedies.<sup>102</sup> In *Griffiths v Australia*, he refers to the ECtHR case law to maintain that some fair trial rights in extradition proceedings must be contemplated with regards to the proceedings in the extraditing States, as well as in the requesting State.<sup>103</sup> Finally, in *A.H.G. v Canada*, Shany refers to the ECtHR case law to assert that certain treatment or forms of punishment are tantamount to torture or cruel treatment, because of the context within which they take place.<sup>104</sup> Our research, therefore, indicates that the readiness to invoke regional human rights case law is a practice that is more present at the HRC and particular to some Committee members.

This trend has resonance beyond the HRC. For instance, in *TBB-Turkish Union in Berlin/Brandenburg v Germany*, CERD member Vazquez referred to ECtHR case law in his dissent, to argue that the concept of incitement to discriminatory legislation is a novel one and that States are not precluded from adopting a policy of prosecuting the most serious cases.<sup>105</sup> This resort to regional bodies' jurisprudence to support a contrary view is particularly significant given that other Committees, and especially CERD, have a long established practice of making decisions on individual communications by consensus.

While the Committees rarely acknowledge that their case law is aligned with findings of regional courts, the permeability of international human rights instruments (or instruments of other fields closely related to human rights law) do figure in their case law. For example, in three cases against Bosnia and Herzegovina, the HRC referred to Article 7(2)(i) of the Rome Statute of the International Criminal Court (Rome Statute)<sup>106</sup> and Article 3 of the International Convention for the Protection of All Persons from Enforced Disappearance in ruling that a disappearance does not necessarily need to be attributed to a State actor to constitute a human rights violation.<sup>107</sup> The Rome Statute was also referred to by CEDAW in *A v Denmark* to establish that rape is a form of torture and a crime against humanity.<sup>108</sup> In *I.D.G v Spain*, CESCR emphasised the centrality of the right to housing by affirming that it is a right inextricably linked to other human rights, including those set forth in the ICCPR.<sup>109</sup> In *S.C. v Brazil*, CRPD noted that Brazil was also a party to the Inter-American Convention on the Elimination of all Forms of Discrimination Against Persons with Disabilities and noted the definition of disability contained therein.<sup>110</sup> In *Yrusta v Argentina*, CED referred to the Inter-American Convention on Forced Disappearance of Persons to clarify the legal meaning of a person 'placed outside the protection of the law'.<sup>111</sup>

Soft-law human rights instruments are also taken into account in the case law of the Committees. In *L.G. v Korea*, CERD referred to soft law instruments when concluding that mandatory HIV/AIDS testing in the workplace, as well as for entry, stay and residence purposes, are ineffective for public health protection, discriminatory and harmful for the enjoyment of fundamental human rights.<sup>112</sup> Similarly, in *Khadzhiev v Turkmenistan*, the HRC quoted the UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules)<sup>113</sup> to support its approach to the right of prisoners to correspond with their families and reputable friends.<sup>114</sup> The Standard Minimum Rules were also cited by the HRC in *Abdullayev v Turkmenistan* to illustrate that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty.<sup>115</sup> In *L.A. v Slovak Republic*, CERD referred to the UN Guiding Principles on the Right to Remedy and Reparation<sup>116</sup> to assess whether a

reparation not including financial compensation was an effective remedy in accordance with international principles.<sup>117</sup> In *Aarrass v Morocco*, CAT noted that the medical examination conducted on the complainant, to investigate their allegations of torture, was not in conformity with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).<sup>118</sup>

## 4. Remedies

The treaty bodies decide upon a wide range of remedies and these differ in terms of their scope, reach and specificity.<sup>119</sup> They also vary between individual versus general remedies and specific versus abstract remedies. The Committees with more recent individual complaint mechanisms – CEDAW, CRPD and CESC – consistently make a distinction between individual and general remedies. The HRC, CAT and CERD do not make such a visible distinction explicitly. Nonetheless, it can be observed that some of the recommendations made by the latter treaty bodies go beyond providing remedies specific to the author and aim to ensure non-repetition of the violation.

### 4.1. Individual remedies

Treaty bodies often call upon States to provide reparations, redress, or another ‘effective remedy’. Whilst all treaty bodies ask for specific remedies, these flow from the specifics of each case and are not provided consistently as a matter of principle. In the period under review, all eight Committees have indicated that the State should compensate the victim.<sup>120</sup> However, no Committee has specified the exact amount of financial compensation.<sup>121</sup> In *L.G. v Korea* CERD called upon the State to grant adequate compensation for the moral and material damages suffered by the author.<sup>122</sup> The Committee further specified that L.G. be compensated for the lost wages during the year she was prevented from working.<sup>123</sup> In *Belousova v Kazakhstan*, CEDAW also suggested that compensation be given for loss of income.<sup>124</sup> Some decisions also request that compensation for legal and other costs be provided.<sup>125</sup> CAT is an exception and does not ask for compensation towards legal costs. There are, however, also instances where the Committees do not call for reparations for the harm suffered but only for the legal costs. This was the case in *I.D.G. v Spain*, where the CESC asked the State party to only reimburse the victim for their legal costs.<sup>126</sup> The CRPD took the same position in *F v Austria*.<sup>127</sup>

All eight Committees have recommended additional individual remedies alongside compensation tailored to the specifics of violations.<sup>128</sup> For instance, in cases where the complainant’s convictions were in violation of the ICCPR, the HRC has called for the criminal record to be expunged.<sup>129</sup> In *Akamatov v Kyrgyzstan* the HRC considered that an effective remedy for a violation of the right to life and the prohibition of torture entailed conducting a new, expeditious, impartial, effective and thorough investigation into the exact circumstances of the author’s son’s death and the prosecution of those responsible.<sup>130</sup> In *Basnet v Nepal*, dealing with enforced disappearance, the HRC added to these that the State should provide detailed information about the results of the investigation and ensure that ‘necessary and adequate’ psychological rehabilitation and medical treatment was made available.<sup>131</sup> In *Shikhmuradova v Turkmenistan* the HRC asked for remedies that were specific to a

disappeared person whose fate was still unknown. In this case the HRC requested the immediate release of the direct victim if he was still being detained incommunicado, or that his remains be handed over to his family if the victim was dead.<sup>132</sup> In cases of non-refoulement the HRC has recommended a full reconsideration of the author's claim regarding the risk he would face should he be returned to his home country.<sup>133</sup> In *Aarrass v Spain* the HRC recommended, after extradition in violation of an interim measure, that the State take 'all possible steps to cooperate with the Moroccan authorities in order to ensure effective oversight of the author's treatment in Morocco'.<sup>134</sup>

Most CAT non-refoulement cases do not follow the HRC in asking for a full reconsideration of the deportation proceedings. Instead CAT normally requests the State to refrain from forcibly returning the author to a place where they may be at risk of being tortured, or to any other country where they run the risk of being returned to the former country.<sup>135</sup> In cases where an extradition has already occurred with diplomatic assurances, CAT may urge the extraditing State to undertake regular visits and effective monitoring of detention.<sup>136</sup> However, in other cases CAT simply finds that expelling the complainant to the country where they are at risk of torture would be, or is, a violation of the principle of non-refoulement without specifying remedies.<sup>137</sup> Some of CAT's decisions dealing with acts of torture or cruel treatment are, however, similar to those of the HRC. This is where CAT recommends that an impartial inquiry into the events in question be launched for the purpose of prosecuting those responsible for the treatment.<sup>138</sup> In *Aarrass v Morocco*, CAT said that the State must investigate the author's allegations of torture and that this investigation must include medical examinations in line with the Istanbul Protocol.<sup>139</sup>

CEDAW and CRPD also demand specific individual remedies on a case by case basis. For example, in *Groninger v Germany*, CRPD requested the State to reassess the author's application for an integration subsidy and effectively promote employment opportunities in light of the Convention.<sup>140</sup> In *X v Argentina* CRPD stressed that the State was obligated to ensure that the author's place of detention provided equal access to facilities, services and suitable, timely health care.<sup>141</sup> In *R.P.B. v Philippines* CEDAW called upon the State to provide psychological counselling and therapy for the survivor and her affected family and to provide barrier-free education with interpretation facilities.<sup>142</sup> In *I.D.G. v Spain* CESCR called on the State to ensure that the auction of the author's property did not proceed unless she was provided with due process and procedural protections.<sup>143</sup> In comparison, CED followed a comprehensive approach with regards to individual remedies and demanded a list of specific measures. In *Yrusta v Argentina* the Committee asked that an investigation and prosecution take place and also that the authors be recognised as victims so that they could play an effective part in the investigation into the death and enforced disappearance of their brother.<sup>144</sup>

A new but also contested trend, especially at the HRC, is to call upon States to convey public apologies as individual remedies. In spite of General Comment No 31, where the HRC recognised that reparations can involve measures of satisfaction such as public apologies and memorials, the Committee's case law on this point has not been consistent.<sup>145</sup> In *Baruani v Democratic Republic of the Congo*, the HRC asked the State to formally apologise to the victim and his family for his arbitrary arrest and the unlawful interference with his right to privacy and torture. However, in *Bariza Zaier v Algeria*, Gerald Neumann issued an opinion where he criticised the author's counsel, Philippe Grant, for having asked the Committee to direct States to provide remedies including an official apology,

building of a monument for the victim or the naming of a street after the victim.<sup>146</sup> Indeed, the measures suggested by Grant were clearly drawn from the remedial practice of the Inter-American Court of Human Rights. Neumann stated that, in his opinion, ‘each of these measures falls in the category of remedial options, for consideration by the State in carrying out its obligation to compose an effective remedy’.<sup>147</sup> He went on to assert that ‘the Committee is not authorised to exercise remedial discretion and impose its choices on the State’.<sup>148</sup> Despite Neumann’s strong criticism these kinds of remedies have also been recommended by other treaty bodies.<sup>149</sup>

#### 4.2. General remedies

General remedies ordered by the treaty bodies can generally be broken down into the following two categories: calls for the review of legislation, procedures, policy and practices and the organisation of trainings sometimes coupled with awareness raising campaigns. In its only view to date, CED requested that the State compile and maintain registers of persons subject to enforced disappearance in order to ensure non-repetition and protection.<sup>150</sup> While the HRC and CAT repeatedly reiterate the State obligation to prevent similar violations in the future, they are the treaty bodies that engage the least with general remedies.<sup>151</sup> The HRC sometimes requests that the State review its legislation and implementation of law in order to ensure that the rights at stake are fully enjoyed.<sup>152</sup> The HRC may also specifically instruct the State to amend the law.<sup>153</sup> In *Mellet v Ireland*, for example, the HRC urged the State party to amend its law on the voluntary termination of pregnancy, including the Constitution if necessary.<sup>154</sup> However, the HRC has failed to call for such amendments in other cases where one might have expected it. This has occurred even in cases where there was a firm belief by some Committee members that such a remedy was necessary.<sup>155</sup> In cases against Algeria, emerging from enforced disappearances arising from the 1990 civil war, the Committee has repeatedly affirmed: ‘Notwithstanding the terms of Ordinance No. 06-01, the State party should also ensure that it does not impede enjoyment of the right to an effective remedy for crimes such as torture, extrajudicial killings and enforced disappearances.’<sup>156</sup> Savioli and Finterman argue that this passage means that the State’s judicial branch is required to ‘ascertain compatibility with treaties and not to apply any domestic norms that are incompatible with the Covenant’.<sup>157</sup> However, they also argue that the Committee should have ordered Algeria to amend its domestic legislation.<sup>158</sup> CAT usually stops short of providing detailed general measures or calling for legislative changes. That being said, in *Ramirez Martinez v Mexico* CAT did call upon Mexico to repeal the legal provisions regarding pre-charge detention, amend the Code of Military Justice and ensure that any human rights violation committed by military officers falls exclusively under its civil jurisdiction.<sup>159</sup> However, between 2013 and 2016 this is the only CAT decision explicitly requiring such legal reforms.

Unlike CAT other Committees have regularly called upon States to review their legislation. Sometimes the treaty bodies go as far as specifying the exact provision or law that needs to be amended. In *L.G. v Korea* CERD asked the State

to review regulations and policies enacted at the State or local level related to employment of foreigners and abolish, both in law and practice, any piece of legislation, regulation, policy or measure which has the effect of creating or perpetuating racial discrimination.<sup>160</sup>

In *I.D.G. v Spain* CESCRC described in detail the type of legislative and administrative reforms that needed to be undertaken to ensure the accessibility of legal remedies for persons facing procedures for failing to repay mortgage loans.<sup>161</sup> Similarly, CEDAW recommended in *R.P.B. v Philippines* that legislative reforms be undertaken with respect to the domestic Criminal Code definition of rape and the right to free and adequate assistance of interpreters.<sup>162</sup> In *X v Argentina* CRPD outlined three areas where Argentina was called to adopt appropriate measures to ensure that similar violations do not occur in the future.<sup>163</sup> In *F v Austria* it called for the review and adoption of laws and regulations concerned with access, for example, to transport and procurement, to be carried out in close consultation with persons with disabilities and their representative organisations.<sup>164</sup>

The CRPD, CEDAW and CERD have developed a comprehensive way of dealing with general remedies that go beyond legislative or policy reforms. In *X and Y v Georgia* CEDAW called upon the respondent State to intensify its awareness-raising campaigns to counter violence against women, ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence<sup>165</sup> and to provide mandatory training for judges, lawyers and law enforcement personnel on how to apply the Convention.<sup>166</sup> In *F v Austria* CRPD urged the State to ensure that training on accessibility for persons with disabilities is provided to all service providers in the public transport network.<sup>167</sup> In *V.S. v Slovakia* CERD stressed that the State should organise training programmes for persons involved in education, and law enforcement officials, on duties related to preventing racial discrimination and equality before the law respectively.<sup>168</sup> While such general remedies are common, and a trend for CEDAW, CRPD and CERD, our research shows that this is not the case for HRC, CAT and CESCRC.

All views where a violation was found by any of the treaty bodies, irrespective of whether specific remedies are recommended, request the State party to provide information within a certain time period, varying from three to six months, on any action taken to give effect to the Committee's view.<sup>169</sup>

## 5. Conclusion

Our survey of the institutional trajectory of the UN treaty bodies reveals that the case law of the treaty bodies can be treated as having an emerging common institutional trajectory with respect to admissibility and access friendliness. Yet differences remain with respect to modalities of cross-fertilisation and approaches to general remedies. The review further shows that treaty bodies are capable of converging with one another through interpretation despite differences in their textual basis and their different stages of engagement with the right to individual communication.

Treaty bodies encourage individual petitions and signal access friendliness to potential victims of human rights violations. They do so, not only by offering expansive interpretations of the scope of victim status, but also through not overly strict exhaustion of the domestic remedy rule. What is more, they are willing to hear applicants who have not been able to succeed before regional human rights institutions due to the imposition of more stringent admissibility criteria of the latter over time. Looking ahead, however, this may not prove to be a stable and shared trend given the rise in the popularity of individual petitions before UN treaty bodies and the lack of success in securing more resources for the Petitions Unit of the UN Office of the High Commissioner for Human Rights.<sup>170</sup>

Indeed, while the number of communications addressed to the treaty bodies increased from 170 in 2013–314 in 2016,<sup>171</sup> the backlog of communications pending review increased from 584 in 2013<sup>172</sup> to 977 in 2017 (of which 71 per cent are of the HRC alone).<sup>173</sup> As such, the current openness may result in treaty bodies with higher number of cases to develop more restrictive approaches, and importing models from institutions with similar problems, such as the ECtHR or to significant delays in delivering justice to applicants.

Our review showed that of all the treaty bodies, CEDAW is the most open body to engage in explicit cross-fertilisation with other treaty bodies in the period under review. Yet, the overall trend, in particular amongst the HRC and the CAT, is the development of their case law through self-referential citations. It is, however, not clear whether explicit cross-references are a matter of treaty body legal culture or a lack of resources.<sup>174</sup> In this respect, increase in the case load across UN treaty bodies, coupled with a failure to provide lack of adequate secretarial support following the 2020 review could presents a risk for the UN treaty bodies to speak in a consolidated voice to victims of human rights violations in the future. Such risk further lends support to concerns over substantive fragmentation.

The same concern, however, does not carry over to the lack of explicit citations of regional courts and commissions. Recurrent references to regional courts case law in the pleadings as well as in the separate and concurrent opinions of Committee members reveal that treaty bodies are informed about regional human rights case law, but are merely cautious in not presenting the UN case law as a strict follower of regional systems. While Navi Pillay had recommended a ‘more systematic reference to jurisprudence of the regional systems’,<sup>175</sup> the lack of explicit cross-fertilisation with regional courts and commissions may be seen as cultivating dynamics of healthy pluralism in interpretations of human rights by UN treaty bodies and regional courts and commissions.

UN treaty bodies share a common institutional trajectory in terms of openness to specify individual remedies on a case by case basis. Their preferences, however, are not yet fully aligned. Pronouncing specific general remedies is one area where textual differences across treaties result in important variations:<sup>176</sup> new Committees such as the CEDAW and the CRPD offering more guidance on general remedies than the old Committees, such as the CAT and the HRC.

This review shows that UN treaty bodies are able to send comparable signals to States, individuals and NGOs despite their existence as separate entities. Given that the creation of a single and unified treaty body does not look feasible as part of the 2020 reform agenda, treaty bodies, the UN Secretariat and those taking cases should nurture this informal, but collective institutional trajectory further. Such purposive nurturing may hold the key to the effective functioning of the UN individual petition system in the years to come, making it more usable, comprehensible and apt for diffusion for all stakeholders concerned.

## Notes

1. Optional Protocol I to the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 302 (OP I-ICCPR).
2. The complaints mechanisms became operational as follows: International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (ICERD): 1982; Convention against

- Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85; 1987; Optional Protocol I to the Convention on the Elimination of Discrimination against Women (adopted 6 October 1999, entered into force 22 December 2000) 2131 UNTS 83 (OP 1-CEDAW): 2000; Optional Protocol to the Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2518 UNTS 283 (OP-CRPD):2008; Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (adopted 10 December 2008, entered into force 5 May 2013), A/63/435 (OP-ICESCR): 2013; Optional Protocol to the Convention on the Rights of the Child (adopted 19 December 2011, entered into force 14 April 2014), A/RES/66/138 (OP-CRC): 2014; International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, entered into force 23 December 2010) 2716 UNTS 3 (ICED): 2010.
3. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted 18 December 1990, entered into force 1 July 2003) A/RES/45/158, Art 77(8). As of 4 June 2018, only four of the 51 States parties have made such declaration.
  4. As of 4 June 2018, the number of States parties that have accepted the right to individual petition before each of the treaty bodies are: HRC, 116 of 171 States parties; CAT, 68 of 164 States parties; CEDAW, 109 of 189 States parties; CERD, 58 of 179 States parties; CRPD, 91 of 177 States parties; CRC, 39 of 196 States parties; CDESCR, 23 of 168 States parties; CED, 21 of 58 States parties.
  5. Office of the High Commissioner for Human Rights (OHCHR) Annual Report (2016) 13.
  6. For some comparative approaches see: L. Lixinski, 'Comparative International Human Rights Law: An Analysis of the Right to Private and Family Life across Human Rights "Jurisdictions"', *Nordic Journal of Human Rights* 32 (2014): 99; S. Tyulkina, 'Fragmentation in International Human Rights Law: Political Parties and Freedom of Association in the Practice of the UN Human Rights Committee, European Court of Human Rights and Inter-American Court of Human Rights', *Nordic Journal of Human Rights* 32 (2014): 157; O. Salát, 'Comparative Freedom of Assembly and the Fragmentation of International Human Rights Law', *Nordic Journal of Human Rights* 32 (2014): 140; M. Ajevski, 'Freedom of Speech as Related to Journalists in the ECtHR, IACtHR and the Human Rights Committee – a Study of Fragmentation', *Nordic Journal of Human Rights* 32 (2014): 118; W. Vandenhoe, *Non-Discrimination and Equality in the View of the UN Human Rights Treaty Bodies* (Intersentia, 2005); W. Vandenhoe, *The Procedures before the UN Human Rights Treaty Bodies. Divergence or Convergence?* (Intersentia, 2004).
  7. See UNGA Res 68/268 (21 April 2014) UN Doc A/RES/68/268; See also: C. Broecker, 'The Reform of the United Nations' Human Rights Treaty Bodies', *ASIL Insights!* 18, no. 16 (2014) <<https://www.asil.org/insights/volume/18/issue/16/reform-united-nations-human-rights-treaty-bodies>> accessed XX XX 2019; S. Egan, 'Strengthening the United Nations Human Rights Treaty Body System', *Human Rights Law Review* 13 (2013): 209.
  8. HRI (UN International Human Rights Instruments), 'Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body' (22 March 2006) UN Doc HRI/MC/2006/2, para 23.
  9. M. Scheinin, 'Towards a World Court of Human Rights', *Swiss Initiative to Commemorate the 60th Anniversary of the UDHR* (2009); M. Nowak, 'The Need for a World Court of Human Rights', *Human Rights Law Review* 7 (2007): 251–2.
  10. For a similar methodological approach, see: B. Çalı, M. Madsen and F. Viljoen, 'Regional Human Rights Regimes: Defining a Research Agenda', *International Journal of Constitutional Law* 18 (2018): 128.
  11. See for example: Y. Shany, *The Competing Jurisdictions of International Courts and Tribunals* (Oxford University Press, 2003); M. Payandeh, 'Fragmentation within International Human Rights Law', in *A Farewell to Fragmentation: Reassertion and Convergence in International Law*, ed. M. Andenas and E. Bjorge (Cambridge University Press, 2015), 297–108; H.

- Keller and G. Ulfstein, eds., *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press, 2012); S. Walker, 'International Human Rights Law, Towards Pluralism or Harmony? The Opportunities and Challenges of Coexistence: The View from the UN Treaty Bodies', in *Towards Convergence in International Human Rights Law: Approaches of Regional and International Systems*, ed. C Buckley, A Donald and P Leach (Brill, 2016), 491.
12. Compliance with the views of UN treaty bodies is outside of the scope of this article.
  13. Vandenhoe (n 9) 205.
  14. See *J.R.T. v Canada*, CCPR/C/18/D/104/1981 (6 April 1983); *C v Italy*, CCPR/C/21/D/163/1984 (10 April 1984).
  15. See Art 14 ICERD; Art 2 OP 1-CEDAW; Art 2 OP-ICESCR.
  16. *TBB-Turkish Union in Berlin/Brandenburg v Germany*, CERD/C/82/D/48/2010 (4 April 2013).
  17. *Ibid.*, paras 11.2–11.4.
  18. *Rabbae v The Netherlands*, CCPR/C/117/D/2124/2011 (14 July 2016) paras 9.5–9.6.
  19. *S.C. v Brazil*, CRPD/C/12/D/10/2013 (2 October 2014).
  20. *M.W. v Denmark*, CEDAW/C/59/D/46/2012 (3 November 2014) para 8.3.
  21. *A.F. v Italy*, CRPD/C/13/D/9/2012 (27 March 2015). See also *Jungelin v Sweden*, CRPD/C/12/D/5/2011 (2 October 2014).
  22. See L. G. Loucaides, 'The Concept of "Continuing" Violations of Human Rights', in *The European Convention on Human Rights: Collected Essays* (Brill, 2007), 17.
  23. *I.D.G. v Spain*, E/C.12/55/D/2/2014 (17 June 2015) para 9.3. See also *A.M.B. v Ecuador*, E/C.12/58/D/3/2014 (20 June 2016).
  24. E.g. *Choudhary v Canada*, CCPR/C/108/D/1898/2009 (28 October 2013); *Leghaei v Australia*, CCPR/C/113/D/1937/2010 (26 March 2015).
  25. *E.S. v United Republic of Tanzania*, CEDAW/C/60/D/48/2013 (2 March 2015) para 6.3. See also *S.M. v Bulgaria*, CCPR/C/117/D/2100/2011 (14 July 2016), para 8.3; *Yrusta v Argentina*, CED/C/10/D/1/2013 (11 March 2016).
  26. *X v Argentina*, CRPD/C/11/D/8/2012 (11 April 2014) para 7.4. See also *N.S. v Canada*, CAT/C/59/D/582/2014 (1 December 2016) para 8.2.
  27. *Carreño v Spain*, CEDAW/C/58/D/47/2012 (16 July 2014) para 8.7.
  28. *R.A.Y. v Morocco*, CAT/C/52/D/525/2012 (16 May 2014) para 6.5.
  29. *Griffiths v Australia*, CCPR/C/112/D/1973/2010 (21 October 2014) para 6.3; see also *B.L. v Australia* CCPR/C/112/D/2053/2011 (16 October 2014); *Samathanam v Sri Lanka*, CCPR/C/118/D/2412/2014 (16 October 2016); *S.S.F. v Spain*, CCPR/C/112/D/2105/2011 (28 October 2014) para 8.3. See also *Beasley v Australia*, CRPD/C/15/D/11/2013 (1 April 2016).
  30. *Basnet v Nepal*, CCPR/C/112/D/2051/2011 (19 October 2014) para 7.4; *Katwal v Nepal*, CCPR/C/113/D/2000/2010 (1 April 2015) para 6.3; *Tharu v Nepal*, CCPR/C/114/D/2038/2011 (3 July 2015) para 9.3.
  31. *C.L.C.D. v Colombia*, CCPR/C/116/D/2399/2014 (30 March 2016) para 6.3.
  32. *Yrusta v Argentina*, CED/C/10/D/1/2013 (11 March 2016).
  33. *Sankhé v Spain*, CEDAW/C/56/D/29/2011 (11 October 2013) para 9.4.
  34. *Y.B. v Russia*, CCPR C/110/D/1983/2010 (25 March 2014) para 9.4. See also *Berezhnoy v Russia*, CCPR/C/118/D/2107/2011 (28 October 2016) para 8.4 where the HRC found that the author did not have adequate opportunities to prepare an appeal.
  35. *Omo-Amenaghawon v Denmark*, CCPR/C/114/D/2288/2013 (23 July 2015) para 6.3.
  36. Art 22(4)(a), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 October 1984, entered into force 26 June 1987) 1465 UNTS 85.
  37. Art 4 OP 1-CEDAW.
  38. Art 2(c) OP-CRPD.
  39. Art 3(2)(c) OP-ICESCR.
  40. Art 7 (d) OP-CRC.

41. Art 5(2) OP 1-ICCPR.
42. Rule 84(l)(g) CERD Rules of Procedure (1989) UN Doc CERD/C/35/Rev. 3.
43. Art 30(2)(e) ICED.
44. Shany, *The Competing Jurisdictions of International Courts and Tribunals*, 211.
45. Austria, Croatia, Denmark, France, Germany, Iceland, Ireland, Italy, Luxembourg, Malta, Norway, Poland, Romania, Slovenia, Sri Lanka, Spain, Sweden and Uganda have entered such a reservation to OP 1-ICCPR. See Shany, *The Competing Jurisdictions of International Courts and Tribunals*, 215–216.
46. See C. Phuong, ‘The Relationship Between the European Court of Human Rights and the Human Rights Committee: Has the “Same Matter” Already Been “Examined”?’, *Human Rights Law Review* 7 (2007): 385.
47. *A.G.S. v Spain*, CCPR/C/115/D/2626/2015 (2 November 2015). See also *Cañada Mora v Spain*, CCPR/C/112/D/2070/2011 (28 October 2014); *J.I. v France*, CCPR/C/117/D/2154/2012 (4 July 2016); *B and C v Czech Republic*, CCPR/C/113/D/1967/2010 (2 April 2015); note that in *Vojnovic v Croatia*, the HRC considered that the ECtHR had examined the author’s claim when it discontinued its application on the ground of a friendly settlement, CCPR/C/112/D/2068/2011 (30 October 2014) (Croatia had entered an *electa una via* reservation). See also *J.P.D. v France*, CCPR/C/115/D/2621/2015 (2 November 2015).
48. *T.N. v Denmark*, CEDAW/C/59/D/37/2012 (3 November 2014) para 12.4.
49. *Guerrero Larez v Venezuela*, CAT/C/54/D/456/2011 (15 May 2015) para 5.2. See also *S. v Sweden*, CAT/C/59/D/691/2015 (25 November 2016).
50. *Sierra v Spain*, E/C.12/59/D/4/2014 (29 September 2016).
51. *Haro v Argentina*, CAT/C/52/D/366/2008 (23 May 2014) para 8.2.
52. *N.S. v Russia*, CCPR/C/113/D/2192/2012 (27 March 2015) para 9.2.
53. *Achabal Puertas v Spain*, CCPR/C/107/D/1945/2010 (27 March 2013); *Ory v France*, CCPR/C/110/DR/1960/2010 (28 March 2014); *X and Y v Georgia*, CEDAW/C/61/D/24/2009 (13 July 2015).
54. *Aarrass v Spain*, CCPR/C/111/D/2008/2010 (21 July 2014) para 9.4.
55. *X and Y v Georgia*, CEDAW/C/61/D/24/2009 (13 July 2015) para 6.6.
56. *Aarrass v Morocco*, CAT/C/52/D/477/2011 (19 May 2014), para 9.1.
57. *Niyonzima v Burundi*, CAT/C/53/D/514/2012 (21 November 2014).
58. *Shikhmuradova v Turkmenistan*, CCPR/C/112/D/2069/2011 (17 October 2014) para 5.2. See also *Mihoubi v Algeria*, CCPR/C/109/D/1874/2009 (18 October 2013) para 6.2; *Al Daquel v Libya*, CCPR/C/111/D/1882/2009 (21 July 2014) para 5.2; and in *Tharu v Nepal*, CCPR/C/114/D/2038/2011 (3 July 2015) para 9.3.
59. See *Kitenge Baruani v Democratic Republic of the Congo*, CCPR/C/110/D/1890/2009 (27 March 2014) (where the Committee tackles the prohibition of arbitrary detention in line with prior jurisprudence noting HRC, *Gorji-Dinka v Cameroon*, CCPR/C/83/D/1134/2002 (17 March 2005); HRC, *van Alphen v The Netherlands*, CCPR/C/39/D/305/1988 (23 July 1990)); then the Committee stated that the ‘prompt’ requirement in Art 9(3) of the ICCPR should be limited to 48 h in police custody barring any special justification noting HRC, *Borisenko v Hungary*, CCPR/C/76/D/852/1999 (14 October 2002); *Zhuk v Belarus*, CCPR/C/109/D/1910/2009 (30 October 2013); *Kovaleva v Belarus*, CCPR/C/106/D/2120/2011 (29 October 2012); *Kovsh v Belarus*, CCPR/C/107/D/1787/2008 (27 March 2013); *Pichugina v Belarus*, CCPR/C/108/D/1592/2007 (17 July 2013). See also HRC in *Toregozhina v Kazakhstan*, CCPR/C/112/D/2137/2012 (21 October 2014) (where the Committee, to confirm that for an arrest to be in compliance with the Covenant it must not only be lawful but also reasonable and necessary, it refers to HRC, *Van Alphen v The Netherlands*, CCPR/C/39/D/305/1988 (23 July 1990); and HRC, *Spakmo v Norway*, CCPR/C/67/D/631/1995 (5 November 1999)).
60. See, for example, *Prostko v Belarus*, CCPR/C/109/D/1919-1920/2009 (1 November 2013); *Komarovsky v Belarus*, CCPR/C/109/D/1839/2008 (25 October 2013).
61. See, for example: *Y v Canada*, CCPR/C/114/D/2280/2013 (22 July 2015). In *Omo-Amenaghawon v Denmark*, CCPR/C/114/D/2288/2013 (23 July 2015), the HRC cited its own non-

- refoulement jurisprudence: *Pillai v Canada*, CCPR/C/101/D/1763/2008 (25 March 2011); HRC, *X v Sweden*, CCPR/C/103/D/1833/2008 (1 November 2011); HRC, *Lin v Australia*, CCPR/C/107/D/1957/2010 (21 March 2013); *X v Denmark*, CCPR/C/110/D/2007/2010 (26 March 2014). See also HRC, *K v Denmark*, CCPR/C/114/D/2393/2014 (16 July 2015) (when asserting that the risk must be personal for non-refoulement cases, the Committee referred to *P.T. v Denmark*, CCPR/C/113/D/2272/2013 (1 April 2015), and *X v Denmark*, CCPR/C/110/D/2007/2010 (26 March 2014)).
62. See, for example, *Basnet v Nepal*, CCPR/C/112/D/2051/2011 (19 October 2014) regarding a violation of Art 16 ICCPR due to enforced disappearance, the HRC referred to *Giri v Nepal*, CCPR/C/101/D/1761/2008 (24 March 2011), and regarding violation of Art 7 ICCPR, it referred *El Abani v Libyan Arab Jamahirya*, CCPR/C/99/D/1640/2007 (26 July 2010).
  63. See, for example the following HRC views: *Duric v Bosnia and Herzegovina*, CCPR/C/111/D/1956/2010 (16 July 2014); *Prutina v Bosnia and Herzegovina*, CCPR/C/107/D/1917/2009, 1918/2009, 1925/2009, 1953/2010 (28 March 2013).
  64. *Evloev v Kazakhstan*, CAT/C/51/D/441/2010 (5 November 2013) paras 9.4, 9.5 (here they refer to their own views in *Nikolov Keremedchiev v Bulgaria*, CAT/C/41/D/257/2004 (11 November 2008) para 9. 4; *Blanco Abad v Spain*, CAT/C/20/D/59/1996 (14 May 1998) para 8.2).
  65. For example: *Niyonzima v Burundi*, CAT/C/53/D/514/2012 (21 November 2014). Here they refer to their own views in *Ktiti v Morocco*, CAT/C/46/D/419/2010 (26 May 2011) para 8.8, and *P.E. v France*, CAT/C/29/D/193/2001 (21 November 2002) para 6.3.
  66. *ibid*, CAT held that redress within the meaning of Art 14 includes restitution, compensation, rehabilitation, and measures to ensure that there are no recurrences of the violations and referred to *Ntikaraha v Burundi*, CAT/C/52/D/503/2012 (12 May 2014) para 6.5, and *Bendib v Algeria*, CAT/C/51/D/376/2009 (8 November 2013).
  67. See for example: CAT in *Sivagnanaratnam v Denmark*, CAT/C/51/D/429/2010 (11 November 2013) reference to, *Dadar v Canada*, CAT/C/35/D/258/2004 (23 November 2005), and *T.A. v Sweden*, CAT/C/34/D/226/2003 (6 May 2005). See also n 60.
  68. *M.S. v Denmark*, CEDAW/C/55/D/40/2012 (22 July 2013); *M.E.N. v Denmark*, CEDAW/C/55/D/35/2011 (26 July 2013); *N. v the Netherlands*, CEDAW/C/57/D/39/2012 (17 February 2014).
  69. *R.P.B. v the Philippines*, CEDAW/C/57/D/34/2011 (21 February 2014) in which CEDAW refers to its opinion in *Vertido v the Philippines*, CEDAW/C/46/D/18/2008 (16 July 2010).
  70. In *Carreño v Spain*, CEDAW/C/58/D/47/2012 (16 July 2014), CEDAW cited its opinions in *Goekce v Austria*, CEDAW/C/39/D/5/2005 (6 August 2007); see also CEDAW, *M.W. v Denmark*, CEDAW/C/63/D/46/2012 (22 February 2016) (refers to *Akbak v Austria*, CEDAW/C/39/D/6/2005 (6 August 2007)).
  71. In *Carreño v Spain*, CEDAW/C/58/D/47/2012 (16 July 2014) CEDAW cited the definition of domestic violence found in its own opinion in *V.K. v Bulgaria*, CEDAW/C/49/D/20/2008 (25 July 2011).
  72. For example, CEDAW in *M.E.N. v Denmark*, CEDAW/C/55/D/35/2011 (26 July 2013) and *M.N.N. v Denmark*, CEDAW/C/55/D/33/2011 (15 July 2013).
  73. For example, the HRC in *Y v Canada*, CCPR/C/114/D/2280/2013 (22 July 2015); *Omo-Amenaghawon v Denmark*, CCPR/C/114/D/2288/2013 (23 July 2015); *Aminov v Turkmenistan*, CCPR/C/117/D/2220/2012 (14 July 2016) and *K.B. v Russia*, CCPR/C/116/D/2193/2012 (10 March 2016).
  74. See: CEDAW, *T.N. v Denmark*, CEDAW/C/59/D/37/2012 (3 November 2014) (looked at HRC case law on the interpretation of whether the same matter has been or is being examined under another procedure of international investigation or settlement; in particular, HRC, *Vojnović v Croatia*, CCPR/C/95/D/1510/2006 (30 March 2009); HRC, *Onoufriou v Cyprus*, CCPR/C/100/D/1636/2007 (25 October 2010)). See CEDAW, *X v Austria*, CEDAW/C/64/D/67/2014 (11 July 2016) (complainant is required to abide by reasonable procedural requirements such as filing deadlines, refers to HRC, *Lim v Australia*, CCPR/C/87/D/1175/2003 (25 July 2006); and alleged violations must be raised in substance

- before the national authorities, refers to HRC, *M. K. v. France*, CCPR/C/37/D/222/1987 (8 November 1989).
75. CEDAW in *R.P.B. v the Philippines*, CEDAW/C/57/D/34/2011 (21 February 2014) cites the HRC in *Cadoret v France*, CCPR/C/41/D/323/1988 (11 April 1991); HRC, *Hervé Le Bihan v France*, CCPR/C/41/D/323/1988 (9 November 1989) and *Singarasa v Sri Lanka*, CCPR/C/81/D/1033/2001 (21 July 2004).
  76. *Bendib v Algeria*, CAT/C/51/D/376/2009 (8 November 2013) (here CAT accepted HRC precedents in *Berzig v Algeria*, CCPR/C/103/D/1781/2008 (31 October 2011) and *Laureano v Peru*, CCPR/C/51/D/540/1993 (25 March 1996)).
  77. *I.D.G. v Spain*, E/C.12/55/D/2/2014 (17 June 2015) in deciding on non-retroactivity the Committee referred to the CRPD views, in particular *Jungelin v Sweden*, CRPD/C/12/D/5/2011 (2 October 2014)).
  78. *Noble v Australia*, CRPD/C/16/D/7/2012 (2 September 2016) para 8.9 referred CAT's views in *Guerrero Larez v. Venezuela*, CAT/C/54/D/456/2011 (15 May 2015) and CED in *Yrusta v Argentina*, CED/C/10/D/1/2013 (11 March 2016).
  79. *Yrusta v Argentina*, CED/C/10/D/1/2013 (11 March 2016) citing CAT in *Guerrero Larez v. Venezuela*, CAT/C/54/D/456/2011 (15 May 2015).
  80. HRC in *Sevostyanov v Russia*, CCPR/C/109/D/1856/2008 (1 November 2013); and *Z v Australia*, CCPR/C/115/D/2279/2013 (5 November 2015).
  81. *N v Denmark*, CCPR/C/114/D/2426/2014 (23 July 2015) para 6.6.
  82. *T.N. v Denmark*, CEDAW/C/59/D/37/2012 (3 November 2014).
  83. *A.F. v Italy*, CRPD/C/13/D/9/2012 (27 March 2015).
  84. *A.A.A. v Spain*, CRC/C/73/D/2/2015 (30 September 2016).
  85. See e.g. HRC, *Johnson v Ghana*, CCPR/C/110/D/2177/2012 (27 March 2014); HRC, *K v Denmark*, CCPR/C/114/D/2393/2014 (16 July 2014); HRC, *N.S. v Russia*, CCPR/C/113/D/2192/2012 (27 March 2015) paras 5.8, 6.3, 6.5, 7.7; CEDAW, *X and Y v Georgia*, CEDAW/C/61/D/24/2009 (13 July 2015) para 3.3; CAT, *Bendib v Algeria*, CAT/C/51/D/376/2009 (8 November 2013) para 3.7; CAT, *Mr. X and Mr. Z v Finland*, CAT/C/52/D/483/2011 and CAT/C/52/D/485/2011 (12 May 2014) paras 3, 4.7; CRPD, *Jungelin v Sweden*, CRPD/C/12/D/5/2011 (2 October 2014) para 2.5; CAT, *Sivagnanaratnam v Denmark*, CAT/C/51/D/429/2010 (11 November 2013) paras 5.4, 6.1; CAT, *Khademi v Switzerland*, CAT/C/53/D/473/2011 (14 November 2014) paras 2.8, 4.7, 5.1; CAT, *K.N. v Switzerland*, CAT/C/52/D/481/2011 (19 May 2014) para 4.7; CEDAW, *N. v the Netherlands*, CEDAW/C/57/D/39/2012 (17 February 2014) para 2.11; CRPD, *S.C. v Brazil*, CRPD/C/12/D/10/2013 (2 October 2014) para 4.2; CERD, *VS. v Slovakia*, CERD/C/88/D/56/2014 (4 December 2015) para 5.4; CEDAW, *S.O. v Canada*, CEDAW/C/59/D/49/2013 (27 October 2014) paras 7.2, 7.5.
  86. CEDAW in *M.N.N. v Denmark*, CEDAW/C/55/D/33/2011 (15 July 2013) para 8.9; *M.E.N. v Denmark*, CEDAW/C/55/D/35/2011 (26 July 2013) para 8.8 and *A. v Denmark*, CEDAW/C/62/D/53/2013 (19 November 2015) para 8.5.
  87. *Jasin v Denmark*, CCPR/C/114/D/2360/2014 (22 July 2015), HRC referring to the ECtHR in *Mohammad Hussein v the Netherlands and Italy*, App No 27725/10, Decision of 2 April 2013, and ECtHR, *Tarakhel v Switzerland*, App No 29217/12, Judgment of 4 November 2014. See also: HRC, *Ahmed v Denmark*, CCPR/C/117/D/2379/2014 (7 July 2016); HRC, *Ali v Denmark*, CCPR/C/116/D/2409/2014 (29 March 2016).
  88. *Ibid.*, para 8.9; see *Tarakhel v Switzerland*, App No 29217/12, Judgment of 4 November 2014, paras 120–121.
  89. *Guerrero Larez v Venezuela*, CAT/C/54/D/456/2011 (15 May 2015) para 6.7. In this case, Venezuela failed to submit its observations to CAT. Thus, on the basis of the facts alleged by the author and the Inter-American Commission on Human Rights report Venezuela was found to have violated Art 2 and 11 of CAT.
  90. *Ibid.*, para 6.4; see for instance IACtHR, *Case of Velásquez-Rodríguez v. Honduras*, Series C No 4 (29 July 1988).
  91. The HRC in *S.I.D. v Bulgaria*, CCPR C/111/D/1926/2010 (21 July 2014) para 6 referring to the ECtHR in *Yordanova v Bulgaria*, App No 25446/06, Judgment of 24 April 2012.

92. In *I.D.G. v Spain*, E/C.12/55/D/2/2014 (17 June 2015) the CESCR refers to CJEU, Case C-415/11 *Mohamed Aziz v Catalunya* EU:C:2013:164.
93. *Ramirez Martinez v Mexico*, CAT/C/55/D/500/2012 (4 August 2015).
94. We did not find any references by the parties to the judgments of the African Court (or Commission) on Human and Peoples' Rights in the views issued during the period under review.
95. *B.L. v Australia*, CCPR/C/112/D/2053/2011 (16 October 2014), Joint opinion of HRC members Gerald L. Neuman and Yuji Iwasawa (concurring).
96. They have also referred to other instruments or reports of UN special rapporteurs. See, for example: *Kerrouche v Algeria*, CCPR/C/118/D/2128/2012 (3 November 2016), Individual opinion of Olivier de Frouville; and *Rabbae v The Netherlands*, CCPR/C/117/D/2124/2011 (14 July 2016), Individual opinion (concurring) of HRC members Sarah Cleveland and Mauro Politi.
97. *A.A.I. v Denmark*, CCPR/C/116/D/2402/2014 (29 March 2016).
98. *B.L. v Australia*, CCPR/C/112/D/2053/2011 (16 October 2014) in which the HRC refers to ECtHR, *Sufi v the United Kingdom* App Nos 8319/07 and 11449/07, Judgment of 28 June 2011, para 266; and ECtHR, *Omeredo v Austria*, App No 8969/10, Decision of 20 September 2011.
99. *M. T. v Uzbekistan*, CCPR/C/114/D/2234/2013 (23 July 2015), Individual opinion of HRC members Sarah Cleveland and Olivier de Frouville (concurring) para 3; referring to ECtHR, *Opuz v Turkey*, App No 33401/02, Judgment of 9 June 2009 and ECtHR, *Mudric v Moldova*, App No 74839/10, Judgment of 16 July 2013.
100. *Rabbae v The Netherlands*, CCPR/C/117/D/2124/2011 (14 July 2016), Opinion *partiellement concordante, partiellement dissidente* of HRC member Olivier de Frouville.
101. *Mihoubi v Algeria*, CCPR/C/109/D/1874/2009 (18 October 2013), Individual opinion by Fabián Omar Salvioli and Víctor Manuel Rodríguez-Rescia, para 3, referring to ECtHR, *Han-dyside v the United Kingdom*, App No 5493/72, Judgment of 7 December 1976, para 41; ECtHR, *Powell v the United Kingdom*, App No 9310/81, Judgment of 21 February 1990, para 29; ECtHR, *Guerra v Italy*, App No 14967/89, Judgment of 19 February 1998, para 44; ECtHR, *Scoppola v Italy* (No 2), App No 10249/03, Judgment of 17 September 2009, para 54; ECtHR, *G.R. v the Netherlands*, App No 22251/07, Judgment of 10 January 2012, paras 35–36; IACtHR, *Godínez Cruz v Honduras*, Series C No 5 (20 January 1989) para 172; African Commission on Human and Peoples' Rights, *Antoine Bissangou v the Republic of Congo*, Communication No 253/2002 (November 2006).
102. *Basnet v Nepal*, CCPR/C/112/D/2051/2011 (19 October 2014), Individual opinion of HRC member Yuval Shany's partly concurring partly dissenting opinion, para 2 referring to ECtHR, *Selmouni v France*, App No 25803/94, Judgment of 28 July 1999, para 74.
103. *Griffiths v Australia*, CCPR/C/112/D/1973/2010 (21 October 2014), Individual opinion of HRC member Yuval Shany (concurring), para 3 referring to ECtHR, *Ismoilov v Russia*, App No 2947/06, Judgment of 24 April 2008, para 164; ECtHR, *Ergashev v Russia*, App No 12106/09, Judgment of 20 December 2011, para 169.
104. *A.H.G. v Canada*, CCPR/C/113/D/2091/2011 (25 March 2015), Individual opinion of HRC member Yuval Shany (concurring), para 3 citing ECtHR, *Gatt v Malta*, App No 28221/08, Judgment of 27 July 2010, para 29 and ECtHR, *Rehbock v Slovenia*, App No 29462/95, Judgment of 28 November 2000, paras 76–78.
105. *TBB- Turkish Union in Berlin/ Brandenburg v Germany*, CERD/C/82/D/48/2010 (4 April 2013), Individual opinion of Committee member Carlos Manuel Vazquez (dissenting) paras 4, 13 (refers to ECtHR, *Erbakan v Turkey*, App No 59405/00, Judgment of 6 July 2006; *Soulas v France*, App No 15948/03, Judgment of 10 July 2008, paras 32–37).
106. Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3.
107. *Rizvanovic v Bosnia and Herzegovina*, CCPR/C/110/D/1997/2010 (21 March 2014); *Duric v Bosnia and Herzegovina*, CCPR/C/111/D/1956/2010 (16 July 2014) and *Selimovic v Bosnia and Herzegovina*, CCPR/C/111/D/2003/2010 (17 July 2014).
108. *A. v Denmark*, CEDAW/C/62/D/53/2013 (19 November 2015).

109. *I.D.G. v Spain*, E/C.12/55/D/2/2014 (17 June 2015) para 11.1
110. *S.C. v Brazil*, CRPD/C/12/D/10/2013 (2 October 2014) para 6.3 cited the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (adopted 7 June 1999, entered into force 14 September 2001) AG/RES. 1608 (XXIX-O/99), when it stated that the State party's obligations regarding other human rights instruments to which it is a party are concurrently applicable.
111. *Yrusta v Argentina*, CED/C/10/D/1/2013 (11 March 2016) cites Art 2 of the Inter-American Convention on Forced Disappearance of Persons (adopted 9 June 1994, entered into force 28 March 1996) 33 ILM1429.
112. *L.G. v Republic of Korea*, CERD/C/86/D/51/2012 (1 May 2015) para 7.5, citing the UN Commission on Human Rights, 'The Protection of Human Rights in the Context of Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS)' (3 March 1995) UN Doc E/CN.4/RES/1995/44 and International Labour Organization, 'Recommendation Concerning HIV and AIDS and the World of Work' (No 200) (17 June 2010).
113. United Nations, 'Standard Minimum Rules for the Treatment of Prisoners' (17 December 2015) UN Doc A/RES/70/175.
114. *Khadzhiiev v Turkmenistan*, CCPR/C/113/D/2079/2011 (1 April 2015) para 8.8 (refers to the Standard Minimum Rule, Rule 37 states that prisoners have the right to correspond with their relatives); see also HRC, *Matyakubov v Turkmenistan*, CCPR/C/117/D/2224/2012 (14 July 2016) para 7.3.
115. *Abdullayev v Turkmenistan*, CCPR/C/113/D/2218/2012 (25 March 2015).
116. UN General Assembly, Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, (16 December 2005) UN Doc A/RES/60/147.
117. *L.A. v Slovak Republic*, CERD/C/85/D/49/2011 (15 August 2014) para 7.4.
118. *Aarrass v Morocco*, CAT/C/52/D/477/2011 (19 May 2014) para 12.
119. See D. Shelton, *Remedies in International Human Rights Law* (3rd edn, Oxford University Press, 2015).
120. See, for example the CAT in *Bairamov v Kazakhstan*, CAT/C/52/D/497/2012 (14 May 2014); See CEDAW in *X and Y v Georgia*, CEDAW/C/61/D/24/2009 (13 July 2015) and CRPD in *Groninger v Germany*, CRPD/C/D/2/2010 (4 April 2014); CERD in *L.G. v Republic of Korea*, CERD/C/86/D/51/2012 (1 May 2015). Finally, CED in *Yrusta v Argentina*, CED/C/10/D/1/2013 (11 March 2016) para 12(d).
121. See, however, HRC in *Timmer v Netherlands*, CCPR/C/111/D/2097/2011 (24 July 2014) para 9 where the HRC indicates that according to the author, 1000 EUR would not be sufficient compensation.
122. *L.G. v Republic of Korea*, CERD/C/86/D/51/2012 (1 May 2015).
123. *Ibid*, para 9.
124. *Belousova v Kazakhstan*, CEDAW/C/61/D/45/2012 (13 July 2015).
125. See for example, *ibid*; also HRC in *Griffiths v Australia*, CCPR/C/112/D/1973/2010 (21 October 2014) (only for legal costs); CESCR in *I.D.G. v Spain*, E/C.12/55/D/2/2014 (17 June 2015); CERD in *VS. v Slovakia*, CERD/C/88/D/56/2014 (4 December 2015); HRC, *Arkadyevich v. Russia*, CCPR/C/115/D/2141/2012 (23 October 2015) (only legal costs); CRPD, *X v Argentina*, CRPD/C/11/D/8/2012 (11 April 2014)(legal costs).
126. *I.D.G. v Spain*, E/C.12/55/D/2/2014 (17 June 2015) para 16.
127. *F v Austria*, CRPD/C/14/D/21/2014 (21 August 2015); HRC, *Bazarov v Kyrgyzstan*, CCPR/C/118/D/2187/2012 (21 October 2016).
128. See HRC, Guidelines on Measures of Reparation Under the Optional Protocol to the International Covenant on Civil and Political Rights, UN doc CCPR/C/158, 30 November 2016. There are very few instances where the individual remedy is only compensation, see e.g. HRC, *Horvath v Australia*, CCPR/C/110/D/1885/2009 (2014) para 10; HRC, *Dorofeev v Russia*, CCPR/C/111/D/2041/2011 (11 July 2014) para 12; CAT, *Kirsanov v Russia*, CAT/C/52/D/478/2011 (14 May 2014) para 13.

129. See e.g. HRC, *Abdullayev v Turkmenistan*, CCPR/C/113/D/2218/2012 (25 March 2015) (conscientious objector); HRC, *Ory v France*, CCPR/C/110/DR/1960/2010 (28 March 2014) (conviction of Roma people for lack of travel permit); *Askarov v Kyrgyzstan*, CCPR/C/116/D/2231/2012 (31 March 2016) (conviction in violation of fair trial rights).
130. *Akmatov v Kyrgyzstan*, CCPR/C/115/D/2052/2011 (29 October 2015) para 10.
131. *Basnet v Nepal*, CCPR/C/112/D/2051/2011 (19 October 2014) para 10.
132. HRC in *Shikhmuradova v Turkmenistan*, CCPR/C/112/D/2069/2011 (17 October 2014) para 8.
133. See, for example, HRC in *Choudhary v Canada*, CCPR/C/109/D/1898/2009 (28 October 2013) para 11; *Ahmed v Denmark*, CCPR/C/117/D/2379/2014 (7 July 2016).
134. *Aarrass v Spain*, CCPR/C/111/D/2008/2010 (21 July 2014) para 12.
135. CAT in *F.K. v Denmark*, CAT/C/56/D/580/2014 (23 November 2015); *Mr. X and Mr. Z v Finland*, CAT/C/52/D/483/2011 and CAT/C/52/D/485/2011 (12 May 2014); *J.K. v Canada*, CAT/C/56/D/562/2013 (23 November 2015); *R.G. v Sweden*, CAT/C/56/D/586/2014 (25 November 2015); *F.B. v The Netherlands*, CAT/C/56/D/613/2014 (20 November 2015).
136. CAT in *X v Kazakhstan*, CAT/C/55/D/554/2013 (3 August 2015); *Nasirov v Kazakhstan*, CAT/C/52/D/475/2011 (14 May 2014) and *X v Russia*, CAT/C/54/D/542/2013 (8 May 2015).
137. CAT in *A.K. v Switzerland*, CAT/C/54/D/544/2013 (8 May 2015); *Azizi v Switzerland*, CAT/C/53/D/492/2012 (27 November 2014).
138. CAT in *Barry v Morocco*, CAT/C/52/D/372/2009 (19 May 2014); *E.N. v Burundi*, CAT/C/56/D/578/2013 (25 November 2015); *Kabura v Burundi*, CAT/C/59/D/549/2013 (11 November 2016); HRC in *Akunov v Kyrgyzstan*, CCPR/C/118/D/2127/2011 (27 October 2016); *Samathanam v Sri Lanka*, CCPR/C/118/D/2412/2014 (16 October 2016).
139. *Aarrass v Morocco*, CAT/C/52/D/477/2011 (19 May 2014) para 12 where the evidence presented by the complainant showed that previous medical examinations were not done in accordance with the Protocol and their reliability was challenged on this particular ground. See also: *Asfari v Morocco*, CAT/C/59/D/606/2014 (15 November 2016) para 15 and *Elaiba v Tunisia*, CAT/C/57/D/551/2013 (6 May 2016) para 7.10.
140. *Groninger v Germany*, CRPD/C/D/2/2010 (4 April 2014); *Beasley v Australia*, CRPD/C/15/D/11/2013 (2016) and CRPD, *Lockrey v Australia*, CRPD/C/15/D/13/2013 (1 April 2016) (the Committee asked the State party to enable the authors to participate in jury duty).
141. *X v Argentina*, CRPD/C/11/D/8/2012 (11 April 2014).
142. *R.P.B. v the Philippines*, CEDAW/C/57/D/34/2011 (21 February 2014).
143. *I.D.G. v Spain*, E/C.12/55/D/2/2014 (17 June 2015).
144. *Yrusta v Argentina*, CED/C/10/D/1/2013 (11 March 2016) para 12 (a), (b), (c).
145. *Kitenge Baruani v Democratic Republic of the Congo*, CCPR/C/110/D/1890/2009 (27 March 2014).
146. *Zaier v Algeria*, CCPR/C/112/D/2026/2011 (29 October 2014), Individual opinion of HRC member Gerald L. Neumann (concurring) in para 2.
147. *Ibid*, para 8.
148. *Ibid*.
149. See CERD in *VS. v Slovakia*, CERD/C/88/D/56/2014 (4 December 2015); On the other hand, see CERD in *L.G. v Republic of Korea*, CERD/C/86/D/51/2012 (1 May 2015) in which the author unsuccessfully asked CERD to urge the State to provide her with a public apology.
150. *Yrusta v Argentina*, CED/C/10/D/1/2013 (11 March 2016) para 12 (e).
151. See e.g. HRC in *Timmer v Netherland*, CCPR/C/111/D/2097/2011 (24 July 2014) para 9; *Zaier v Algeria*, CCPR/C/112/D/2026/2011 (29 October 2014); *Zv Australia*, CCPR/C/115/D/2279/2013 (5 November 2015); CAT in *Bairamov v Kazkhstan*, CAT/C/52/D/497/2012 (14 May 2014); *Barry v Morocco*, CAT/C/52/D/372/2009 (19 May 2014).
152. See e.g. HRC in *Prostko v Belarus*, CCPR/C/109/D/1919-1920/2009 (1 November 2013); *Ory v France*, CCPR/C/110/DR/1960/2010 (28 March 2014); *Bazarov v Belarus*, CCPR/C/111/D/1934/2010 (24 July 2014); *Kuznetsov v Belarus*, CCPR/C/111/D/1976/2010 (24 July 2014) (in all these cases against Belarus the HRC asked that Law on Mass Events be reviewed in accordance with Art 19 and/or 21 of the ICCPR); see also HRC in *Koktish v Belarus*, CCPR/C/111/D/1985/2010 (24 July 2014) (review of legislation, the 'Rules of Accreditation for Journalists

- from the Mass Media House to the House of Representatives of Belarus' in accordance with Art 19 of the ICCPR).
153. See HRC in *Rizvanovic v Bosnia and Herzegovina*, CCPR/C/110/D/1997/2010 (21 March 2014).
  154. *Mellet v Ireland*, CCPR/C/116/D/2324/2013 (31 March 2016) para 9.
  155. HRC in *Mihoubi v Algeria*, CCPR/C/109/D/1874/2009 (18 October 2013), Individual opinions by Fabián Omar Salvioli and Víctor Manuel Rodríguez-Rescia; see also *Boudjemai v Algeria*, CCPR/C/107/D/1791/2008 (22 March 2013), Individual opinion (concurring) of Committee member Fabián Omar Salvioli; *Mechani v Algeria*, CCPR/C/107/D/1807/2008 (22 March 2013), Partly dissenting opinion of Committee member Víctor Rodríguez Rescia.
  156. HRC in *Bousseloub v Algeria*, CCPR/C/111/D/1974/2010 (23 July 2014) para 9.
  157. *Berzig v Algeria*, CCPR/C/103/D/1781/2008 (31 October 2011), Individual opinion of HRC member Fabian Salvioli, joined by Cornelis Flinterman (concurring) in para 14.
  158. *Ibid*, para 16.
  159. *Ramirez Martinez v Mexico*, CAT/C/55/D/500/2012 (4 August 2015) para 10.
  160. *L.G. v Republic of Korea*, CERD/C/86/D/51/2012 (1 May 2015) para 9; *TBB- Turkish Union in Berlin/ Brandenburg v Germany*, CERD/C/82/D/48/2010 (4 April 2013) which recommends that the State party review its policy and procedures concerning prosecution in cases of alleged racial discrimination consisting of dissemination of ideas of superiority over other ethnic groups and incitement to discrimination on such grounds.
  161. *I.D.G. v Spain*, E/C.12/55/D/2/2014 (17 June 2015) para 17.
  162. *R.P.B. v the Philippines*, CEDAW/C/57/D/34/2011 (21 February 2013) para 9.
  163. *X v Argentina*, CRPD/C/11/D/8/2012 (11 April 2014).
  164. *F v Austria*, CRPD/C/14/D/21/2014 (21 August 2015).
  165. Council of Europe Convention on preventing and combating violence against women and domestic violence (adopted 11 May 2011, entered into force 1 August 2014) CETS 210.
  166. *X and Y v Georgia*, CEDAW/C/61/D/24/2009 (13 July 2015).
  167. *F v Austria*, CRPD/C/14/D/21/2014 (21 August 2015); see also CRPD, *Nyusti v Hungary*, CRPD/C/9/D/1/2010 (16 April 2013).
  168. *VS. v Slovakia*, CERD/C/88/D/56/2014 (4 December 2015).
  169. Note that formal follow-up procedures have been established to assess compliance with views of the HRC, CERD, CAT, CEDAW, CRPD, CED. See: OHCHR Secretariat, 'Procedures of the human rights treaty bodies for following up on concluding observations, decisions and Views' (8 May 2017) UN Doc HRI/MC/2017/4, 15–20.
  170. The Petition Unit is currently of 15 Staff, see Geneva Academy of International Humanitarian and Human Rights Law, 'Optimizing the UN Treaty Body System: Academic Platform Report on the 2020 Review' (May 2018) 37.
  171. OHCHR, Annual Report (2016) 13.
  172. Report of the Secretary-General, 'Status of the human rights treaty body system' (18 July 2016) UN Doc A/71/118, Annex IX.
  173. Report of the Secretary-General, 'Status of the human rights treaty body system (6 August 2018) UN Doc A/73/309, 5.
  174. Note Art 28(2) of CED which calls upon the Committee to consult the other treaty bodies, and in particular the HRC, to ensure the consistency of its case law.
  175. United Nations High Commissioner for Human Rights, 'United Nations reform: measures and proposals' (26 June 2012) UN Doc. A/66/860, section 4.3.2.
  176. Compare OP 1-ICCPR, art. 5(4), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 22(7) and ICED, art. 31(5) with ICERD, art. 14 (7)(b); OP 1-CEDAW, art. 7(3); OP-CRPD, art. 5; OP-ICESCR, art. 9(1); OP-CRC, art. 10(5).

## Disclosure statement

No potential conflict of interest was reported by the authors.

## Notes on contributors

*Başak Çalı* is a Professor of International Law and Director of the Center for Fundamental Rights, Hertie School, Berlin, Germany; Editor-in-Chief of the Oxford Reports on UN Human Rights Bodies. Email: cali@hertieschool.org

*Alexandre Skander Galand* is a Post-Doctoral Research Fellow, Centre for Fundamental Rights, Hertie School, Berlin, Germany; Associate Editor of the Oxford Reports on UN Human Rights Bodies. Email: alexandre.s.galand@hotmail.com