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THE PROOF IS IN THE PROCESS:
SELF-REPORTING UNDER INTERNATIONAL HUMAN RIGHTS TREATIES

By Cosette D. Creamer and Beth A. Simmons***

ABSTRACT

Recent research has shown that state reporting to human rights monitoring bodies is associated with improvements in rights practices, calling into question earlier claims that self-reporting is inconsequential. Yet little work has been done to explore the theoretical mechanisms that plausibly account for this association. This Article systematically documents—across treaties, countries, and years—four mechanisms through which reporting can contribute to human rights improvements: elite socialization, learning and capacity building, domestic mobilization, and law development. These mechanisms have implications for the future of human rights treaty monitoring.

Over the past fifty years, the number of international human rights codified in treaty form has exploded. There are now nine core multilateral human rights agreements, each with their own monitoring body, and several optional protocols.¹ This treaty regime covers a range of rights for all persons, from civil and political to economic, social, and cultural rights. Dedicated treaties aim to eliminate discrimination against racial minorities and women, and to protect the rights of children, migrants, and the disabled. Every country has committed itself to at least one of these core treaties, and most have ratified several.

The treaties are administered by reviewing bodies that, among other functions, receive reports from the member states on their human rights practices. Recent research has shown that reporting states improve their rights practices when they engage in ongoing dialogue with these treaty bodies, throwing into question earlier impressions that self-reporting is inconsequential. This improvement occurs even though states that report are initially no better at respecting human rights than those that do not.²

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¹ OHCHR, The Core International Human Rights Instruments and Their Monitoring Bodies, at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>.

² Cosette D. Creamer & Beth A. Simmons, *Do Self-Reporting Regimes Matter? Evidence from the Convention Against Torture*, INT'L STUD. Q. (forthcoming); Cosette D. Creamer & Beth A. Simmons, *The Dynamic Impact of Periodic Review on Women's Rights*, 81 L. & CONTEMP. PROBS. 31 (2018).

To be sure, the human rights treaty-body system has faced many challenges. Reform discussions have recurred since its inception.³ Commentary has grown more urgent since the early 2000s, as the system has expanded in size, scope, and membership. In 2009, the UN high commissioner for human rights initiated a process to strengthen the treaty bodies, recognizing that chronic under-resourcing, backlog, lack of engagement, and complexity of working methods were compromising the system. After consultations with states parties, experts, and civil society, the high commissioner presented a report to the General Assembly proposing measures to reinforce the system.⁴ Following two years of difficult negotiations among member states, the General Assembly adopted a resolution to do so.⁵ This resulted in measures aimed to enhance the treaty bodies' capacity to protect human rights. In 2020 the General Assembly will review these measures' effectiveness and consider additional actions to further improve the system.

Given these upcoming reform discussions, it is important to understand the nature and quality of the self-reporting process and consider evidence-based recommendations for its improvement. Over the past decade, our understanding of international treaties' effects on state behavior and human rights outcomes has grown significantly,⁶ but few studies investigate systematically how self-reporting affects treaty implementation and ultimately domestic laws and practices. The most rigorous evidence to date establishes a plausible connection between the cumulative effects of participating in the reporting process and improved human rights outcomes. Recent research shows that the more frequently states participate in the reporting process, the better they perform on relevant indicators of rights outcomes.⁷ In particular, repeated and cumulative dialogues with treaty bodies have contributed to lower levels of discrimination against women and physical integrity rights violations. Employing a range of statistical techniques, these studies help establish a causal connection between the fact of iterated reporting and improved rights practices and gesture toward mechanisms of public attention and political mobilization as potential explanations for this connection. However, research has yet to explore the range of theoretical mechanisms that plausibly account for the link between reporting and rights improvements. In short, the process connecting periodic review by the treaty bodies and human rights improvements remains opaque.

This Article demonstrates that certain features of the process of self-reporting to human rights treaty bodies can account for the positive relationship between the act of reporting and

³ UN GAOR, 44th Sess. Effective Implementation of International Instruments on Human Rights, Including Reporting Obligations Under International Instruments on Human Rights, UN Doc. A/44/668 (Nov. 8, 1989).

⁴ UN High Commissioner for Human Rights, Strengthening the United Nations Human Rights Treaty Body System, UN Doc. A/66/860 (2012).

⁵ UN GAOR, 68th Sess., Resolution Adopted by the General Assembly on 9 April 2014, Strengthening and Enhancing the Effective Functioning of the Human Rights Treaty Body System, UN Doc. A/RES/68/268 (Apr. 21, 2014).

⁶ KATHRYN SIKKINK, EVIDENCE FOR HOPE: MAKING HUMAN RIGHTS WORK IN THE 21ST CENTURY (2017); BETH A. SIMMONS, MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS (2009); Christopher J. Fariss, *The Changing Standard of Accountability and the Positive Relationship Between Human Rights Treaty Ratification and Compliance*, 48 BRIT. J. POL. SCI. 239 (2018); Kevin L. Cope & Cosette D. Creamer, *Disaggregating the Human Rights Treaty Regime*, 56 VA. J. INT'L L. (2016); Xinyuan Dai, *The Conditional Effects of International Human Rights Institutions*, 36 HUM. RTS. Q. 569 (2014). Some researchers argue that international treaties have contributed little to improved rights enjoyment, citing weak enforcement. Oona Hathaway, *Do Human Rights Treaties Make a Difference?* 111 YALE L.J. 1935 (2002); EMILIE M. HAFNER-BURTON, MAKING HUMAN RIGHTS A REALITY (2013).

⁷ Creamer & Simmons, *The Dynamic Impact of Periodic Review on Women's Rights*, *supra* note 2; Creamer & Simmons, *Do Self-Reporting Regimes Matter?*, *supra* note 2.

positive human rights outcomes reported in earlier research. In particular, this Article systematically documents—across treaties, countries, and years—four mechanisms that theory and evidence suggest contribute to human rights improvements: elite socialization, learning and capacity building, domestic mobilization, and law development. We show that reports are becoming more thorough, increasingly candid, and more relevant to treaty obligations. More states are developing the capacity to collect, systematize, and analyze information—and more are willing to include such information in their reports—than in the past. Most importantly, the report-and-review process seeps into domestic politics, as reflected in the growth and localization of civil society participation (shadow reporting) and local media publicity. In other words, what is discussed in Geneva does not stay in Geneva. It spills over into domestic debates, adding fuel to mobilization and prompting demands for implementation. The work of the treaty bodies is also increasingly relevant to and informs law development at the regional level.

This Article’s claims are limited in two respects. First, it should be obvious that rights practices are shaped by many complex influences. No monocausal account of law—much less reporting under international treaty regimes—can fully determine actual rights protections and violations. The processes documented in this Article exist synergistically with a multitude of other influences; they do not operate in social, political, or legal isolation. Self-reporting matters because bureaucracies can learn, because the media reports, because groups mobilize, and because expert decisions and views contribute to law development. A host of other individuals and institutions—from special rapporteurs to local politicians—play important roles as well. The mechanisms discussed here benefit from, amplify, and empower these entities. Second, while the Article demonstrates that the reporting process accords with conditions that theoretically facilitate positive outcomes, causal tests for each mechanism are not presented here. Rather, we offer empirically supported reasons for taking seriously established causal claims between the act of self-reporting and positive human rights outcomes.

This Article first demonstrates in Part I that self-reporting is a crucial and pervasive “enforcement” device in both domestic and international law. Part II describes the history and evolution of the contemporary human rights self-reporting regime. Part III links self-reporting and review to theories of elite socialization, learning and capacity building, political mobilization, and law development. The conclusion in Part IV is cautiously optimistic. It entertains critiques, including potential problems of reporting fatigue and meaningless bureaucratic ritualization. It also offers policy recommendations based on theory and evidence. Far from conceding defeat, reforms should continue to focus on making the report-and-review process streamlined, accessible, and actionable.

I. SELF-REPORTING AND LAW “ENFORCEMENT”

Self-reporting has become a common tool of regulatory compliance at all levels of governance. At the national level, it is often considered the best—and sometimes the only—way to elicit information needed to enforce the law. From the U.S. Defense Department’s Contractor

Disclosure Program⁸ to the Federal Energy Regulatory Commission⁹ to the U.S. Department of Health and Human Services,¹⁰ American regulators routinely use self-reporting to enhance regulatory compliance and encourage the development of self-policing capacity among firms.

Self-reporting is also central to regional regulatory enforcement. The European Union depends on information provided by national administrations and employs “soft” tools such as regulatory transparency to encourage compliance with European policies.¹¹ The EU’s Open Method of Coordination relies on iterative national reports to assess regulatory progress, provide peer review, exchange best practices, and occasionally issue recommendations on how best to achieve common regulatory goals.¹² A range of actors—national agencies, ministry officials, parliamentarians, civil society, and the media—deploy information disclosed during this process to set national policy agendas and press for reforms.¹³

Critics debate self-reporting systems’ effectiveness in reducing law violations, but some domestic evidence suggests it is a useful component in a broader regulatory framework. Self-reporting systems have contributed to pollution abatement¹⁴ by reducing the costs of monitoring,¹⁵ encouraging remediation (or correction) of violations,¹⁶ and generally contributing to a norm of “self-policing.”¹⁷ Firms’ ability and willingness to self-police has long been an important aspect of deterrence and compliance in a range of regulatory arenas.¹⁸

These systems also have well-known weaknesses. Often, actors resist self-reporting, especially when such requirements are new and perceived as burdensome. One particularly disparaged example is Section 1502 of the Dodd-Frank Act,¹⁹ which required companies to disclose annually whether they had obtained certain minerals from mines controlled by armed groups in the Congo. Few reporting requirements have been so severely denounced as costly and

⁸ *Department of Defense Voluntary Disclosure Program*, in DEPARTMENT OF JUSTICE, UNITED STATES ATTORNEYS’ MANUAL (USAM), TITLE 9: CRIMINAL RESOURCE MANUAL (CRM), § 931, at <http://www.justice.gov/usam/criminal-resource-manual-931-department-defense-voluntary-disclosure-program>.

⁹ The Federal Energy Regulatory Commission (FERC) “encourages self-reports of possible violations, and in many cases, self-reported violations have resulted in closure of the matter without sanctions.” See FERC, *Self Reports*, at <http://www.ferc.gov/enforcement/self-reports.asp>.

¹⁰ The Office of the Inspector General (OIG) relies on “several self-disclosure processes that can be used to report potential fraud in Department of Health and Human Services (HSS) Programs.” See OIG, *Self-Disclosure Information*, at <http://oig.hhs.gov/compliance/self-disclosure-info>.

¹¹ Åse Gornitzka & Ulf Sverdrup, *Access of Experts: Information and EU Decision-Making*, 34 W. EUR. POL. 48 (2011).

¹² See CHANGING EUROPEAN EMPLOYMENT AND WELFARE REGIMES: THE INFLUENCE OF THE OPEN METHOD OF COORDINATION ON NATIONAL REFORMS (Martin Heidenreich & Jonathan Zeitlin eds., 2009).

¹³ Rik de Ruiter, *Full Disclosure? The Open Method of Coordination, Parliamentary Debates and Media Coverage*, 14 EUR. UNION POL. 95 (2013); Eva G. Heidbreder, *Governance in the European Union: A Policy Analysis of the Attempts to Raise Legitimacy Through Civil Society Participation*, 17 J. COMP. POL’Y ANALYSIS 359 (2015).

¹⁴ See John Livernois & C. J. McKenna, *Truth or Consequences: Enforcing Pollution Standards with Self-Reporting*, 71 J. PUB. ECON. 415 (1999); CLIFFORD S. RUSSELL, WINSTON HARRINGTON & WILLIAM J. VAUGHN, *ENFORCING POLLUTION CONTROL LAWS* (2011); Maureen L. Cropper & Wallace E. Oates, *Environmental Economics: A Survey*, 30 J. ECON. LIT. 675 (1992).

¹⁵ Arun S. Malik, *Self-Reporting and the Design of Policies for Regulating Stochastic Pollution*, 24 J. ENVTL. ECON. & MGMT. 241 (1993).

¹⁶ Robert Innes, *Remediation and Self-Reporting in Optimal Law Enforcement*, 72 J. PUB. ECON. 379 (1999).

¹⁷ Michael W. Toffel & Jodi L. Short, *Coming Clean and Cleaning Up: Does Voluntary Self-Reporting Indicate Effective Self-Policing?*, 54 J. L. & ECON. 609 (2011).

¹⁸ Jennifer Arlen, *The Potentially Perverse Effects of Corporate Criminal Liability*, 23 J. LEGAL STUD. 833 (1994).

¹⁹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124, § 929-Z, 124 Stat. 1376, 1871 (2010) (codified at 15 U.S.C. § 78o).

ineffective. When some of the initial reports became available for review and analysis, they made for quite uninformative reading, with companies typically claiming they could not determine who controlled the mines from which they sourced minerals.²⁰

Yet even this much-maligned reporting requirement spawned potentially interesting dynamics. Some companies began to investigate the provenance of their mineral inputs, which incentivized implementation of firm governance models that increased the feasibility of tracing mineral sourcing. Models of supply chain due diligence were adopted to replace individual firms' uninformative go-it-alone reports.²¹ Third-party auditors developed a capacity to certify certain sources as "conflict free." While early returns from the reporting were not encouraging, even-handed analysts noted new reputational pressures to scrutinize supply chains and concluded that the system should be improved rather than scrapped.²² More importantly, firms were innovating even as they began—often reluctantly—the task of self-reporting. Some optimistic advocates attributed a decline in rebel mining in the Congo to greater attention by corporations and consumers to sourcing.²³

Domestic self-reporting systems for private or commercial actors, as well as regional European ones for governments, differ in an important respect from most international systems: they are usually backed by some ability to punish violators if detected. International regimes have very limited ability to punish delinquent non-reporters.²⁴ Instead, they must rely on moral suasion and peer pressure to encourage report submission. Governments might then face political pressure and administrators may even experience "lie aversion,"²⁵ which creates subtle pressures to be honest and thorough.²⁶

International law depends on self-reporting even more than domestic or regional legal systems do. International cooperation is inconceivable—or at least very inefficient—without the ability to collect and share credible information.²⁷ Such information makes it theoretically possible

²⁰ Yong H. Kim & Gerald F. Davis, *Challenges for Global Supply Chain Sustainability: Evidence from Conflict Minerals Reports*, 59 ACAD. MGMT. J. 1896 (2016) (finding that the more decentralized and dispersed the vertical supply chains, the less likely firms were to certify that their supplies were "conflict free").

²¹ Stephane Timmer & Lutz Kaufmann, *Conflict Minerals Traceability – a Fuzzy Set Analysis*, 47 INT'L J. PHYSICAL DISTRIBUTION & LOGISTICS MGMT. 344 (2017); Hannes Hofmann, Martin C. Schleper & Constantin Blome, *Conflict Minerals and Supply Chain Due Diligence: An Exploratory Study of Multi-tier Supply Chains*, 147 J. BUS. ETHICS 115 (2108) (finding that a supply-chain wide management and accountability approach renders traceability more feasible than a firm-by-firm approach).

²² Jeff Schwartz, *The Conflict Minerals Experiment*, 6 HARV. BUS. L. REV. 129 (2016). See also Jomo Sankara, Deborah L. Lindberg & Khalid A. Razaki, *Conflict Minerals Disclosures: Reporting Requirements and Implications for Auditing*, 10 CURRENT ISSUES IN AUDITING A1 (2016) (noting the increase in auditing triggered by reputational pressures).

²³ The Enough Project, *Progress and Challenges on Conflict Minerals: Facts on Dodd-Frank 1502*, at <https://enoughproject.org/special-topics/progress-and-challenges-conflict-minerals-facts-dodd-frank-1502>.

²⁴ Differential punishments are useful if actors can expect to escape harsher punishments or more intensive scrutiny by reporting than if wrongs are discovered independently. See, e.g., Louis Kaplow & Steven Shavell, *Optimal Law Enforcement with Self-Reporting of Behavior*, 102 J. POL. ECON. 583 (1994).

²⁵ Lana Friesen & Lata Gangadharan, *Designing Self-Reporting Regimes to Encourage Truth Telling: An Experimental Study*, 94 J. ECON. BEHAVIOR & ORG. 90 (2013).

²⁶ This finding is consistent with findings in the context of international human rights regimes. See Cosette D. Creamer & Beth A. Simmons, *Ratification, Reporting and Rights: Quality of Participation in the Convention Against Torture*, 37 HUM. RTS. Q. 579 (2015) (finding that the quality of reporting to the Committee Against Torture has improved overtime for those states that submit reports).

²⁷ Paul R. Milgrom, Douglass C. North & Barry R. Weingast, *The Role of Institutions in the Revival of Trade: The Law Merchant, Private Judges, and the Champagne Fairs*, 2 ECON. & POLIT. 1 (1990); ROBERT O. KEOHANE, *AFTER HEGEMONY: COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY* (1984).

for states to avoid costly conflict²⁸ and realize joint gains that would otherwise be difficult to achieve given that “political market failures” are rife internationally.²⁹

In fact, self-reporting requirements are the most common form of “enforcement” in international law and institutions.³⁰ Barbara Koremenos recently found that a little over half of a random sample of treaties deposited with the United Nations rely on self-monitoring, third-party surveillance, or a combination of both.³¹ In the area of arms control, some eighty-five of 227 agreements provide for self-reporting as the most intrusive form of monitoring.³² When the stakes are high, self-reporting is often supplemented with verification by an international body, peer inspections, and/or unilateral or external monitoring. Under the Chemical Weapons Convention, for instance, states parties must initially declare stocks of chemical weapons and subsequent annual progress made toward their destruction.³³ The Organization for the Prohibition of Chemical Weapons verifies these declarations through onsite inspection. States parties may also request a “challenge inspection” of any other state party’s facilities. Self-reporting thus plays a central role in arms control, even as verification provisions have increased and external monitoring has become denser.

Other areas of international law rely on self-reporting systems with weaker forms of delegated monitoring, while allowing for additional input from civil society, peer governments, and international bureaucracies. A good example is trade enforcement, which relies on a system of fire alarms rather than police patrols.³⁴ With private firms highly incentivized to report and litigate instances of noncompliance,³⁵ information is produced largely through dispute settlement.³⁶ However, the World Trade Organization (WTO) also collects information through regular “notifications” by governments regarding specific measures, policies, or laws. Regular reporting and review of trade policies also occurs through the Trade Policy Review Mechanism, with input provided by the reviewed state and the Organization’s bureaucracy, followed by questioning by peer governments within a public forum.³⁷ In this case, the purpose is expressly not to enforce WTO law but rather to facilitate trade by providing transparency on members’

²⁸ James D. Fearon, *Rationalist Explanations for War*, 49 INT’L ORG. 379 (1995); Michaela Mattes & Burcu Savun, *Information, Agreement Design, and the Durability of Civil War Settlements*, 54 AM. J. POL. SCI. 511 (2010); DAN LINDLEY, PROMOTING PEACE WITH INFORMATION: TRANSPARENCY AS A TOOL OF SECURITY REGIME (2007); POWER AND CONFLICT IN THE AGE OF TRANSPARENCY (Bernard I. Finel & Kristin M. Lord eds., 2002).

²⁹ Robert O. Keohane, *The Demand for International Regimes*, in INTERNATIONAL REGIMES 141 (Stephen D. Krasner ed., 1983).

³⁰ Ann Florini, *The Evolution of International Norms*, 40 INT’L STUD. Q. 363, 381 (1996).

³¹ BARBARA KOREMENOS, THE CONTINENT OF INTERNATIONAL LAW 261–62 (2016).

³² Jane Vaynman, *Enemies in Agreement: Domestic Politics, Uncertainty, and Cooperation Between Adversaries*, ch. 3 (July 2014) (unpublished Ph.D. dissertation, Harvard University), available at <https://dash.harvard.edu/handle/1/13070027>.

³³ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Art. IX.2, Jan. 13, 1993, 1974 UNTS 45; 32 ILM 800 (1993).

³⁴ Matthew D. McCubbins & Thomas Schwartz, *Congressional Oversight Overlooked: Police Patrols Versus Fire Alarms*, 28 AM. J. POL. SCI. 165 (1984).

³⁵ Xinyuan Dai, *Information Systems in Treaty Regimes*, 54 WORLD POL. 405 (2002).

³⁶ See, e.g., James McCall Smith, *The Politics of Dispute Settlement Design: Explaining Legalism in Regional Trade Pacts*, 54 INT’L ORG. 137 (2000).

³⁷ Marrakesh Agreement Establishing the World Trade Organization), Art. III & Annex III:A(ii), THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 4 (1999), 1867 UNTS 154, 33 ILM 1144 (1994).

policies and practices.³⁸ While an innovation in monitoring multilateral trade agreements, practically nothing is known about its consequences.

Self-reporting is also a central pillar in international environmental agreements. Some, like the G20 Fossil Fuel Subsidy Agreement, depend almost exclusively on information from adhering states.³⁹ In many instances, self-reporting complements other forms of information gathering thought to be critical to transparency and ultimately compliance. For example, various “systems for implementation review” exist in international environmental agreements, “through which the parties share information, compare activities, review performance, handle noncompliance, and adjust commitments.”⁴⁰ While existing research does not theorize how state-generated self-reports can affect behavior,⁴¹ the role of nongovernmental organizations (NGOs) is likely a critical element. Many observers note the similarity between the watchdog role that NGOs play in supplementing state reporting in environmental and human rights implementation processes.⁴²

Monitoring provisions are also common in human rights agreements. In Koremenos’s random sample, about 41 percent of human rights agreements contained no monitoring provisions at all, which is almost the exact proportion for international agreements as a whole (40 percent).⁴³ The remaining 59 percent of human rights agreements sampled are fairly “densely monitored” and commonly require states parties to report to “internal bodies” (e.g., treaty-based implementation committees) and establish a formal monitoring role for existing intergovernmental organizations (e.g., UN bodies) as well. For instance, since 2006, Universal Periodic Review has enhanced self-reporting to peers in the UN Human Rights Council. Overall, the international community depends heavily on states parties to provide the raw material for human rights oversight.⁴⁴

In issue areas from arms control to the environment, and from trade to human rights, state-generated information provision and review have been critical in increasing the transparency necessary for treaty implementation.⁴⁵ But *has* self-reporting enhanced international human rights treaty implementation? If so, how? It was certainly intended to do so, as the historical record discussed in the next part demonstrates.

II. SELF-REPORTING UNDER INTERNATIONAL HUMAN RIGHTS LAW

³⁸ Roderick Abbott, *GATT and the Trade Policy Review Mechanism: Further Reflections on Earlier Reflections*, 27 J. WORLD TRADE 117 (1993); Richard Blackhurst, *Strengthening GATT Surveillance of Trade-Related Policies*, in THE NEW GATT ROUND OF MULTILATERAL TRADE NEGOTIATIONS: LEGAL AND ECONOMIC ASPECTS 123 (Meinhard Hilf & Ernst-Ulrich Petersmann eds., 1988); Julien Chaisse & Mitsuo Matsushita, *Maintaining the WTO’s Supremacy in the International Trade Order: A Proposal to Refine and Revise the Role of the Trade Policy Review Mechanism*, 16 J. INT’L ECON. L. 9 (2013).

³⁹ Joseph E. Aldy, *Policy Surveillance in the G-20 Fossil Fuel Subsidies Agreement: Lessons for Climate Policy* (Harvard Project on Climate Agreements, Discussion Paper 15-70, 2015), available at http://belfercenter.ksg.harvard.edu/files/dp70_alddy.pdf.

⁴⁰ David G. Victor, Kal Raustiala & Eugene B. Skolnikoff, *Introduction and Overview*, in THE IMPLEMENTATION AND EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL COMMITMENTS: THEORY AND PRACTICE 1, 3 (David G. Victor, Kal Raustiala & Eugene B. Skolnikoff eds., 1998).

⁴¹ *Id.* at 11.

⁴² IMPROVING COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL LAW 29–47 (Jacob Werksman, James Cameron & Peter Roderick eds., 1996).

⁴³ KOREMENOS, *supra* note 31, at 261–62.

⁴⁴ Dai, *supra* note 35, at 405.

⁴⁵ Victor, Raustiala & Skolnikoff, *supra* note 40, at 24.

Historical Development

Self-reporting is the tip of the spear of the accountability revolution in international human rights. Before World War I, there are only hints of such accountability in areas we might recognize as related to human rights. Reporting by states parties was discussed in the area of labor standards and in limited regional agreements to address what today we call human trafficking for sexual exploitation. As early as 1905, a draft labor convention called on national supervisory authorities to “publish regularly reports on the execution of the present convention and to exchange these reports among themselves.”⁴⁶

Two world wars changed global attitudes about state accountability, which was slowly built into inter-war international law and organizations. In November 1918, the League of Nations Committee on Labor urged governments to provide for the creation of an International Labor Office in the Paris Treaty of Peace. This office would be charged with the “collection and comparison of the measures taken to carry out international [labor] conventions and of the government reports on their observance.”⁴⁷ The next year, an American draft included reference to states parties reporting to the secretary-general of the League of Nations any actions taken in response to a “recommendation of the General Conference [of Labor] communicated to it.”⁴⁸ The International Labor Organization (ILO) constitution signed in 1919 ultimately required annual reports that “shall be made in such form and shall contain such particulars as the Governing Body may request.”⁴⁹

The Mandate System under the League of Nations also relied on reports from countries charged with overseeing non-self-governing territories, a practice continued under the Trusteeship Council of the United Nations.⁵⁰ Early human-trafficking conventions further signaled the emergence of reporting norms. Agreements negotiated in 1904 and 1910 to curb trafficking in prostitution had rudimentary information-exchange provisions,⁵¹ and eventually came under the supervision of the League’s Advisory Committee on the Traffic of Women and Children.⁵² States began reporting to Geneva on anti-trafficking measures in the early 1920s,⁵³ and the 1926 Slavery Convention created an additional obligation to report relevant anti-trafficking laws to other parties

⁴⁶ Sir Malcolm Delevingne, *The Pre-War History of International Labor Legislation*, in *THE ORIGINS OF THE INTERNATIONAL LABOR ORGANIZATION, VOLUME ONE: HISTORY* 3, 29–39 (James T. Shotwell ed., 1934).

⁴⁷ Charles Picquenard, *The Preliminaries of the Peace Conference*, in *THE ORIGINS OF THE INTERNATIONAL LABOR ORGANIZATION, VOLUME ONE: HISTORY*, *supra* note 46, at 88.

⁴⁸ Edward J. Phelan, *The Commission of International Labor Legislation*, in *THE ORIGINS OF THE INTERNATIONAL LABOR ORGANIZATION, VOLUME ONE: HISTORY*, *supra* note 46, at 159.

⁴⁹ Treaty of Peace at Versailles, Art. 408, June 28, 1919, 225 Parry 188, 2 Bevens 235, 13 AJIL Supp. 151, 385 (1919).

⁵⁰ Covenant of the League of Nations, Art. 22, June 28, 1919; Charter of the United Nations (1945), Arts. 73(e), 83, 87(a), 88.

⁵¹ International Agreement for the Suppression of the “White Slave Traffic,” May 18, 1904, 35 Stat. 1979, 1 LNTS 83 (*entered into force* 18 July 1905); International Convention for the Suppression of the “White Slave Traffic,” May 4, 1910, 211 Consol. TS 45, 1912 GR. Brit. TS No. 20, *as amended by* Protocol Amending the International Agreement for the Suppression of the White Slave Traffic, and Amending the International Convention for the Suppression of the White Slave Traffic, May 4, 1949, 2 UST 1999, 30 UNTS 23 (*entered into force* June 21, 1951). 103 BFSP 244 (1910).

⁵² See HENRY WILSON HARRIS, *HUMAN MERCHANDISE: A STUDY OF THE INTERNATIONAL TRAFFIC IN WOMEN* 27 (1928).

⁵³ International Convention for the Suppression of the Traffic in Women and Children, concluded at Geneva on Sept. 30 1921, as amended by the Protocol signed at Lake Success, New York, on Nov. 12, 1947, 9 LNTS 415 (*entered into force* June 15, 1922); HARRIS, *supra* note 52, at 27.

and the League secretary-general,⁵⁴ though it failed to provide procedures for review or follow-up. In 1930, the British government tried to use the Permanent Mandates Commission model to gather information through reports to a “Permanent Slavery Organization,” but these efforts failed due to the financial constraints of the inter-war depression and the outbreak of World War II.⁵⁵ A more elaborated system for reporting and information sharing to counter human trafficking and other rights violations would have to await the postwar period.⁵⁶

The postwar international order crucially changed the context for human rights. Democratic governance was reestablished in many countries, including in the heart of Europe. Transnational organizations and faith-based organizations found their voices in advocating for human rights. Crumbling empires would be replaced by a wave of newly independent nation states. Many of these emerging states found common cause with rights advocates in their calls for national self-determination.⁵⁷

The postwar period was a watershed for both international human rights and for what has been called the “regulatory turn” in international law.⁵⁸ This regulatory turn undoubtedly fueled reporting as an enforcement mechanism, especially in international human rights law. Most basically, state reporting was a way for the United Nations to collect information for law development in the first place.⁵⁹ This role had been carried out on a limited basis under the League of Nations, but it became more common and widespread as human rights principles were codified in the early 1960s.⁶⁰ UN protocols increasingly called on states to submit information in the context of conciliation and dispute-settlement procedures.⁶¹ Of central concern here, state reporting was employed first in general hortatory requests and then as a treaty obligation in an effort to secure adherence.

The Universal Declaration of Human Rights (UDHR) was the focus of these efforts. The UN General Assembly and Economic and Social Council (ECOSOC) both passed resolutions requesting information on state law and practice on human rights. As early as 1947, the General Assembly recommended that the UN secretary-general request member states to report annually to ECOSOC, which would in turn report to the General Assembly on steps taken to give effect to “recommendations made by the General Assembly on matters falling within the Council’s

⁵⁴ Convention to Suppress the Slave Trade and Slavery, Art. VII, Sept. 25, 1926, 46 Stat. 2183, 2191, 60 LNTS 253, 263, amended by Protocol Amending the Slavery Convention Signed at Geneva on Sept. 25, 1926, New York on Dec. 7, 1953, 7 UST 479, 182 UNTS 51.

⁵⁵ Kathryn Zoglin, *United Nations Action Against Slavery: A Critical Evaluation*, 8 HUM. RTS. Q. 306 (1986).

⁵⁶ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, at New York on Mar. 21, 1950, 96 UNTS 271.

⁵⁷ SIMMONS, *supra* note 6, at 23–42.

⁵⁸ Jacob Katz Cogan, *The Regulatory Turn in International Law*, 52 HARV. INT’L L.J. 321 (2011).

⁵⁹ State reporting was built into a broad range of UN activities and areas of responsibility. For example, UNESCO’s constitution provided that members report on “laws, regulations and statistics relating to educational, scientific and cultural life and institutions.” Constitution of the UN Educational, Scientific, and Cultural Organization, Art. VII, Nov. 16, 1945, 4 UNTS 275.

⁶⁰ For example, Economic and Social Council Res. 934 (XXXV) urged governments to inform the secretary-general of any new developments in law and practice regarding capital punishment and requested the secretary-general to prepare a report based on information received. UN GAOR 3d Comm., 18th Sess., UN Doc. A/C.3/SR.1252 (Nov. 4, 1963).

⁶¹ See, e.g., UNESCO General Conference, 12th Sess., Protocol Instituting a Conciliation and Good Offices Commission to be Responsible for Seeking the Settlement of Any Disputes which May Arise Between States Parties to the Convention Against Discrimination in Education, Art. 16 (Dec. 10, 1962).

competence.”⁶² This resolution was intended to include UDHR principles, which had no explicit provisions for implementation. Few states responded to such a general exhortation. ECOSOC thus postponed systematic review and instead perused the few reports it received on an ad hoc basis. Five years later, the submission of official state reports remained a rarity, so the Council discontinued this system of self-reporting entirely.⁶³

In 1956, ECOSOC again passed a resolution calling for systematic self-reporting on human rights.⁶⁴ It requested UN members to transmit reports every three years describing how they were implementing UDHR principles. John Humphrey, then serving as rapporteur of the International Committee on Human Rights, later reported that forty-one states (exactly half) responded as requested in the first round of reporting, and sixty-seven (over 80 percent) responded in the second round (1957–59). But Cold War rhetoric and a perfunctory review by the Human Rights Commission rendered the exercise ineffective.⁶⁵ Self-reporting received a boost six years later, when NGOs with consultative status in ECOSOC were invited to submit their views and observations to the Council.⁶⁶ The system of “shadow reporting” by civil society organizations was thereby conceived.

At best, the general call for reports on progress toward realizing the UDHR was a soft law obligation. The problem remained state cooperation. In 1965, ECOSOC invited states to participate in a three-year cycle of reporting on civil and political rights, economic and social rights, and freedom of information.⁶⁷ This process routed state reports through the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, which generally failed to read them—an outcome John Humphrey called “a political victory won by governments who do not favour the international enforcement of human rights.”⁶⁸ Rights advocates knew, however, they were not in a position to do much more than request state information. Despite his frustrations, Humphrey concluded that “[o]f the various techniques, reporting is the one with which the international community has had the most and probably the most successful experience” and that given government reticence to accept international oversight, “reporting may indeed, even for these rights, be the most practical means of implementation.”⁶⁹

The Consent-Based Treaty System

Self-reporting as part of a consent-based treaty obligation was another route to enhance implementation. This approach built on an explicit legal commitment and engaged expert implementation committees rather than government-composed bodies of the United Nations. As early as 1947, the Drafting Committee for the International Convention on Civil and Political Rights (ICCPR) proposed a state reporting mechanism, to be triggered by UN General Assembly resolution, for “an explanation, certified by the highest legal authorities of the State concerned, as

⁶² Implementation of Recommendations on Economic and Social Matters (1947) UNGA 15; A/RES/119 (II) (Oct. 31, 1947).

⁶³ John Humphrey, *Report of the Rapporteur of the International Committee on Human Rights, in REPORT OF THE FIFTY-THIRD CONFERENCE [OF THE INTERNATIONAL LAW ASSOCIATION] HELD AT BUENOS AIRES, ARGENTINA, AUGUST 25TH TO AUGUST 31ST, 1968*, at 439 (1969).

⁶⁴ ECOSOC Res. 624 B(XXII), para. 12, UN ESCOR, 22d Sess., Supp. No. 1, UN Doc. E/2929 (Aug. 17, 1956).

⁶⁵ Humphrey, *supra* note 63.

⁶⁶ ECOSOC Res. 888B (XXXIV), para. 21, UN ESCOR, 18th Sess., UN Doc. E/3676 (July 24, 1962).

⁶⁷ ECOSOC Res. 1074C (XXXIX), paras. 24–25, UN ESCOR, 21st Sess., UN Doc. E/4100 (July 28, 1965).

⁶⁸ Humphrey, *supra* note 63.

⁶⁹ *Id.* at 438–39.

to the manner in which the law of that state gives effect to any of the said provisions of this Bill of Rights.”⁷⁰ The United States proposed amending this to regularized two-year intervals.⁷¹ When the commission on human rights resumed discussion of the draft in 1950, the Soviet Union and its allies resisted the inclusion of any reporting procedures as contrary to Article 2.7 of the UN Charter, which prohibits the UN from intervening in matters essentially within the domestic jurisdiction of any state.⁷² Resistance was due in part to the concern that while similar procedures were developing with respect to the drafting of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), that treaty was to be “progressively realized” while the ICCPR was “intended, in the main, to be applied immediately.”⁷³ Moreover, the idea of reporting on progress toward implementation might, some feared, undercut the idea that states should be in compliance with the ICCPR upon ratification.⁷⁴

To whom reports would be submitted was initially controversial as well. On the one hand, the idea of reporting to the General Assembly was anathema insofar as it meant that obligated states would in effect be reporting to those who remained outside the treaty arrangement.⁷⁵ On the other hand, some states objected to an autonomous body of individuals acting in their personal capacity as experts.⁷⁶ The former view prevailed, although the final draft acknowledged that the reports could also be forwarded to UN specialized agencies after consultation with the treaty body.⁷⁷

The Cold War effectively put the adoption of the ICCPR and ICESCR on ice between the tenth and twenty-first sessions of the Human Rights Commission (between 1954 and 1966). The Convention on the Elimination of Racial Discrimination (CERD), negotiated in the early 1960s and entering into force in 1965, turned out to be the path-breaking treaty that provided the model for nearly all major subsequent human rights agreements and established the precedent that human rights treaties must contain some means for implementation.⁷⁸ While CERD drafters could look to the (unadopted) drafts of the “international bill of rights,” the convention broke new ground as the first major post-UDHR treaty in force to require states to report to a treaty body. As such, the CERD provided an important model, especially for anti-discrimination treaties such as the Convention on the Elimination of Discrimination Against Women (CEDAW) negotiated a decade later.

Several historical streams converged in the late 1950s and early 1960s to elevate racial equality above “the sacred notions of sovereignty so closely guarded by many UN member states.”⁷⁹ The civil rights movement highlighted embarrassing conditions in the United States and

⁷⁰ MARC J. BOSSUYT, GUIDE TO THE “TRAVAUX PRÉPARATOIRES” OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 615 (1987).

⁷¹ *Id.*

⁷² *Id.* at 617.

⁷³ While there was a desire to make the ICESCR and ICCPR as similar as possible, the prevailing view was that they ought not be identical. Even liberal democracies voiced hesitancy about equating the two agreements for reporting purposes. *Id.* at 619.

⁷⁴ For example, this point was made by Pakistan. *Id.*

⁷⁵ See the comments of the United Kingdom and Belgium. *Id.* at 620.

⁷⁶ See the comments of Tunisia. *Id.* at 621.

⁷⁷ International Covenant on Civil and Political Rights, Art. 40(3), Dec. 16, 1966, 999 UNTS 171, Art. 40(3) [hereinafter ICCPR].

⁷⁸ STEVEN L. B. JENSEN, THE MAKING OF INTERNATIONAL HUMAN RIGHTS: THE 1960S, DECOLONIZATION, AND THE RECONSTRUCTION OF GLOBAL VALUES 102 (2016); International Convention on the Elimination of All Forms of Racial Discrimination, Art. 9(1), Dec. 21, 1965, 660 UNTS 195, 216 [hereinafter CERD].

⁷⁹ JENSEN, *supra* note 78, at 103.

created a sense of urgency surrounding the CERD.⁸⁰ Following the Holocaust, Israel pushed vocally for racial and religious tolerance. South African apartheid was also a focal point for the evils of extreme racial discrimination. But the decolonization movement itself provided the necessary condition for accelerating and strengthening international commitments to nondiscrimination based on race. It rapidly transformed the UN's composition, and the leadership of an Afro-Asian coalition spearheaded by Ghana, the Philippines, and others united the newly independent states.⁸¹ In the Cold War context, decolonization also provoked the major powers to engage.

This global political context made possible consideration of binding legal obligations forbidding discrimination based on race. The CERD draft developed alongside the ICCPR and ICESCR, and as the first of the three to enter into force provided the model for implementation that would be replicated with only minor variations in subsequent agreements: a triad of petitioning, state-to-state complaints, and self-reporting to a treaty body. The first of these was optional and voluntary, as in every treaty to come. The second, while obligatory under CERD, is optional for all subsequent treaties and altogether absent from CEDAW. Moreover, it has scarcely been used. The third provided the minimum floor for treaty implementation. As the most broadly used component of the triad—and because of the institutional path dependence initiated by CERD—it is worth excavating the logics and interests expressed at its creation.

Debates over the CERD text reveal a keen sense of the limits of law alone to ensure compliance with international human rights obligations. Treaty drafters did not see public production of information as an alternative for international rule of law but as a complement. Delegates realized that racial attitudes were stubborn and would require treaty law, education, information, and supportive media and courts.⁸² Self-reporting was considered a potentially powerful way to develop state capacity to prevent and punish racial discrimination. Some of the most powerful delegations were interested in pushing toward “fact-finding and reporting machinery . . . of the United Nations” so that members could be “helped to build up national institutions and national laws to give practical meaning to the principles endorsed by the draft Declaration.”⁸³

But what should CERD reporting obligations look like? Three models were debated.⁸⁴ In one, states would report in the context of quasi-judicial or conciliatory processes. In a second, reports would originate from civil society alleging treaty violations.⁸⁵ In a third, states would report

⁸⁰ *Id.* at 111 (noting that thirteen states commented on race relations in the United States during the 1963 debate).

⁸¹ *Id.* at 22.

⁸² ECOSOC, Report on the Commission of Human Rights: Manifestations of Racial Prejudice and National and Religious Intolerance, UN Doc. E/RES/826 (XXXII) (July 27, 1961); UN GAOR 3d Comm., paras. 5–6, 24, 17th Sess., UN Doc. A/C.3/SR.1167 (Oct. 30, 1962); UN GAOR 3d Comm., 17th Sess., para. 2, UN Doc. A/C.3/SR.1171 (Nov. 2, 1962).

⁸³ UN GAOR 3d Comm., para. 8, 18th Sess., UN Doc. A/C.3/SR.1217 (Oct. 1, 1963).

⁸⁴ A Philippine proposal called for all three: submission of state reports, establishment of UN Good Offices, and a mechanism for petition by individuals or groups alleging violation (Art. 16). See “Draft International Convention on the Elimination of All Forms of Racial Discrimination: Philippines: Articles Relating to Measures of Implementation to be Added to the Provisions of the Draft International Convention on the Elimination of All Forms of Racial Discrimination Adopted by the Commission on Human Rights (A/5921, annex),” UN GAOR 3d Comm., 20th Sess., UN Doc. A/C.3/L.1221 (Oct. 11, 1965).

⁸⁵ *Id.*; UN GAOR 3d Comm., 20th Sess., Draft International Convention on the Elimination of All Forms of Racial Discrimination: Ghana: Revised Amendments to the Articles Relating to Measures of Implementation Submitted by the Philippines (A/C.3/L.1221), UN Doc. A/C.3/L.1274/Rev.1 (Nov. 12, 1965).

regularly on their own implementation,⁸⁶ with Costa Rica drafting an amendment additionally inviting what are referred to today as civil society shadow reports.⁸⁷ Each mechanism had recognized weaknesses. State-based procedures were subject to politics, and their “effectiveness suffered accordingly.”⁸⁸ Critics argued that ad hoc individual complaints would not assure legislative implementation.⁸⁹ States reluctant to empower private actors in an international treaty criticized civil society initiation as unproductive.⁹⁰ Periodic state reports were considered “useful but . . . not enough, since they did not allow for intervention at the time when a violation took place.”⁹¹

Self-reporting was an important supplement to other measures and commonly mentioned as “the bare minimum”⁹² for implementing a serious human rights agreement. At least one state (Jamaica) emphasized the value of examination, review, and evaluation attendant to the obligation to report.⁹³ Ultimately, all three approaches were adopted in CERD: conciliation procedures were established,⁹⁴ periodic reporting was required by states,⁹⁵ and complaints by private individuals were permitted.⁹⁶ Despite concerns about redundancy associated with reporting for each individual treaty,⁹⁷ the three major multilateral human rights treaties of the 1960s—CERD, ICCPR, and ICESCR—each developed their own fairly similar implementation committees and reporting regimes.⁹⁸

After a lull in human rights codification, the international community turned to women’s rights. Early treaties dealing with women’s rights had practically no implementation provisions.⁹⁹ But by early 1967, the UN Commission on the Status of Women (CSW) began drafting a nonbinding Declaration on the Elimination of Discrimination Against Women, which was adopted

⁸⁶ UN GAOR 3d Comm., 20th Sess., Official Records, 1344th Mtg., Nov. 16 1965, New York, UN Doc. A/C.3/SR.1344 (Nov. 16, 1965).

⁸⁷ UN GAOR 3d Comm., 20th Sess., Costa Rica: Amendment to the Draft Resolution (826B(XXXII)) Submitted by the Economic and Social Council to the General Assembly, UN Doc. A/C.3/L.1008 (Oct. 29, 1965).

⁸⁸ UN Doc. A/C.3/SR.1344, *supra* note 86, para. 63.

⁸⁹ *Id.*, paras. 46, 48.

⁹⁰ UN GAOR 3d Comm., para. 39, 17th Sess., Official Records, 1170th mtg., Nov. 1, 1962, New York, UN Doc. A/C.3/SR.1170 (Nov. 1, 1962).

⁹¹ UN Doc. A/C.3/SR.1344, *supra* note 86, para. 58.

⁹² Comments to this effect include those of Mexico and Jordan. Several countries, including Sweden, the Netherlands, and France, saw state reporting as meaningless without an individual right to petition. *See* UN GAOR 3d Comm., 20th Sess., Official Records, 1345th mtg., Nov. 17, 1965, New York, UN Doc. A/C.3/SR.1345 (Nov. 17, 1965).

⁹³ UN GAOR 3d Comm., 20th Sess., para. 45, Official Records, 1346th mtg., Nov. 17, 1965, New York, UN Doc. A/C.3/SR.1346 (Nov. 17, 1965).

⁹⁴ CERD, *supra* note 78, Art.12.

⁹⁵ *Id.* Art. 9.

⁹⁶ *Id.* Art. 14.

⁹⁷ UN Doc. A/C.3/SR.1344, *supra* note 86, para. 62.

⁹⁸ The ICESCR initially required reports to be submitted to ECOSOC, but later moved to review by a separate treaty body in 1985. ECOSOC E/RES/1985/17 (May 28, 1985).

⁹⁹ Convention on Consent to Marriage, Nov. 2, 1962, 521 UNTS 231; Convention on the Political Rights of Women, Mar. 31, 1953, 193 UNTS 135; Convention on the Nationality of Married Women, Jan. 29, 1957, 309 UNTS 65. Until CEDAW, no treaty on women’s rights or issues contained an obligation for parties to self-report. However, several ILO labor conventions aim to protect female workers from discrimination and have a reporting requirement. These include: Equal Remuneration Convention (ILO No.100), June 29, 1951, 165 UNTS 303; Discrimination (Employment and Occupation) Convention (ILO No.111), June 25, 1958, 362 UNTS 31; Workers with Family Responsibilities Convention (ILO No. 156), June 23, 1981, 1331 UNTS 295; Maternity Protection Convention (ILO No. 183), June 15, 2000, 2181 UNTS 253.

by the General Assembly in November of that year.¹⁰⁰ ECOSOC and CSW worked on strategies for implementing the declaration over the next several years. In the hortatory tradition described earlier, one tactic was to ask states to submit voluntary reports on their implementation efforts, but this request elicited little cooperation.¹⁰¹ By the mid-1970s, the CSW began working on a comprehensive and legally binding instrument, soliciting comments of governments and specialized agencies.

Self-reporting requirements were a central part of the discussions of the Working Group that drafted CEDAW. Although an early Soviet draft did not contain a reporting requirement, directing only that ECOSOC consider implementation periodically,¹⁰² initial discussions revealed a willingness to include one, with most states considering the ILO, CERD, or ICCPR to be appropriate models.¹⁰³ The Netherlands called for civil society participation, “granting these organizations . . . a role in channelling [sic] wishes and complaints towards an international forum,” such as the CSW.¹⁰⁴ Canada suggested that all reporting go through the CSW to avoid “conflict in implementation procedures” across treaties.¹⁰⁵ Several countries anticipated the modern critique of reporting overlap, and called for simplification.¹⁰⁶ Women’s groups were strongly behind reporting; in fact the draft article on state reporting was the only provision mentioned explicitly in a crucial 1976 statement by a broad coalition of women’s NGOs sent to the Working Group.¹⁰⁷ In the end, Egypt, Nigeria, and Zaire’s proposal to use language almost identical to that contained in the CERD was accepted.¹⁰⁸ A series of working groups finalized the agreement in 1979, and the CEDAW—with Article 18 describing the obligation to report on implementation—opened for signature the next year.

Current Practice and Recent Reforms

Today, each of the nine core international human rights conventions establishes an independent treaty body to monitor implementation.¹⁰⁹ These committees are comprised of ten to

¹⁰⁰ UN GAOR General Assembly Resolution: Declaration on the Elimination of Discrimination Against Women, A/RES/2263(XXII) (Nov. 7, 1967).

¹⁰¹ LARS ADAM REHOF, GUIDE TO THE TRAVAUX PRÉPARATOIRES OF THE UNITED NATIONS CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 7 (1993).

¹⁰² ECOSOC, Working Group on a New Instrument or Instruments of International Law to Eliminate Discrimination Against Women, Working Paper Submitted by the Union of Soviet Socialist Republics, draft Art. 22, UN Doc. E/CN.6/AC.1/L.2. (Jan. 7, 1974).

¹⁰³ ECOSOC, Commission on the Status of Women, 24th Sess., International Instruments and National Standards Relating to the Status of Women: Study of Provisions in Existing Conventions that Relate to the Status of Women, para. 236, UN Doc. E/CN.6/552 (Jan. 21, 1972); ECOSOC, Commission on the Status of Women, 25th Sess., International Instruments and National Standards Relating to the Status of Women: Consideration of Proposals Concerning a New Instrument of Instruments of International Law to Eliminate Discrimination Against Women, paras. 103, 106, UN Doc. E/CN.6/573 (Nov. 6, 1973).

¹⁰⁴ UN Doc. E/CN.6/573, *supra* note 103, para.105.

¹⁰⁵ *Id.*, para.104.

¹⁰⁶ These included Austria, Brazil, and Canada. *Id.*, paras. 108–10.

¹⁰⁷ Commission on the Status of Women, 26th Sess., Statement Submitted by the International Alliance of Women et al., para. 4, UN Doc. E/CN.6/NGO/259 (Aug. 26, 1976).

¹⁰⁸ ECOSOC, Working Group on a New Instrument or Instruments of International Law to Eliminate Discrimination Against Women, Nigeria and Zaire: Draft Proposals Concerning the Measures of Implementation of the Draft Convention, UN Doc. E/CN.6/AC.1/L.5 (Jan. 9, 1974).

¹⁰⁹ The nine core international human rights treaties identified by the OHCHR consist of: CERD, *supra* note 78; ICCPR, *supra* note 77; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 UNTS 3

twenty-three independent experts nominated and elected by states parties for fixed, renewable terms of four years. By virtue of treaty ratification, states must submit periodic reports to each committee—ranging from every two to every five years—on the legislative, judicial, administrative, or other measures adopted to give effect to human rights obligations.¹¹⁰ Periodic reporting has thus become an aspect of procedural compliance with a government’s treaty obligations.¹¹¹ Niger submitted the first ever state report to the Committee on the Elimination of Racial Discrimination in January 1970. By 2017, the committees for the nine core treaties had received on average 129 state reports each year.¹¹²

The treaty bodies largely employ the same general framework in examining reports. While not required, committees invite government delegations to Geneva to participate in an in-person consideration of the report.¹¹³ A team of government officials appears before the treaty body for two or three three-hour discussions. Each review begins with the state’s introductory statement followed by committee acknowledgement of the state’s implementation progress. Rapporteurs are assigned to each country to provide a comprehensive overview of missing information, identify discrepancies between domestic and treaty law, point to previous recommendations on which they saw no progress, and request follow-up information on these recommendations.¹¹⁴ Questions by other committee members follow. Sometimes state representatives answer on the spot; other times the government commits to follow up in writing. Committee members use this interaction to expound on what is normatively appropriate under the treaty. This so-called “constructive dialogue” provides an opportunity for mutual engagement, acknowledgment of progress made, and identification of areas for improvement.¹¹⁵

Initially, the treaty bodies did not provide any collective assessment following their review. In 1980, the Human Rights Committee (ICCPR’s treaty body) extensively debated whether or how it should express comments on state reports. Most committee members favored committee reports, “conducted in such a way as not to turn the reporting procedure into contentious or inquisitory

[hereinafter ICESCR]; Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 UNTS 13 [hereinafter CEDAW]; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 UNTS 85 [hereinafter CAT]; Convention on the Rights of the Child, Nov. 20, 1989, 1577 UNTS 3 [hereinafter CRC]; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Dec. 18, 1990, 2220 UNTS 3 [hereinafter CMW]; Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 UNTS 3 [hereinafter CRPD]; and International Convention for the Protection of All Persons from Enforced Disappearances, Dec. 20, 2006, 2716 UNTS 3 [hereinafter CED]. Ten treaty-monitoring bodies exist today, one for each of the nine core treaties in addition to the Subcommittee on Prevention of Torture, established by the Optional Protocol to CAT. The Committee on Economic, Social and Cultural Rights is not technically a treaty body, since it was not established directly under the terms of the Covenant but was created later by ECOSOC Res. 1985/17 (May 28, 1985).

¹¹⁰ With the exception of CED, which requires an initial report but does not have a periodic reporting procedure. *See* CED, *supra* note 109, Art. 29.

¹¹¹ ANN KENT, CHINA, THE UNITED NATIONS, AND HUMAN RIGHTS: THE LIMITS OF COMPLIANCE 236 (1999).

¹¹² UN GA, Report of the Secretary-General, Status of the Human Rights Treaty Body System, Supplementary Information, para. 11, UN Doc. A/73/309, Annexes (Aug. 6, 2018).

¹¹³ CERD’s practice of allowing, and later inviting, state representatives to Geneva to participate in review of their report was only adopted following a 1971 General Assembly recommendation. UN GA, Report of the Committee on the Elimination of Racial Discrimination, A/RES/2783 (XXVI) (Dec. 6, 1971); *see also* Rüdiger Wolfrum, *The Committee on the Elimination of Racial Discrimination*, 3 MAX PLANCK UN Y.B. 490, 506 (1999).

¹¹⁴ CERD did not move to a procedure of appointing Country Rapporteurs until 1988, with the first proposal for doing so advanced in 1974 and subsequently in 1986. Wolfrum, *supra* note 113, at 507.

¹¹⁵ UN International Human Rights Instruments, Report on the Working Methods of the Human Rights Treaty Bodies Relating to the State Party Reporting Process: Note by the Secretariat, para. 7, UN Doc. HRI/MC/2005/4 (May 25, 2005).

proceedings, but rather to provide valuable assistance to the State party concerned in the better implementation of the provisions of the Covenant.”¹¹⁶ However, a minority supported the German Democratic Republic’s view that the committee’s primary function was not to “interfere . . . in the internal affairs of States parties,” but instead to merely include within its annual reports general comments addressed to all states parties.¹¹⁷ A Soviet-coordinated bloc of members thus prevented treaty bodies from being able to pass judgment on the human rights situations in states throughout the 1980s.¹¹⁸ This changed in the 1990s with the end of the Cold War. Now all committees publish some form of “concluding observations” containing recommendations for specific reforms a government should undertake to address implementation shortcomings.¹¹⁹ Most commentators agree that these recommendations are not legally binding,¹²⁰ but all state reports and committee observations are made public¹²¹ and sometimes cited by domestic and regional courts,¹²² arguably raising the political stakes of ignoring them.

These basic elements have remained essentially unchanged, although a few reforms have been introduced to help strengthen the treaty-body system. The creation of the Office of the High Commissioner for Human Rights (OHCHR) in 1993 was transformatory.¹²³ Before its creation, there was almost no capacity for human rights training¹²⁴ or strategic thinking on reform.¹²⁵ Far from just another example of an inflated UN bureaucracy, its establishment was a game changer that greatly improved the international community’s capacity to make state reporting meaningful.

First, the OHCHR harmonized reporting guidelines across treaties, at the request of the General Assembly.¹²⁶ These include guidelines on a “common core document,” which provides background information, the general framework for the protection and promotion of human rights, and information on effective remedies. States need submit only one common core document to all treaty bodies, updating as necessary. This reduces reporting redundancy and encourages states to

¹¹⁶ UN GAOR, 35th Sess., Report of the Human Rights Committee, para. 378, UN Doc. A/35/40 (Supp.) (Sep. 18, 1980).

¹¹⁷ *Id.*, paras. 380–81.

¹¹⁸ Thomas Buergenthal, *The U.N. Human Rights Committee*, 5 MAX PLANCK UN Y.B. 341, 350 (2001).

¹¹⁹ Michael O’Flaherty, *The Concluding Observations of United Nations Human Rights Treaty Bodies*, 6 HUM. RTS. L. REV. 27, 36 (2006).

¹²⁰ *Id.*

¹²¹ The Office of the High Commissioner of Human Rights now publishes all state reports on its website, at <https://tbinternet.ohchr.org>.

¹²² Machiko Kanetake, *UN Human Rights Treaty Monitoring Bodies Before Domestic Courts*, 67 INT’L & COMP. L. Q. 201 (2018); Gerald L. Neuman, *Import, Export, and Regional Consent in the Inter-American Court of Human Rights*, 19 EUR. J. INT’L L. 101 (2008).

¹²³ See Andrew Clapham, *Creating the High Commissioner for Human Rights: The Outside Story*, 5 EUR. J. INT’L L. 556 (1994).

¹²⁴ Current OHCHR training resources can be found at <https://www.ohchr.org/EN/Library/Pages/Training.aspx>.

¹²⁵ Fionnuala Ni Aoláin, *Looking Ahead: Strategic Priorities and Challenges for the United Nations High Commissioner for Human Rights*, 35 COLUM. HUM. RTS. L. REV. 469 (2003).

¹²⁶ UN GA, Effective Implementation of International Instruments on Human Rights, Including Reporting Obligations on Human Rights, UN Doc. A/RES/ 52/118 (Dec. 12, 1997); UN GA, Effective Implementation of International Instruments on Human Rights, Including Reporting Obligations on Human Rights, UN Doc. A/RES/53/138 (Dec. 9, 1998); International Human Rights Instruments, Compilation of Guidelines on the Form and Content of Reports to Be Submitted by States Parties to the International Human Rights Treaties, UN Doc. HRI/GEN/2 (and subsequent revisions) (Apr. 14, 2000); International Human Rights Instruments, Harmonized Guidelines on Reporting Under the International Human Rights Treaties, Including Guidelines on a Common Core Document and Treaty-Specific Documents: Report of the Inter-Committee Technical Working Group, UN Doc. HRI/MC/2006/3 (May 10, 2006).

report periodically on treaty-specific information. The guidelines also limit the length of periodic reports.

Second, to improve the quality of the constructive dialogue, some committees began giving states a set of questions in advance of their report's review. They further expanded on this practice by making available a simplified procedure employing a "List of Issues Prior to Reporting" (LOIPR).¹²⁷ The state party's replies to the LOIPR count as its report for that treaty. In 2014, the General Assembly adopted a resolution that encouraged use of this simplified procedure across all treaty bodies.¹²⁸ It has since become standard practice to focus on these priorities, and the chairs of the treaty bodies—with the assistance of the OHCHR Secretariat—have made efforts to further harmonize their simplified procedure working methods in light of the 2020 treaty body review.¹²⁹ This includes recently agreeing to coordinate each treaty's list of issues for a given country, to reduce unnecessary overlap.

Third, the OHCHR invested in developing state capacities.¹³⁰ In 2015, the OHCHR enhanced regional training and workshops on state reporting, and developed a Practical Guide for reporting and follow-up in 2016.¹³¹ The OHCHR also encouraged the establishment of dedicated national mechanisms to coordinate reporting and follow-up across national institutions and civil society.¹³²

Finally, the OHCHR took a leading role in providing support to a range of stakeholders, so that they might better engage with the periodic review process. It works closely with national human rights institutions (NHRIs) to support their interaction with the treaty bodies and civil society organizations.¹³³ A number of NHRIs now hold national consultations on report preparation or otherwise provide input to the state report; several submit alternative reports and/or provide oral briefings to the treaty bodies, either prior to or during the constructive dialogue.¹³⁴ The OHCHR also encourages civil society participation by providing treaty-specific guidelines for submitting shadow reports and attending sessions.¹³⁵

¹²⁷ UN International Covenant on Civil and Political Rights, Human Rights Committee, 99th Sess., Focused Reports Based on Replies to Lists of Issues Prior to Reporting (LOIPR): Implementation of the New Optional Reporting Procedure (LOIPR procedure), UN Doc. CCPR/C/99/4 (Sept. 29, 2010).

¹²⁸ UN GA, 68th Sess., Strengthening and Enhancing the Effective Functioning of the Human Rights Treaty Body System, UN Doc. A/RES/68/268 (Apr. 9, 2014).

¹²⁹ See International Human Rights Instruments, 30th Mtg. of Chairs of the Human Rights Treaty Bodies, Identifying Progress Achieved in Aligning the Working Methods and Practices of the Treaty Bodies: Note by the Secretariat, UN Doc. HRI/MC/2018/3 (Mar. 23, 2018).

¹³⁰ The 2014 General Assembly resolution on treaty body strengthening also requested the OHCHR to "support States parties in building the capacity to implement their treaty obligations and to provide in this regard advisory services, technical assistance and capacity-building," including "[f]acilitating the sharing of best practices among States parties." UN Doc. A/RES/68/268, *supra* note 128, para. 17.

¹³¹ UN GAOR, 71st Sess., Status of the Human Rights Treaty Body System: Report of the Secretary-General, paras. 9–16, UN Doc. A/71/118 (July 18, 2016).

¹³² OHCHR, National Mechanisms for Reporting and Follow-up: A Practical Guide to Effective State Engagement with International Human Rights Mechanisms, UN Doc. HR/PUB/16/1 (2016).

¹³³ NHRIs are called upon to cooperate with international human rights mechanisms, as articulated in Part A.3. of the Paris Principles. See OHCHR and NHRIs, at <https://www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx>.

¹³⁴ International Human Rights Instruments, 29th Mtg. of Chairs of the Human Rights Treaty Bodies, Common Approaches to Engagement with National Human Rights Institutions, paras. 18–24, UN Doc. HRI/MC/2017/3 (June 9, 2017).

¹³⁵ OHCHR, Working with the United Nations Human Rights Programme: A Handbook for Civil Society, UN Doc. HR/PUB/06/10/Rev.1 (2008).

Assessments of Self-Reporting

How effective has this system of self-reporting been over the past half century? Although positive assessments are hard to find, a few authors note that self-reporting can, under some circumstances, have positive effects. Sally Engle Merry finds in her study of gender violence that NGOs have used the CEDAW Committee's concluding remarks to pressure governments to protect women from violence.¹³⁶ Xinyuan Dai reports positively on the informational role that independent NGOs play in the monitoring process.¹³⁷ A study by C.H. Heyns and Frans Viljoen mentions several committee observations and recommendations that have been flagrantly ignored, but lists others that have been heeded, such as the release of prisoners in Egypt, the disbanding of armed civilian groups in Colombia, and attention to minority cultural rights in Estonia.¹³⁸ Positive accounts typically stress that the influence of this process is diffuse and indirect, with the media, NGOs, domestic actors, and other governments using the committees' concluding observations to pressure governments for change.¹³⁹

Much more common are criticisms of the system as inadequate, ineffective, and even "in crisis."¹⁴⁰ Many governments fail to report altogether.¹⁴¹ Reports vary considerably across countries and over time in their structure and quality.¹⁴² Some commentators suggest that reporting varies by treaty as well: it may be easier to engage with obligations under CEDAW and CRC rather than on torture and civil rights.¹⁴³ States often provide inconsistent and meaningless data in their reports, making it hard to assess implementation.¹⁴⁴ Quality reporting requires expertise in and familiarity with the treaty and the reporting process, which many states apparently lack. And of course, capacity is not the only issue. Some states simply refuse to render self-critical reports,¹⁴⁵ and even resource-rich democratic states do not always do what experts tell them they should do.¹⁴⁶

¹³⁶ SALLY ENGLE MERRY, *HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE* 87 (2006).

¹³⁷ Dai, *supra* note 6, at 584–88.

¹³⁸ C.H. Heyns & Frans Viljoen, *The Impact of the United Nations Human Rights Treaties on the Domestic Level*, 23 *HUM. RTS. Q.* 483, 512 (2001).

¹³⁹ Philip Alston, *Beyond "Them" and "Us": Putting Treaty Body Reform into Perspective*, in *THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING* 505–06 (Philip Alston & James Crawford eds., 2000); Andrew C. Byrnes & Marsha Freeman, *The Impact of the CEDAW Convention: Paths to Equality*, at 51 (UNSW Law Research Paper No. 2012-7, 2012), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2011655##.

¹⁴⁰ James Crawford, *The UN Human Rights Treaty System: A System in Crisis?*, in *THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING* 1, 3 (Philip Alston & James Crawford eds., 2000). See also ANNE F. BAYEFKY, *THE UN HUMAN RIGHTS TREATY SYSTEM: UNIVERSALITY AT THE CROSSROADS* (2001) (providing a comprehensive but critical evaluation of the treaty body system's operation).

¹⁴¹ For overdue reporting status, see the UN Treaty Body Database, at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/LateReporting.aspx.

¹⁴² See Creamer & Simmons, *Ratification, Reporting and Rights*, *supra* note 26.

¹⁴³ Heyns & Viljoen, *supra* note 138, at 509.

¹⁴⁴ Benjamin Mason Meier & Yuna Kim, *Human Rights Accountability Through Treaty Bodies: Examining Human Rights Treaty Monitoring for Water and Sanitation*, 26 *DUKE J. COMP. & INT'L L.* 139 (2015).

¹⁴⁵ Morten Kjørsum, *State Reports*, in *INTERNATIONAL HUMAN RIGHTS MONITORING MECHANISMS: ESSAYS IN HONOUR OF JAKOB TH. MÖLLER* 17, 20 (Gudmundur Alfredsson, Jonas Grimheden, Bertrand G. Ramcharan & Alfred Zayas eds., 2d rev. ed. 2009).

¹⁴⁶ Ronagh McQuigg, *How Effective Is the United Nations Committee Against Torture?*, 22 *EUR. J. INT'L L.* 813 (2011); JASPER KROMMENDIJK, *THE DOMESTIC IMPACT AND EFFECTIVENESS OF THE PROCESS OF STATE REPORTING UNDER UN HUMAN RIGHTS TREATIES IN THE NETHERLANDS, NEW ZEALAND AND FINLAND: PAPER-PUSHING OR POLICY PROMPTING?* 389 (2014).

Government commitment and state capacity both tend to contribute to compliance with reporting requirements. Gross domestic product per capita is strongly associated with the likelihood of reporting, suggesting that wealthier states are better able to bear the costs of compiling legislation, collecting data, and studying outcomes. For some treaties (such as CAT and CRC) bureaucratic capacity (in the form of an NHRI) also correlates with report submission as well as reporting quality.¹⁴⁷ NHRIs supply for many states the institutional capacity needed to provide factual knowledge of, expertise in, and familiarity with the treaty regime and reporting process.¹⁴⁸ Two other factors also correlate with better reporting: commitment to human rights law (widespread human rights treaty ratification) and regional reporting norms and socialization (the higher the regional reporting density, the more likely a state from that same region will report). States with the resources and a broad legal commitment to international human rights treaties are much more likely to turn in their reports than are poor states and spotty ratifiers. It is, however, not the case that nondemocratic countries or those with poor human rights records systematically avoid reporting.¹⁴⁹

Much of the criticism leveled at the self-reporting process focuses on the oversight machinery itself.¹⁵⁰ Bias and politicization of the process is a common concern. By 2000, almost half of the elected treaty-body members had been government employees.¹⁵¹ It is easy to find disparaging accounts of some committee members' commitment to the task at hand,¹⁵² and other members' ritualistic commentary and superficial questioning.¹⁵³ Cultural insensitivity further reduces genuine dialogue and leads to formalistic recommendations that many states are unlikely to take up.¹⁵⁴ In addition, some governments complain the treaty bodies have overreached, assuming "additional responsibilities not envisaged in the . . . treaties."¹⁵⁵

¹⁴⁷ Creamer & Simmons, *The Dynamic Impact of Periodic Review on Women's Rights*, *supra* note 2; Creamer & Simmons, *Ratification, Reporting and Rights*, *supra* note 26, at 597, 604. See also Lawrence J. LeBlanc, Ada Huibregetse & Timothy Meister, *Compliance with the Reporting Requirements of Human Rights Conventions*, 14 INT'L J. HUM. RTS. 789, 804 (2010) (finding a strong association between measures of government effectiveness and reporting under CERD, CEDAW, CAT, and CRC).

¹⁴⁸ On the role of NHRI's information provision and transparency-enhancing functions, see Cosette Creamer & Beth A. Simmons, *Transparency at Home: How Well do Governments Share Human Rights Information with Citizens?*, in TRANSPARENCY IN INTERNATIONAL LAW 239 (Andrea Bianchi & Anne Peters eds., 2013). See also Richard Carver, *A New Answer to an Old Question: National Human Rights Institutions and the Domestication of International Law*, 10 HUM. RTS. L. REV. 1 (2010); Kjærø, *supra* note 145, at 17, 22 (noting that "it is difficult to envisage such dialogues happening today without the involvement of . . . national human rights institutions").

¹⁴⁹ Creamer & Simmons, *The Dynamic Impact of Periodic Review on Women's Rights*, *supra* note 2; Creamer & Simmons, *Ratification, Reporting and Rights*, *supra* note 26; LeBlanc, Huibregetse & Meister, *supra* note 147.

¹⁵⁰ HAFNER-BURTON, *supra* note 6, at 102.

¹⁵¹ BAYEFSKY, *supra* note 140, at 108. See also Scott Leckie, *The Committee on Economic, Social and Cultural Rights: Catalyst for Change in a System Needing Reform*, in THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING 129, 131 (Philip Alston & James Crawford eds., 2000).

¹⁵² KROMMENDIJK, *supra* note 146, at 15.

¹⁵³ Robert Jackson, *The Committee on the Elimination of Discrimination Against Women*, in THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL 461 (Philip Alston ed., 1992); Roland Bank, *Country-Orientated Procedures Under the Convention Against Torture: Towards a New Dynamism*, in THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING 145, 151 (Philip Alston & James Crawford eds., 2000).

¹⁵⁴ Yvonne Donders & Vincent Vleugel, *Universality, Diversity and Legal Certainty: Cultural Diversity in the Dialogue Between CEDAW and States Parties*, in THE RULE OF LAW AT THE NATIONAL & INTERNATIONAL LEVELS: CONTESTATIONS AND DEFERENCE 321 (Machiko Kanetake & André Nollkaemper eds., 2016).

¹⁵⁵ See, e.g., OHCHR, Individual Submissions of the Russian Federation and China in the Context of the Treaty Body Strengthening Process, at <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/StatesPartiesSubmissions.aspx>;

The oversight machinery is severely under-resourced, leading to a host of inadequacies. Committee members are not paid and often employed by governments or other institutions with the potential to compromise independence. They are swamped with work and sometimes take more than a year to respond to state reports.¹⁵⁶ Despite this, over the past two years the General Assembly adopted budget cuts that significantly impacted the treaty body system, which now faces a serious financial crisis and at one point the possibility of cancelled meetings in order to cut costs.¹⁵⁷ The capacity to follow up in practice on their recommendations is also severely limited.¹⁵⁸ While the OHCHR Secretariat and treaty body chairs have recently made efforts to harmonize and strengthen the follow-up procedure for urgent recommendations, the CRC Committee has discontinued follow-up due to resource constraints.¹⁵⁹ Repeatedly, the individual committees miss opportunities to work across institutions, such as when economic, social, and cultural rights are violated during periods of transitional justice.¹⁶⁰

Once concluding observations are rendered, there is little consensus on their impact. Several studies discuss their influence, but it is hard to tell whether the glass is half empty or half full, what criteria authors use to determine effectiveness, and whether the committees' observations play any causal role.¹⁶¹ Most literature on the treaty bodies is descriptive, and while many observers move readily from description to critique and policy recommendations,¹⁶² it is difficult to infer what contribution the process has made to rights on the ground. Critics assert that those most affected by treaty violations are not even aware of the periodic review process. Hafner-Burton summarizes an informal (and untested) consensus among commentators that “the reports often don't seem to lead to results that matter.”¹⁶³

OHCHR, Response by Cuba to the Questionnaire on Implementation of GA UN Doc. A/RES/68/268, at <https://www.ohchr.org/Documents/HRBodies/TB/HRTD/3rdBiennial/States/Cuba.doc>.

¹⁵⁶ See, e.g., UN ECOSOC, Commission on Human Rights, 53rd Sess., Effective Functioning of Bodies Established Pursuant to United Nations Human Rights Instruments: Final Report on Enhancing the Long-Term Effectiveness of the United Nations Human Rights Treaty System, para. 7, UN Doc. E/CN.4/1997/74 (Mar. 27, 1997); BAYEFSKY, *supra* note 140, at 17.

¹⁵⁷ Nick Cumming-Bruce, *Budget Cuts May Undercut the U.N.'s Human Rights Committees*, N.Y. TIMES (May 24, 2019); UN Secretary-General, Note to Correspondents: Secretary-General's Meeting with Chairs of the Human Rights Treaty Bodies (June 25, 2019), at <https://www.un.org/sg/en/content/sg/note-correspondents/2019-06-25/note-correspondents-%E2%80%93-secretary-general%E2%80%99s-meeting-chairs-of-the-human-rights-treaty-bodies>.

¹⁵⁸ Françoise J. Hampson, *An Overview of the Reform of the UN Human Rights Machinery*, 7 HUM. RTS. L. REV. 7, 13–14 (2007).

¹⁵⁹ International Human Rights Instruments, 29th Mtg. of Chairs of the Human Rights Treaty Bodies, Procedures of the Human Rights Treaty Bodies for Following Up on Concluding Observations, Decisions and Views, UN Doc. HRI/MC/2017/4 (May 8, 2017); International Human Rights Instruments, 30th Mtg. of Chairs of the Human Rights Treaty Bodies, Procedures of the Human Rights Treaty Bodies for Following Up on Concluding Observations, Decisions and Views, paras. 3, 9, UN Doc. HRI/MC/2018/4 (Mar. 19, 2018) (noting “the resource constraints of OHCHR to attend to the additional workload generated by the follow-up procedures”).

¹⁶⁰ Evelyne Schmid, *Socio-Economic and Cultural Rights and Wrongs After Armed Conflicts: Using the State Reporting Procedure Before the United Nations Committee on Economic, Social and Cultural Rights More Effectively*, 31 NETHERLANDS Q. HUM. RTS. 241 (2013).

¹⁶¹ KROMMENDIJK, *supra* note 146, at 20–21. Much greater attention focuses on assessing the implementation of recommendations under Universal Periodic Review. See UPR Info, *Beyond Promises: The Impact of the UPR on the Ground (2014)*, at <http://www.upr-info.org>.

¹⁶² See, e.g., Claudio Grossman, *Implementing Human Rights in Closed Environments Through the United Nations Convention Against Torture Human Rights in Closed Environments*, 31 L. CONTEXT 125 (2014).

¹⁶³ HAFNER-BURTON, *supra* note 6, at 100.

Despite these critical assessments, recent cross-national studies have found a correlation between reporting and better rights outcomes.¹⁶⁴ How might this be explained? The next Part theorizes the mechanisms through which self-reporting might lead to improvements.

III. MECHANISMS FOR HUMAN RIGHTS IMPROVEMENT

“Self-reporting” is a much more complex system than the name implies. It is not synonymous with whitewashed documents that receive brief acknowledgement in Geneva and then never see the light of day. Every step of this process creates opportunities for impact (and potentially backlash). Reviewing laws and collecting new data involve activating a domestic bureaucracy. Actors who otherwise might not have the chance to form coalitions, alter the policy agenda, or provide different versions of the status of treaty implementation are at least minimally empowered. The reporting process also offers external experts an opportunity to teach about international obligations, produce actionable recommendations, and learn about constraints experienced and resistance encountered. While not a panacea for protecting human rights, self-reporting is an opportunity to persuade, learn, build capacity, mobilize politically, and contribute to transnational law development. It is a crucial part of a broader system of human rights accountability.

Global correlations linking participation in the report-and-review process with rights improvements exist, notably for CEDAW and CAT.¹⁶⁵ But a theoretical account of the mechanisms underpinning these correlations is needed. Where feasible, we present global evidence to demonstrate the plausibility of these mechanisms for four treaty regimes: ICCPR, CEDAW, CAT, and CRC.

We limit our focus to these four treaties for a number of reasons. These represent some of the most important core multilateral human rights treaties, covering a broad range of universal as well as group-specific rights. Yet they also vary in ways that permit examination of the self-reporting process in distinct contexts. Each entered into force at different historical moments but all have been in force long enough for significant state reporting histories to accumulate. In particular, the ICCPR—one of the conventions comprising the “international bill of rights”—enables evaluation over four decades and a broad range of rights. The other three represent “single issue” conventions situated within a broader regime organized around their respective issues, ones that often stimulate specialized interest group attention.¹⁶⁶ The CAT covers protections that touch on issues tied to national security and crime control (i.e., prisons and policing) and thus represents a hard case for the reporting process to influence policymakers. The CEDAW also represents a hard case in that it touches on culturally sensitive issues, but has a somewhat unique institutional history with a dedicated bureaucracy—now UN Women, the Secretariat of the Commission on the Status of Women—and active involvement by organized women’s rights NGOs. It is also the second most widely ratified international human rights instrument, behind the CRC, which is ratified by every member of the United Nations save the United States. Like CEDAW, the CRC also touches on sensitive public/private sphere issues and mobilizes highly organized children’s rights NGOs.

¹⁶⁴ Creamer & Simmons, *The Dynamic Impact of Periodic Review on Women’s Rights*, *supra* note 2; Creamer & Simmons, *Do Self-Reporting Regimes Matter?*, *supra* note 2.

¹⁶⁵ *Id.*

¹⁶⁶ JACK DONNELLY, *INTERNATIONAL HUMAN RIGHTS* 171–73 (3d ed. 2010).

The analysis is limited temporally given the data demands to make a persuasive case, with a cut-off date of December 2011 for CAT and December 2014 for ICCPR, CEDAW, and CRC (see Online Appendix A for a description of the data collection process, coverage, and coding procedure). This precludes discussion of the self-reporting process in light of recent critiques of the treaty body system and its budgetary crisis, but the conclusion offers thoughts on implications for the current political moment.

Since self-reporting processes are complex and contextual, at times the empirical focus is limited to one region—Latin America. There are both practical and theoretical reasons for this choice. In practical terms, states in this region have in fact ratified the relevant conventions. Many were early parties and have committed to multiple agreements, providing a rich source of data. This contrasts with other regions, notably Asia and the Middle East, where governments have been more hesitant to ratify or have tended to do so with very broad reservations. While reservations do not preclude inclusion, ratification *is* a necessary condition for investigating the power of the report-and-review process. Further, Latin America is linguistically accessible, which allows for a deeper and more consistent qualitative examination of the posited mechanisms compared to a sampling of more countries with higher linguistic barriers. Tradeoffs are unavoidable; we have chosen to probe more deeply within a limited set of documents rather than attempt a broader but more superficial treatment.

Latin America is also a theoretically appropriate sample for a number of reasons. Human rights violations historically have been a serious issue in Latin America and reporting has varied across countries, by treaty, and over time. This is by no means an “easy” region for demonstrating the plausible influence of self-reporting processes on outcomes. Nevertheless, the conditions for such influence seem present: there is at least a modicum of elite acceptance of and integration into international legal institutions. With relatively democratic institutions, active civil society, and (to varying degrees) meaningful press freedom, states across Latin America are plausible candidates to investigate the potential impact of the periodic review process on rights protections.

Elite Socialization

Socialization is the process through which people adopt the norms, values, attitudes, and behaviors that a group accepts and practices. It involves cognitive elements, such as mechanisms of persuasion that changes actors’ minds about facts, values, or norms; it also entails social influences, akin to peer pressure associated with the desire for social acceptance, which leverages praise, opprobrium, and other intangible rewards and punishments.¹⁶⁷ In the context of periodic review, elite socialization refers to the process through which officials participating in the preparation, presentation, discussion, and follow-up associated with reporting come to understand what the international community (represented by committee experts) means by implementation of and compliance with treaty obligations. Socialization suggests that government officials may seek to gain this community’s acceptance and respect by demonstrating pro-social behaviors in words and actions. As such—and in contrast to learning, discussed below—socialization is an inherently intersubjective process. It depends on the interaction of the individual and the reference group, and denotes the process through which the former comes to adopt the norms and values of the latter.

¹⁶⁷ Alastair Iain Johnston, *Treating International Institutions as Social Environments*, 45 INT’L STUD. Q. 487 (2001).

Socialization theory assumes that elites are open to persuasion and/or peer pressure to conform to international standards. This seems plausible in the treaty-monitoring context. Participating in the constructive dialogue is consent-based, suggesting that no participant has a serious issue with the treaty body's authority to undertake its review. States parties elect committee members purported to be independent experts of high moral character, who psychological studies find are viewed as more credible and under many circumstances more persuasive than non-experts.¹⁶⁸ The perceived authoritativeness may thus imbue expert committees with normative power to persuade.¹⁶⁹ Social psychological research also suggests that persuasive attempts are more likely to be effective when conveyed in person rather than virtually or at a distance.¹⁷⁰ As an in-person and iterative process, government officials participating in periodic review are likely to find themselves in regular conversation with the committees, reinforcing socialization efforts and effects. At the very least, reporting generates discussion about treaty obligations' meaning—an integral part of the compliance process.¹⁷¹

Criticism, disapproval, and even moderate shaming are also integral to socialization. These social cues alter the costs associated with disapproved behaviors, social psychological costs that socialization theories emphasize involve a desire for group acceptance.¹⁷² The treaty bodies aim to avoid aggressive and overt “naming and shaming” approaches in favor of tempered disapproval and constructive dialogue.¹⁷³ Felice Gaer (who currently sits on the Committee Against Torture) notes the advantages of a “dialogue” over a “confrontation,” and that dialogue has generated better outcomes than the more confrontational approach of the former Human Rights Commission.¹⁷⁴ To be sure, treaty bodies are clear about areas where states fall short and have failed to make progress. Such clarity furthers “[t]he very process of identifying, describing, and controlling human rights practices [which] helps the diffusion of the human rights discourse through global and local levels.”¹⁷⁵ Committee reviews are made public, which not only diffuses compliance norms but potentially influences officials' reputations as well.¹⁷⁶ Even if initial participation in the report-

¹⁶⁸ Shelly Chaiken & Durairaj Maheswaran, *Heuristic Processing Can Bias Systematic Processing: Effects of Source Credibility, Argument Ambiguity, and Task Importance on Attitude Judgment*, 66 J. PERSONALITY & SOC. PSYCHOL. 460 (1994).

¹⁶⁹ Michael N. Barnett & Martha Finnemore, *The Politics, Power, and Pathologies of International Organizations*, 53 INT'L ORG. 699 (1999); Jeffrey T. Checkel, *International Institutions and Socialization in Europe: Introduction and Framework*, 59 INT'L ORG. 801 (2005); Thomas Risse, “Let's Argue!” *Communicative Action in World Politics*, 54 INT'L ORG. 1 (2000).

¹⁷⁰ ERIN BRADNER & GLORIA MARK, WHY DISTANCE MATTERS: EFFECTS ON COOPERATION, PERSUASION & DECEPTION (2002), available at <https://www.ics.uci.edu/~gmark/CSCW2002.pdf>.

¹⁷¹ ABRAM CHAYES & ANTONIA HANDLER CHAYES, THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS (1995).

¹⁷² Johnston, *supra* note 167, at 499; RYAN GOODMAN & DEREK JINKS, SOCIALIZING STATES: PROMOTING HUMAN RIGHTS THROUGH INTERNATIONAL LAW 27–28 (2013); Jeffrey T. Checkel, *Why Comply? Social Learning and European Identity Change*, 55 INT'L ORG. 553, 569 (2001).

¹⁷³ On the use of naming and shaming, see, for example, Emilie M. Hafner-Burton, *Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem*, 62 INT'L ORG. 689 (2008); Jacqueline H.R. DeMeritt, *International Organizations and Government Killing: Does Naming and Shaming Save Lives?*, 38 INT'L INTERACTIONS 597 (2012); Matthew Krain, *J'accuse! Does Naming and Shaming Perpetrators Reduce the Severity of Genocides or Politicides?*, 56 INT'L STUD. Q. 574 (2012); Amanda M. Murdie & David R. Davis, *Shaming and Blaming: Using Events Data to Assess the Impact of Human Rights INGOs*, 56 INT'L STUD. Q. 1 (2012).

¹⁷⁴ Felice D. Gaer, *A Voice Not an Echo: Universal Periodic Review and the UN Treaty Body System*, 7 HUM. RTS. L. REV. 109, 117 (2007).

¹⁷⁵ GOODMAN & JINKS, *supra* note 172, at 130.

¹⁷⁶ On the roles of publicity and reputation in elite socialization processes, see *id.*; Andrew T. Guzman, *International Law: A Compliance Based Theory*, 90 CAL. L. REV. 1823 (2002); Robert O. Keohane, *International*

and-review process is motivated by rote adoption of superficial “scripts of modernity,” it exposes governments to broader acculturation pressures for implementation and compliance.¹⁷⁷

Are government officials socialized to the reporting process and to international human rights norms more generally? Evidence can be found in the communicative process, in the form of (1) committee language consistent with socialization (praise and opprobrium in service of clear implementation standards), and (2) target engagement suggestive of increasing government understanding of the rules, norms, and purposes of reporting. The first implies that the committees communicate in a way that is plausibly persuasive; the second implies that the reporter communicates back: “I get it.” Empirically, we look for persuasive tone and language from committee members and higher quality, more thorough, and responsive reports from states over time.

Committees’ Communicative Choices: Preparing the Conditions for Socialization

Research on social persuasion suggests that language matters, and that persuasive communication must walk a fine line between normative clarity on the one hand and threatening or condescending language on the other.¹⁷⁸ Cultivating trust also has a significant impact on the prospects for persuasion.¹⁷⁹ While we do not have irrefutable causal proof that government elites have in fact become socialized by the periodic review process, we do demonstrate that the process displays theoretically necessary preconditions for socialization to occur and that it is thus conducive to that end.

If committees are communicating in order to socialize, we would expect them to frame comments using respectful language, in order to elicit genuine consideration of their suggestions. To maximize the possibilities for persuasion, we should see committee members keeping discussions professional, as research consistently shows that perceived expertise is positively associated with persuasion.¹⁸⁰ We would further expect that committee language stresses normative clarity, and evinces both back-patting and mild forms of criticism. To find evidence of socialization efforts, we examined in detail the history of committees’ communicative choices during constructive dialogues with five Latin American countries (Argentina, Chile, Colombia, Mexico, Uruguay), across the four core treaties on which this Article focuses (ICCPR, CEDAW, CAT, and CRC).

Relations and International Law: Two Optics, 38 HARVARD INT’L L.J. 487 (1997); Thomas Risse & Stephen C. Ropp, *International Human Rights Norms and Domestic Change: Conclusions*, in THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE 234 (Thomas Risse, Stephen C. Ropp & Kathryn Sikkink eds., 1999).

¹⁷⁷ Christine Min Wotipka & Francisco O. Ramirez, *World Society and Human Rights: An Event History Analysis of the Convention on the Elimination of All Forms of Discrimination Against Women*, in THE GLOBAL DIFFUSION OF MARKETS & DEMOCRACY 303 (Beth A. Simmons, Frank Dobbin & Geoffrey Garrett eds., 2007).

¹⁷⁸ A significant body of psychological literature points to the importance of tone and emotional state in persuasion. See Richard E. Petty & Pablo Briñol, *Attitude Change*, in ADVANCED SOCIAL PSYCHOLOGY: THE STATE OF THE SCIENCE 217 (Roy F. Baumeister & Eli J. Finkel eds., 2010).

¹⁷⁹ Jean-Baptiste Légal, Julien Chappé, Viviane Coiffard & Audrey Villard-Forest, *Don’t You Know that You Want to Trust Me? Subliminal Goal Priming and Persuasion*, 48 J. EXPERIMENTAL SOC. PSYCHOL. 1 (2012) (arguing that talk that primes for trust likely influences information processing and persuasion).

¹⁸⁰ Ramon J. Rhine & Laurence J. Severance, *Ego-Involvement, Discrepancy, Source Credibility, and Attitude Change*, 16 J. PERSONALITY & SOC. PSYCHOL. 175 (1970); ALICE H. EAGLY & SHELLY CHAIKEN, THE PSYCHOLOGY OF ATTITUDES (1993); Robert B. Cialdini & Noah J. Goldstein, *Social Influence: Compliance and Conformity*, 55 ANN. REV. PSYCHOL. 591 (2004).

In the early years of the treaty-body system, committee members used formal, diplomatic, and often deferential language, particularly when discussing obligations that implicate national security or core societal norms or values. For example, during the Cold War the Human Rights Committee was rarely explicitly critical. It was not “uncommon for certain states, regardless of their human rights record, to be treated with ‘kid gloves.’”¹⁸¹ Members typically elaborated on the scope and interpretation of specific covenant provisions (cuing their expertise) and then requested further clarification about legislation to indirectly highlight where there might be inconsistencies with ICCPR provisions (mild shaming).¹⁸² The committee’s deft requests in 1980 for clarification of Colombia’s law and practices prior to cautiously worded suggestions provide one example.¹⁸³ There were undoubtedly exceptions in the early years, particularly for Latin American countries with military regimes or states of emergency. Stressing normative clarity, committee members could be quite blunt when they thought there was a significant gap between a state’s laws and international norms.¹⁸⁴

The diplomatic and indirect approach began to shift in the late 1980s, with committee members much more willing to identify directly inconsistencies between domestic law and treaty obligations. Over the 1990s, members increasingly drew attention to insufficient legal implementation. For instance, the CAT country rapporteur for Uruguay’s second review explicitly stated that the Penal Code’s two-year sentence for abuse of authority was “insufficient” in light of Article 2 of the convention.¹⁸⁵ Another member noted an additional “contradiction” between the Penal Code’s inclusion of a due obedience defense and convention obligations and asked the delegation to “express its views on that contradiction.”¹⁸⁶ Members were sometimes loath to explicitly identify violations in practice, but a few began to do so, often avoiding direct accusations by drawing attention to alleged incidents of non-compliance from NGO or U.S. State Department accounts and asking the representative to comment on them. Allegations of torture incidents in Argentina followed this pattern,¹⁸⁷ followed by solicitous back-patting for the country’s commitment to preventing torture and improvements in other areas.¹⁸⁸ This is evidence of the committees’ efforts to influence behavior through balanced concern and praise, while articulating what counts as compliance with treaty obligations. Prompting government agents to reflect and comment on implementation shortcomings represents a practice of “cuing,” a central tactic of persuasion.¹⁸⁹

During the late 1990s and early 2000s, a few committees grew increasingly confrontational, adopting tones that belied the notion of dialogue or persuasion. Confrontation

¹⁸¹ Buergenthal, *supra* note 118, at 355.

¹⁸² Such an approach is consistent with the use of “injunctive norms,” or information about acceptable social behavior, which has been found to be especially effective as social persuasion. See Robert B. Cialdini, Linda J. Demaine, Brad J. Sagarin, Daniel W. Barrett, Kelton Rhoads & Patricia L. Winter, *Managing Social Norms for Persuasive Impact*, 1 SOC. INFLUENCE 3, 4 (2006).

¹⁸³ Human Rights Committee, Tenth Sess.: Summary Record of the 221st Mtg. (July 15, 1980), paras. 31, 34, UN Doc. CCPR/C/SR.221 (July 17, 1980).

¹⁸⁴ See, e.g., Human Rights Committee, Sixth Sess.: Summary Record of the 128th Mtg. (Apr. 11, 1979), paras. 4, 13, UN Doc. CCPR/C/SR.128 (Apr. 16, 1979).

¹⁸⁵ Committee Against Torture, Seventeenth Sess.: Summary Record of the First Part (Public) of the 274th Mtg. (Nov. 19, 1996), para. 15, UN Doc. CAT/C/SR.274 (Nov. 22, 1996).

¹⁸⁶ *Id.*, para. 23.

¹⁸⁷ Committee Against Torture, Ninth Sess.: Summary Record of the 122nd Mtg. (Nov. 11, 1992), paras. 58, 79, UN Doc. CAT/C/SR.122 (Nov. 17, 1992).

¹⁸⁸ *Id.*, para. 61.

¹⁸⁹ GOODMAN & JINKS, *supra* note 172, at 25.

tempered somewhat by the early 2010s, when the character of committee dialogues became less accusatory and much more technical. States predominantly provided objective descriptions of laws, policies, and practices, and committee members underscored their expertise with near clinical assessments of (in)compatibility with treaty provisions, followed by detailed questions to point to shortcomings or to clarify the situation. Committee members frequently draw from reports by NGOs, the U.S. State Department, special procedures, regional human rights mechanisms, and other treaty bodies' concluding observations to flag discrepancies with the state's report and request clarification or comment.¹⁹⁰

Consistent with socialization theory, members telegraph their meaning using cooperative and problem-solving language, sometimes following up critical assessments (mild shaming) with assurances that we are here to help (identification and back-patting), and offering new or alternative approaches to address recognized shortcomings.¹⁹¹ During Chile's most recent CEDAW review, Patricia Schultz (Switzerland) commended the creation of the Technical Secretariat for Gender Equality and Non-discrimination before noting that "action currently being taken to guarantee equal access to justice and protection against gender stereotyping remained either insufficient or insufficiently timely," and suggesting that the Committee's General Comment No. 3 "could provide useful guidance for addressing that situation."¹⁹² A CAT Committee member expressed alarm at the large number of individuals in pre-trial detention in Colombia, stressing that the problem needed to be addressed "urgently and imaginatively," employing alternatives to detention such as electronic bracelets and community service.¹⁹³ In discussing Mexico's new legislative efforts on detention registers, another CAT Committee member suggested that legislation include "robust mechanisms, such as the use of video recordings and Global Positioning System (GPS) equipment, to guard against the falsification of information."¹⁹⁴

The normative strategy remains central: the word "should" appears frequently both during the dialogue and within the concluding observations. To be sure, questioning remains demanding and occasionally sharply critical. For example, Olivier de Frouville (France) began the second session of Colombia's most recent review before the Human Rights Committee by noting that "the vagueness and evasiveness of the [delegation's] replies . . . were making it difficult to engage in a truly constructive dialogue" and that the information provided by the government "shed relatively

¹⁹⁰ See, e.g., Committee Against Torture, Sixtieth Sess.: Summary Record of the 1517th Mtg. (Apr. 26, 2017), paras. 34, 40, 47, UN Doc. CAT/C/SR.1517 (Apr. 28, 2017); Committee on the Elimination of Discrimination Against Women, Seventy-Second Sess.: Summary Record of the 1661st Mtg. (Feb. 19, 2019), para. 54, UN Doc. CEDAW/C/SR.1661 (Feb. 26, 2019); Human Rights Committee, 118th Sess.: Summary Record of the 3314th Mtg. (Oct. 20, 2016), para. 41, UN Doc. CCPR/C/SR.3314 (Oct. 28, 2016).

¹⁹¹ See, e.g., Committee on the Elimination of Discrimination Against Women, Sixty-fourth Sess.: Summary Record of the 1418th Mtg. (July 14, 2016), para. 10, UN Doc. CEDAW/C/SR.1418 (July 20, 2016); Committee on the Elimination of Discrimination Against Women, Seventieth Sess.: Summary Record of the 1608th Mtg. (July 6, 2018), para. 51, UN Doc. CEDAW/C/SR.1608 (July 13, 2018); Committee on the Rights of the Child, Sixty-Eighth Sess.: Summary Record of the 1952nd (Chamber B) Mtg. (Jan. 19, 2015), para. 11, UN Doc. CRC/C/SR.1952 (Jan. 22, 2015).

¹⁹² Committee on the Elimination of Discrimination against Women, Sixty-Ninth Sess.: Summary Record of the 1574th Mtg. (Feb. 21, 2018), para. 27, UN Doc. CEDAW/C/SR.1574 (Feb. 26, 2018), para. 27.

¹⁹³ Committee Against Torture, Fifty-fourth Sess.: Summary Record of the 1309th Mtg. (May 1, 2015), para. 50, UN Doc. CAT/C/SR.1309 (May 6, 2015).

¹⁹⁴ Committee Against Torture, Sixty-Sixth Sess.: Summary Record of the 1724th Mtg. (Apr. 25, 2019), para. 22, UN Doc. CAT/C/SR.1724 (May 1, 2019).

little light on the state of implementation of the Covenant on the ground.”¹⁹⁵ A CAT Committee member characterized Argentina’s recent proposed amendments to its criminal sentence enforcement legislation as making “a mockery of the notion, enshrined in the Constitution, that serving a sentence was a form of rehabilitation.”¹⁹⁶ Overall, however, there appears to have been a clear shift to less politicized language by the 2010s, in line with many theories of persuasive communication. Of course there is room for improvement: a number of government comments in the context of the 2020 treaty body review note that the current process seems more like a “‘one-way dialogue’ that resembled an appearance before a court”¹⁹⁷ than a genuine dialogue, leading to a “frustrated feeling of not having been heard.”¹⁹⁸ Such experiences may hamper elite socialization, a point to which we return in the conclusion.

Socialization in Practice: Taking Reporting Seriously?

Have states become socialized to take their procedural obligations under treaties seriously? Treaty bodies have set a public normative expectation that governments submit timely, responsive, and transparent reports. Committees repeatedly and vigorously praise quality reports and express disappointment at delayed submissions or reports that fail to conform to guidelines.¹⁹⁹ This is how social norms are created and transmitted.

To find out whether states have become socialized into these reporting expectations, we read all state reports (not just those for Latin America) submitted under four core human rights treaties—ICCPR, CEDAW, CAT, and CRC. Each was assigned a Quality Score, based on the government’s willingness to recognize shortcomings in implementation or compliance and to outline specific measures or efforts to address them (see Online Appendix A for the coding procedure). Figure 1 shows the average quality scores for reports submitted under each treaty over time. Improvements in report quality vary noticeably across treaties. The earliest reports were not forthcoming in acknowledging shortcomings, but with the partial exception of CRC and ICCPR reports in more recent years, they systematically improved in candor and transparency over time.

¹⁹⁵ See, e.g., Human Rights Committee, 118th Sess.: Summary Record of the 3314th Mtg. (Oct. 20, 2016), para. 2, UN Doc. CCPR/C/SR.3314 (Oct. 28, 2016).

¹⁹⁶ UN Doc. CAT/C/SR.1517, *supra* note 190, para. 22.

¹⁹⁷ OHCHR, Response by the Group of Small States to the Questionnaire on Implementation of General Assembly Resolution 68/268, at <https://www.ohchr.org/Documents/HRBodies/TB/HRTD/3rdBiennial/States/Group%20of%20Small%20States.docx>

¹⁹⁸ OHCHR, Response by Spain to the Questionnaire on Implementation of General Assembly Resolution 68/268, at <https://www.ohchr.org/Documents/HRBodies/TB/HRTD/3rdBiennial/States/Spain.docx>.

¹⁹⁹ See, e.g., Committee on the Elimination of Discrimination Against Women, Eighteenth Sess.: Summary Record of the 376th Mtg. (Jan. 30, 1998), para. 20, UN Doc. CEDAW/C/SR.376 (June 15, 1998).

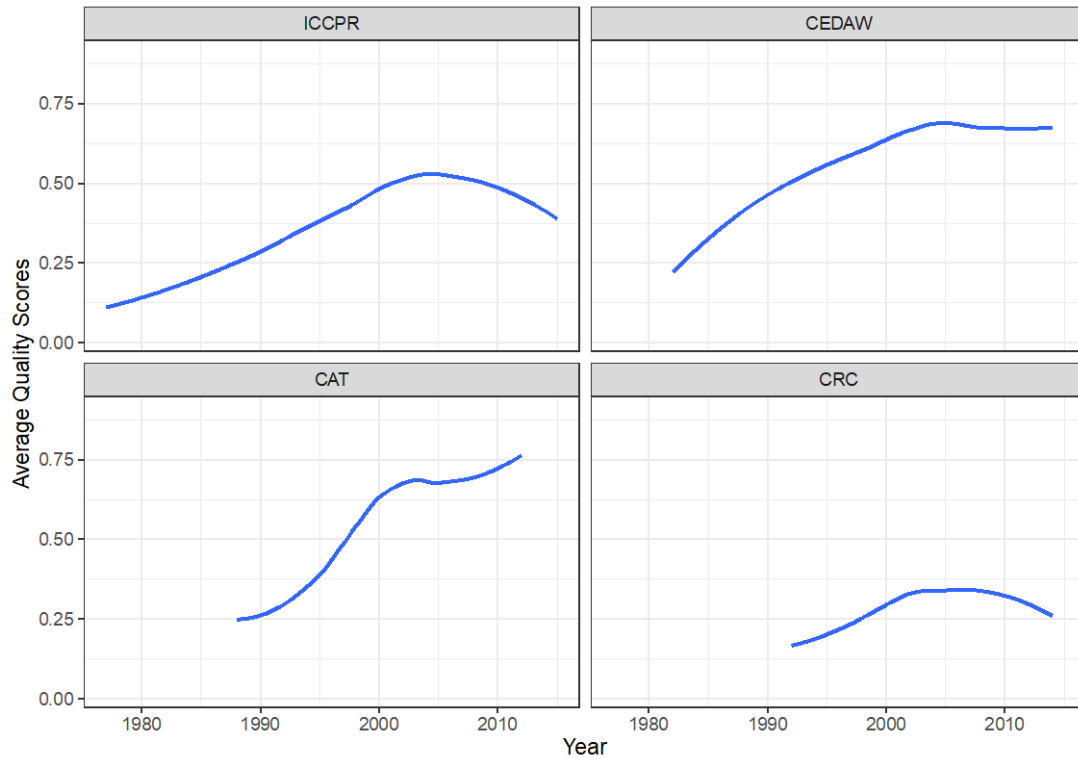


Figure 1. Average report quality scores across four core human rights treaties. Average quality scores assigned to all reports in a given year as a proportion of the total score a report could receive (0–1). Report quality scores available for: ICCPR (1977–2014); CEDAW (1982–2014); CAT (1988–2011); and CRC (1992–2014). See Online Appendix A for details on the coding instrument and procedure.

Elite socialization also implies that governments become increasingly responsive to committee concerns. To evaluate this expectation, we assigned all reports (except initial reports) submitted under the same four core human rights treaties a Responsiveness Score, based on how well the report engaged with the committee’s previous concluding observations (see Online Appendix A for the coding procedure). Figure 2 shows state reports have become more responsive to committee recommendations and concerns over time, though ICCPR reports tend to be relatively less so than those under the other three treaties. This shift was reinforced in the 2010s by the institutional reform of moving to the simplified reporting procedure.²⁰⁰ Steady improvements in responsiveness provide indirect evidence that elite socialization to international norms is at work.

²⁰⁰ See reforms discussed in note 127 *supra* and corresponding text.

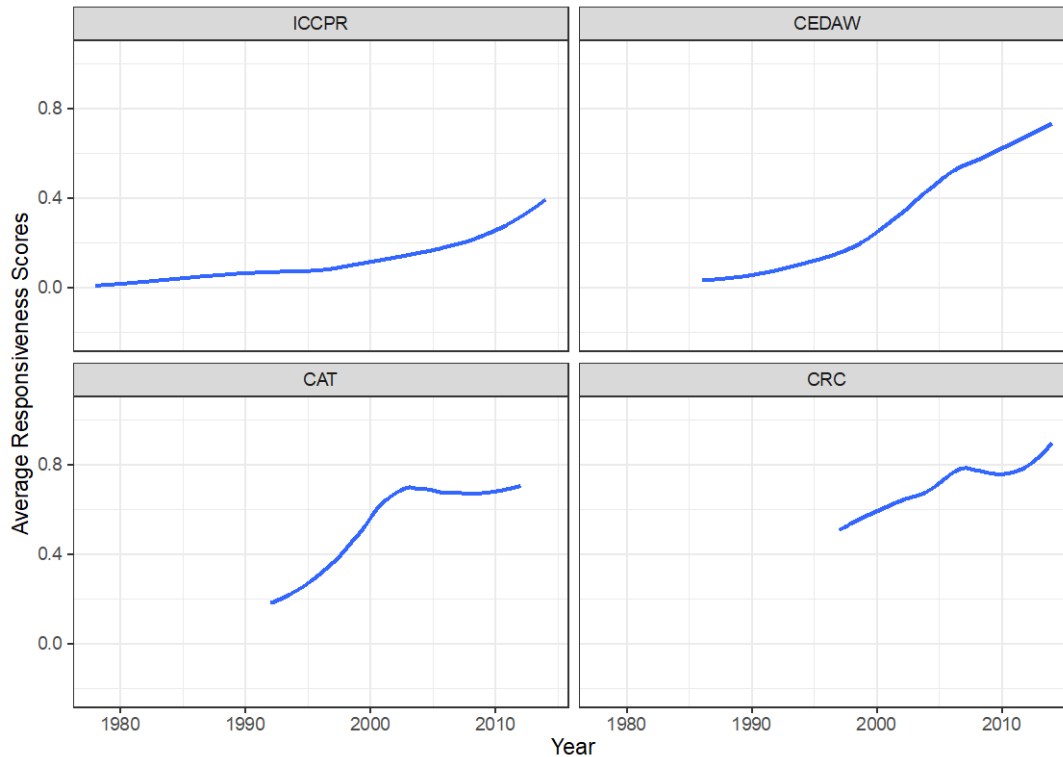


Figure 2. Average report responsiveness scores across four core human rights treaties. Average responsiveness scores are assigned to all subsequent reports in a given year as a proportion of the total score a report could receive (0–1). Report responsiveness scores available for: ICCPR (1978–2014); CEDAW (1991–2014); CAT (1992–2011); CRC (1997–2014). See Online Appendix A for details on the coding instrument and procedure.

Finally, we expect governments to genuinely deliberate during the constructive dialogue. Evidence points to language of both deliberative engagement as well as resistance during these reviews. Examples of genuine engagement include Uruguay’s explicit recognition that it needed to align its legal system with the CAT and its openness to the committee’s recommendations for how to do so.²⁰¹ Similarly, Argentina told the Committee Against Torture that it considered its definition of torture “sufficiently broad to cover the requirements of the Convention” but that “it remained open to suggestions from the Committee in that regard.”²⁰² Before the Committee on the Rights of the Child, an Argentine delegation “did not deny that . . . domestic legislation ran counter to some of the recommendations set forth by the Committee,” then reminded the committee of recent developments in case law.²⁰³ Mexico accepted a CEDAW Committee member’s observation that a discriminatory culture in the government remained a primary obstacle to gender equality in politics, and committed to develop programs to help promote women at all levels of government.²⁰⁴ More recently, the Mexican delegation acknowledged the same

²⁰¹ UN Doc. CAT/C/SR.274, *supra* note 185, para. 2.

²⁰² Committee Against Torture, Sixtieth Sess.: Summary Record of the 1519th Mtg. (Apr. 27, 2017), para. 31, UN Doc. CAT/C/SR.1519 (May 3, 2017).

²⁰³ Committee on the Rights of the Child, Fifty-Fourth Sess.: Summary Record of the 1524th (Chamber B) Mtg. (June 2, 2010), para. 72, UN Doc. CRC/C/SR.1524 (Mar. 25, 2011).

²⁰⁴ Committee on the Elimination of Discrimination Against Women, Thirty-Sixth Sess.: Summary Record of the 752nd Mtg. (Chamber B) (Aug. 17, 2006), paras. 11–21, UN Doc. CEDAW/C/SR.752 (B) (Sept. 13, 2006).

committee's concern that "much remained to be done to improve conditions for women in detention."²⁰⁵

Clearly, states resist as well, particularly regarding matters that touch on national security or core societal norms and values. An Argentine representative resisted a suggestion to review the government's criminalization of abortion.²⁰⁶ Chilean representatives were particularly defensive during the military government's first review by the Human Rights Committee, noting that "some members of the Committee had made highly politicized statements which had been repeated many times in other forums."²⁰⁷ Such a statement demonstrates the limits of politicized shaming in this setting; the committees themselves have returned to more professionalized assessments.

We can draw several conclusions from this exploration of the reporting process. First, it is a process in which elite socialization—the gradual adoption of the norms, values, attitudes, and behaviors accepted and practiced by a group—is possible.²⁰⁸ Since confrontation and harsh excoriation are likely to lead to backlash, treaty bodies are often careful to maintain a respectful posture toward states parties, using diplomatic and increasingly technical language. Problem-solving language is common, suggesting an effort to cultivate a cooperative relationship while inculcating international procedural and substantive norms. Second, the quality and responsiveness of state reports represents evidence that (some) states are becoming socialized into international norms of accountability.

Learning and Capacity Building

Learning Best Practices

The report-and-review process is a dialogue—not an exam and certainly not a trial.²⁰⁹ It is an opportunity for states to learn about best implementation practices or more efficient and effective methods to improve treaty outcomes. When review and dialogue accompany self-reporting, opportunities arise for state and international elites to "learn more about one another's position and perspectives, desires and constraints."²¹⁰ Learning exactly how to implement one's treaty obligations is thus a highly plausible explanation for the correlation between cumulative reporting activity and rights improvements.

Implementing accepted norms—discussed above in the context of socialization—requires knowledge. Even if we all affirm that torture is "bad," people of goodwill might not know how to keep it from happening. Even if we all agree that child labor is deplorable and not in a child's immediate interest or the long-run interest of a society, it is not altogether clear how to reduce it when families need the extra income. Fair trials may be widely embraced in principle, but it is not

²⁰⁵ UN Doc. CEDAW/C/SR.1608, *supra* note 191, para. 13.

²⁰⁶ Committee on the Elimination of Discrimination Against Women, Thirty-First Sess.: Summary Record of the 660th Mtg. (July 16, 2004), para. 37, UN Doc. CEDAW/C/SR.660 (Aug. 5, 2004).

²⁰⁷ Human Rights Committee, Sixth Sess.: Summary Record of the 130th Mtg. (Apr. 12, 1979), para. 2, UN Doc. CCPR/C/SR.130 (Apr. 18, 1979).

²⁰⁸ Petty & Brinol, *supra* note 178 (citing interaction with experts, positive tone, and repetition as all favorable to persuasion).

²⁰⁹ Berhard Graefrath, *Reporting and Complaint Systems in Universal Human Rights Treaties*, in HUMAN RIGHTS IN A CHANGING EAST-WEST PERSPECTIVE 290, 301–02 (Allan Rosas & Donna Gomien eds., 1990) (noting that states were concerned during negotiations that the reporting system not be converted into a quasi-judicial inquiry).

²¹⁰ Karolina M. Milewicz & Robert E. Goodin, *Deliberative Capacity Building Through International Organizations: The Case of Universal Periodic Review of Human Rights*, 48 BRIT. J. POL. SCI. 513, 514–16 (2016).

immediately obvious how to better ensure them in practice (and often with limited resources). This sort of learning is often factual and experiential, drawing heavily on a logic of consequences (“what works”).

In this sense, self-reporting resembles a type of global experimentalist governance that frames global issues in a rather open-ended way: how can women’s rights be strengthened? What forms of police training have the best shot at reducing torture in detention centers? The constructive dialogue attempts to solve such problems in light of locally generated knowledge and experiences, thereby contributing to localized efforts to improve capacity and compliance.

Information has a major impact on political and policy behavior.²¹¹ Learning from other states’ experiences or from international organizations plays a central role in domestic regulatory practice²¹² as well as the diffusion of social and economic policies globally.²¹³ Learning is voluntary, purposive, and involves seeking out information to help solve a problem based on an improved understanding of what policies lead to better outcomes.²¹⁴ Multilateral reporting regimes often engender transnational networks involved in common implementation and compliance problems.²¹⁵ In this sense, self-reporting is less a mea culpa and more a part of what Charles F. Sabel and others call “global experimental governance,” itself a response to conditions of ignorance and uncertainty.²¹⁶

Both governments and the treaty bodies themselves can be expected to learn from the report-and-review process.²¹⁷ As Abram Chayes and Antonia Handler Chayes argue, learning processes are central to eliciting treaty compliance and effectiveness.²¹⁸ As early as 1953, the

²¹¹ See, e.g., Alan S. Gerber & Donald P. Green, *The Effects of Canvassing, Telephone Calls, and Direct Mail on Voter Turnout: A Field Experiment*, 94 AM. POL. SCI. REV. 653 (2000) (finding that learning how and where to vote affects the likelihood of voting).

²¹² This is one theme developed in the literature on “meta-regulation” which refers to ways in which regulatory oversight induces targets to develop their own internal, self-regulatory responses. See Cary Coglianese & Evan Mendelson, *Meta-Regulation and Self-Regulation*, in THE OXFORD HANDBOOK OF REGULATION 146 (Robert Baldwin, Martin Cave & Martin Lodge eds., 2010). Meta-regulation contributes to the diffusion of regulatory capacity through learning processes. See Colin Scott, *Reflexive Governance, Regulation and Meta-Regulation: Control or Learning?*, in REFLEXIVE GOVERNANCE: REDEFINING THE PUBLIC INTEREST IN A PLURALISTIC WORLD 43 (Olivier de Schutter & Jacques Lenoble eds., 2010).

²¹³ Covadonga Meseguer, *Policy Learning, Policy Diffusion, and the Making of a New Order*, 598 ANNALS AM. ACAD. POL. & SOC. SCI. 67 (2005); Diane Stone, *Transfer Agents and Global Networks in the “Transnationalization” of Policy*, 11 J. EUR. PUB. POLICY 546 (2004).

²¹⁴ Meseguer, *supra* note 213, at 73.

²¹⁵ O’Flaherty, *supra* note 119, at 46–47, 51; Robert O. Keohane, Stephen Macedo & Andrew Moravcsik, *Democracy-Enhancing Multilateralism*, 63 INT’L ORG. 1, 36 (2009).

²¹⁶ Gráinne de Búrca, Robert O. Keohane & Charles Sabel, *Global Experimentalist Governance*, 44 BRIT. J. POL. SCI. 477 (2014). See also Charles F. Sabel & Jonathan Zeitlin, *Experimentalism in the EU: Common Ground and Persistent Differences*, 6 REG. & GOV. 410, 411 (2012); EXPERIMENTALIST GOVERNANCE IN THE EUROPEAN UNION: TOWARDS A NEW ARCHITECTURE (Charles F. Sabel & Jonathan Zeitlin eds., 2010).

²¹⁷ See Vicki C. Jackson, *Feminisms, Pluralisms and Transnationalism: On CEDAW and National Constitutions*, in THE PUBLIC LAW OF GENDER: FROM THE LOCAL TO THE GLOBAL 437 (Kim Rubenstein & Katharine G. Young eds., 2016). We fielded a brief survey to current and past treaty body members via Qualtrics, asking whether they (dis)agree that reporting helped them learn about common deficiencies and best practices among reporting states. 70% of respondents (out of twenty-six total) indicated they agreed or strongly agreed with that statement; 30% of respondents somewhat agreed or neither agreed/disagreed.

²¹⁸ Abram Chayes & Antonia Handler Chayes, *On Compliance*, 47 INT’L ORG. 175, 303 (1993). See also Ronald B. Mitchell, *Sources of Transparency: Information Systems in International Regimes*, 42 INT’L STUD. Q. 109, 113 (1998); Jutta M. Joachim, Bob Reinalda & Bertjan Verbeek, *International Organizations and Implementation: Pieces of the Puzzle*, in INTERNATIONAL ORGANIZATIONS AND IMPLEMENTATION: ENFORCERS, MANAGERS, AUTHORITIES? 3, 11 (Jutta M. Joachim, Bob Reinalda & Bertjan Verbeek eds., 2008).

United States proposed that the goal of periodic review should be to “allow countries to draw inspiration and guidance from the experiences of other countries when trying to solve their own problems.”²¹⁹ Indeed, treaty bodies explicitly intend to convey the experience they have acquired in their examination of other reports.²²⁰ The treaty bodies draw on collective experiences and information from myriad sources to expand knowledge available to governments and publics.²²¹ States gain advice about modes of implementation not previously known or considered. Learning is a shorter-term mechanism than elite socialization, though similarly iterative. Iterative reporting builds on learning opportunities to improve policies and practices over time.²²²

Records of the review process provide clear evidence that teaching and learning is a prime goal of the committee members. The constructive dialogues and concluding observations are replete with suggestions found to be effective elsewhere. For example, during Chile’s first review before the Human Rights Committee, Christian Tomuschat (Federal Republic of Germany) noted that “[e]xperience from other countries showed that workers had to be organized at the national level if they were to be successful in defending their interests.”²²³ In reviewing Chile’s most recent report before the CEDAW Committee, Marion Bethel (the Bahamas) suggested the government might consider prosecuting human traffickers under anti-money-laundering laws, noting that the “Argentinian authorities had recently begun to move in that direction.”²²⁴ Learning best practices is similarly a goal for a number of governments who view the self-reporting process as an opportunity to “help strengthen domestic implementation by identifying areas of good practice”²²⁵ and to “shar[e] best practice examples.”²²⁶

The committees’ highly visible General Comments further reinforce learning and sharing of best practices.²²⁷ In fact, this is their intended purpose.²²⁸ General Comments are used to “share best practices with states parties, identify barriers to the enjoyment of Covenant rights, and to provide information on how rights violations may be prevented.”²²⁹ For example, the Human Rights Committee’s General Comment on freedoms of opinion and expression drew from over one hundred concluding observations and individual communications to elaborate legislative models for treaty implementation.²³⁰

²¹⁹ Helen Keller & Leena Grover, *General Comments of the Human Rights Committee and their Legitimacy*, in U.N. HUMAN RIGHTS TREATY BODIES: LAW AND LEGITIMACY 116, 121 (Helen Keller & Geir Ulfstein eds., 2012).

²²⁰ OHCHR, Manual on Human Rights Reporting Under Six Major International Human Rights Instruments, para. 262, UN Doc. HR/PUB/91/1 (Rev.1) (1997) (noting that “[t]he main function of the Committee is . . . to make available to [States Parties] the experience the Committee has acquired in its examination of other reports”).

²²¹ Keohane, Macedo & Moravcsik, *supra* note 215, at 18.

²²² However, one study of human rights periodic review based on interviews in three wealthy democracies concludes that officials are generally unwilling to learn much from the process. See KROMMENDIJK, *supra* note 146, at 376–77.

²²³ UN Doc. CCPR/C/SR.128, *supra* note 184, para. 36.

²²⁴ UN Doc. CEDAW/C/SR.1574, *supra* note 192, para. 64.

²²⁵ Response by the Group of Small States, *supra* note 197.

²²⁶ OHCHR, Response by Australia to the Questionnaire on Implementation of GA Res. 68/268, at <https://www.ohchr.org/Documents/HRBodies/TB/HRTD/3rdBiennial/States/Australiae.DOCX>.

²²⁷ Philip Alston, *The Historical Origins of the Concept of “General Comments” in Human Rights Law*, in THE INTERNATIONAL LEGAL SYSTEM IN QUEST OF EQUITY AND UNIVERSALITY: LIBER AMICORUM, GEORGES ABI-SAAB 763, 775, n. 49 (Laurence Boisson de Chazournes & Vera Gowlland-Debbas eds., 2001).

²²⁸ Human Rights Committee, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. CCPR/C/21/Rev.1 (May 19, 1989).

²²⁹ Keller & Grover, *supra* note 219, at 125.

²³⁰ *Id.*; Human Rights Committee, General Comment No. 34, UN Doc. CCPR/C/GC/34 (Sept. 12, 2011).

This Article does not offer direct proof that participants have learned specific best practices from interacting with the treaty bodies. Learning—and especially self-regulated learning—is difficult to measure, even in well-controlled settings with calibrated instruments designed to do so.²³¹ Nothing approaching a rigorous study of bureaucratic learning has been accomplished in the human rights literature. Rather, our focus is on whether the right conditions for learning are present during the report and review process.

To investigate this question, we looked to the composition of government delegations sent to Geneva—and specifically delegates’ connections with relevant domestic lawmaking and implementing organs—as a feature likely to improve the chances of carrying lessons back home. Latin American delegations to the treaty bodies were examined for the ICCPR, CEDAW, CAT, and CRC over the past decade. Governments typically send over a dozen officials with diverse levels and types of expertise. A handful are permanent diplomats in Geneva who are unlikely to return home with useful lessons on implementation. However, governments frequently send individuals from ministries and agencies tasked with implementing specific treaty obligations. For the CAT and ICCPR, representatives typically include both high-level officials and civil servants working in human rights departments from a country’s Ministry of Justice, Ministry of Foreign Relations, Ministry of Defense, and Ministry of the Interior. Delegations often include individuals from the judiciary, senators, police chiefs, and a country’s NHRI. For CEDAW, many of the same types of officials show up in Geneva, but they are typically led by a high-level official from a National Institute/Council of Women (Argentina and Mexico), the Ministry for Women and Gender Equity, the National Service for Women and Gender Equity (Chile), or similar institutions. Likewise, CRC delegations include policymakers and civil servants from agencies that deal specifically with youth planning and rights of the child.

The conditions for networked learning linked to domestic institutions and groups appear particularly ripe. Domestic bureaucracies, inter-governmental agencies, and civil society organizations have been found to interact within international institutions in complex ways,²³² and in doing so act as transmission belts of knowledge flowing from the discussions with experts. This conception of networked learning sees the reporting process as less of a do-as-you’re-told scolding and more of an opportunity to educate parties, experts, and civil society about treaty obligations and implementation difficulties.

Development of Capacity to Implement

Learning is not simply about acquiring knowledge, but further involves the development of legal, technical, and institutional capacities to take action. The self-reporting process prompts a government to collect and share information it might not otherwise have gathered, thereby promoting self-assessment capacity.²³³ The capacity to conduct a self-assessment potentially brings more critical eyes to the status quo,²³⁴ ultimately revealing previously unnoticed gaps in

²³¹ See Philip H. Winne & Nancy E. Perry, *Measuring Self-Regulated Learning*, in HANDBOOK OF SELF-REGULATION 531 (Monique Boekaerts, Moshe Zeidner & Paul R. Pintrich eds., 1999).

²³² See Betsi Beem, *Leaders in Thinking, Laggards in Attention? Bureaucratic Engagement in International Arenas*, 37 POL’Y STUD. J. 497 (2009); Diane Stone, *Global Public Policy, Transnational Policy Communities, and Their Networks*, 36 POL’Y STUD. J. 19 (2008).

²³³ Walter Kälin, *Examination of State Reports*, in UN HUMAN RIGHTS TREATY BODIES: LAW AND LEGITIMACY, *supra* note 219, at 16, 39.

²³⁴ Keohane, Macedo & Moravcsik, *supra* note 215, at 18.

rights protections.²³⁵ Raised expectations that specific types of information should be produced may further generate pressure for more transparency about the state of treaty implementation.

State reports reveal some capacity development over time. In addition to the general increase in quality and responsiveness documented above, governments have made greater effort to collect increasingly specific and disaggregated statistics relevant to treaty obligations.²³⁶ To confirm this, we coded every state report—not just those for Latin America—submitted under the ICCPR, CAT, CEDAW, and CRC, for whether or not they contain meaningful numerical data (Figure 3), by which we mean statistics about outcomes relevant to treaty obligations.²³⁷ Gathering data is only a first, albeit important, step. Such longitudinal quantitative data are important because they contribute to assessing a problem’s extent, any improvements, and backsliding.

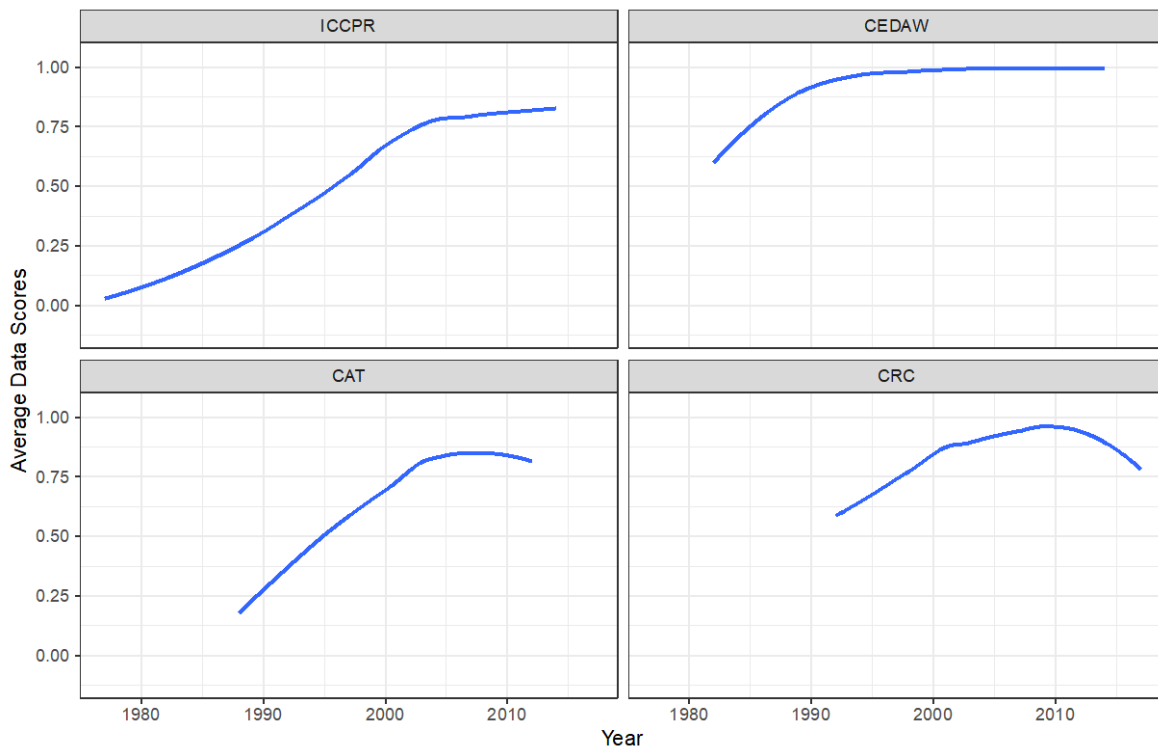


Figure 3. Average report data scores across four core human rights treaties. Average data scores assigned to all reports in a given year as a proportion of the total score a report could receive (0–1).

Many government bureaucracies initially did not report statistical information relevant to implementation, most noticeably for civil and political rights and the ban against torture. Yet the trend for reporting statistical information has increased steadily over the years. In 1990, fewer than

²³⁵ The United Nations sees detecting shortcomings as one of periodic review’s major purposes. *See* International Human Rights Instruments, Compilation of Guidelines on the Form and Content of Reports to Be Submitted by States Parties to the International Human Rights Treaties, para. 5, UN Doc. HRI/GEN/2/Rev.6 (June 3, 2006).

²³⁶ The international community adopted specific norms about using indicators to measure progress in human rights in 1993, though only in the area of economic social and cultural rights. World Conference on Human Rights, Vienna Declaration and Programme of Action, Art. 98, UN Doc. A/CONF.157/23 (July 12, 1993).

²³⁷ Unfortunately, there is no way to know whether the data are accurate, so we cannot make claims about quality. *See* Online Appendix A for data collection and coding procedures for all four treaties.

10 percent of reports to the Human Rights Committee contained quantitative information. There is a clear upward trend between approximately 1995 and 2005, followed by variability in the past decade. Some data provision is nearly universal in CEDAW and CRC reports. While we cannot speak to the accuracy of the statistics provided in reports, the trend may suggest a capacity to collect and organize comparable information. One advantage for including data at all is that it can be systematically contested by civil society and other skeptics. It also has uses beyond treaty implementation.²³⁸ Efforts to collect data are important for assessing the breadth of a problem and the extent to which it is being addressed over time.

While it is appropriate to be skeptical of government-generated human rights data, its production is not always entirely unsupervised. The OHCHR has been central in assisting the development of information-collection capacities. It trains officials to use its Human Rights Indicators guide to collect data in areas from health, water, and sanitation to education and fair trials.²³⁹ The OHCHR treaty-body capacity-building program established in 2015 similarly organizes training workshops that focus on treaty-body reporting and data collection methodologies.²⁴⁰ Learning and capacity development are thus plausible channels for the positive correlations earlier research established between participating in self-reporting and rights improvements.

Public Attention

Self-reporting is not secretive. It is an acknowledged treaty obligation with potential for public participation and contestation. At least some negotiators intended self-reporting to move discussions about human rights from the halls of Geneva to civil society, the media, and eventually the state's legislative chambers, national courts, and executive agencies. Implementation committees also stress governments' obligation to raise awareness about human rights and to disseminate committee recommendations among the population at large.²⁴¹ Public attention to the report-and-review process may be another key reason that self-reporting correlates with rights improvements.

Publicity, Information, and Accountability

Many theories of international legal compliance rely implicitly on the availability—particularly to domestic publics—of information about government activities and legal obligations. Information produced by international bodies informs domestic audiences about their government's (non-)compliance, allowing domestic constituencies to hold government officials accountable.²⁴² Quantitative observational evidence, case studies, and experimental studies of

²³⁸ John D. Huber & Nolan McCarty, *Bureaucratic Capacity, Delegation, & Political Reform*, 98 AM. POL. SCI. REV. 481 (2004).

²³⁹ Human Rights Council, 27th Sess., Report of the OHCHR: Technical Assistance and Capacity-Building Options for Integrating Human Rights into National Policies, para. 44, UN Doc. A/HRC/27/41 (July 24, 2014); OHCHR, Human Rights Indicators: A Guide to Measurement and Implementation, UN Doc. HR/PUB/12/5 (2012).

²⁴⁰ Human Rights Council, 35th Sess., Report of the OHCHR: Progress and Challenges Encountered in the Main Activities Aimed at Enhancing Technical Cooperation and Capacity-Building Undertaken Since the Establishment of the Human Rights Council, para. 51, UN Doc. A/HRC/35/20 (May 3, 2017).

²⁴¹ Human Rights Committee, 80th Sess., General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 7, UN Doc. CCPR/C/21/Rev.1/Add.13 (adopted Mar. 29, 2004).

²⁴² XINYUAN DAI, INTERNATIONAL INSTITUTIONS AND NATIONAL POLICIES (2007).

public opinion all suggest that human rights treaties raise domestic groups' expectations that they can demand treaty compliance.²⁴³

International conventions are central in generating and publicly disseminating both normative and empirical information. Normatively, treaties are focal instruments for public audiences in the sense that they are nearly universally ratified statements of the international community's values relating to human rights. Experimental evidence suggests that agreements framed as the product of consensus are more likely to garner public support.²⁴⁴ Even though treaties are sometimes ratified cynically,²⁴⁵ they do shape understandings of what is and is not acceptable human rights behavior. Their formality further enhances their ability to influence the public's normative understandings and expectations.²⁴⁶

The report-and-review exercise is an extended and visible revelation of what the treaty requires. Through their concluding observations, committees inform the public about the normative definition of human rights obligations, such as, for example, what torture is.²⁴⁷ Self-reporting also reveals empirical information. It generates details on legislation, statistics on prisoner abuses, infant mortality rates, school enrollment figures disaggregated by gender, and employment and wage discrimination. Importantly, the reporting process elicits nongovernmental sources of information from civil society, various UN agencies, and special rapporteurs.

Mobilizing Civil Society Organizations

By mobilizing and empowering groups within and outside of government, reporting can have a catalytic effect in promoting internal policy reform. A number of states consult with nongovernmental organizations in the preparation of their periodic reports. Committees' concluding recommendations further provide domestic constituencies with information to evaluate their state's treaty compliance, focusing domestic pressure on the government to perform better. Even when states are less than forthright, their reports contain information nonstate actors can assess and contest.²⁴⁸ Examples abound, from Southeast Asia²⁴⁹ to South Asia²⁵⁰ to Nigeria.²⁵¹

The process of reporting and responding has elicited significant public attention over time. Civil society organizations (CSOs) are increasingly involved in the reporting process itself. Civil society "shadow reports" are an effort to give voice to facts and views that may not be reflected in

²⁴³ SIMMONS, *supra* note 6; Adam S. Chilton, *The Laws of War and Public Opinion: An Experimental Study*, 171 J. INST'L & THEORETICAL ECON. 181 (2015); Sarah E. Kreps & Geoffrey P.R. Wallace, *International Law, Military Effectiveness, and Public Support for Drone Strikes*, 53 J. PEACE RES. 830 (2016); Geoffrey P.R. Wallace, *International Law and Public Attitudes Toward Torture: An Experimental Study*, 67 INT'L ORG. 105 (2013).

²⁴⁴ Tyler Johnson & Victoria Rickard, *United Nations, Uniting Nations: International Support Cues and American Attitudes on Environmental Sustainability*, 98 SOC. SCI. Q. 876 (2017).

²⁴⁵ See Oona A. Hathaway, *Why Do Countries Commit to Human Rights Treaties?*, 51 J. CONFLICT RESOL. 588 (2007); James Raymond Vreeland, *Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention Against Torture*, 62 INT'L ORG. 65 (2008).

²⁴⁶ JAMES D. MORROW, ORDER WITHIN ANARCHY: THE LAWS OF WAR AS AN INTERNATIONAL INSTITUTION 17 (2014).

²⁴⁷ See, e.g., Committee Against Torture, 36th Sess., Conclusions and Recommendations of the Committee Against Torture: United States, para. 13, UN Doc. CAT/C/USA/CO/2 (July 25, 2006).

²⁴⁸ Jacqui True, *Mainstreaming Gender in Global Public Policy*, 5 INT'L FEMINIST J. POL. 368 (2003) (stressing the importance of treaties as focal points for women's groups lobbying).

²⁴⁹ See The Cambodian NGO Committee on CEDAW, *About Us*, at http://ngocedaw.org/?page_id=7.

²⁵⁰ See the work of Partners for Law in Development at <http://cedawsouthasia.org>.

²⁵¹ See, e.g., International Federation for Human Rights, *The Nigeria NGO Coalition Shadow Report to the CEDAW Committee* (July 31, 2008), at <http://www.refworld.org/docid/48a0007a2.html>.

the governments’ reports. They are publicly available and have been posted on the OHCHR’s website reliably since around 2007 (2009 for the CRC). Figure 4 charts patterns in shadow reports per state report for four core treaties over time, effectively measuring the intensification of public—and increasingly domestic—scrutiny of states reports.²⁵²

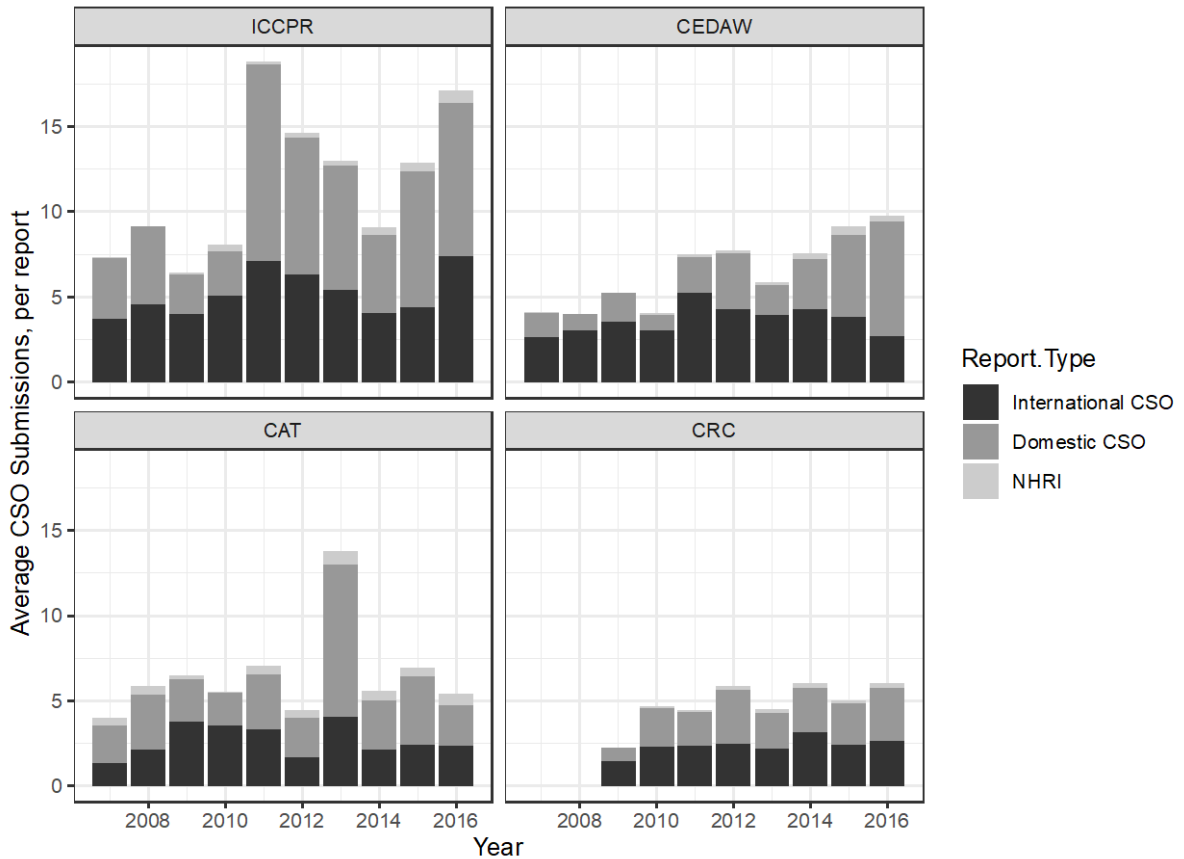


Figure 4. Average shadow reporting per state report submission under four core human rights treaties (all states).

NHRIs have weighed in since about 2011 as well. In some cases, there is a dramatic increase in this form of public mobilization around the reporting process, especially for the ICCPR and CEDAW, and a detectable increase for the CAT and CRC as well. If anything, Figure 4 understates the degree of civil society mobilization around the reporting process because many reports are authored in the name of a broad coalition of local organizations. Notably, implementation committees have begun to consider CSO reports even when states themselves fail to report, underscoring the value of public engagement with implementation. As trends in shadow reporting indicate, domestic civil society mobilization around human rights reporting has intensified over time, complementing earlier claims about domestic bureaucratic capacity building.

²⁵² By “domestic CSOs” we mean organizations based in-country that take primary responsibility for compiling the report, even if assisted by an international nongovernmental organization. By contrast, “international CSOs” operate on a (near-)global scale.

Many civil society reports expose serious violations. Domestic CSOs revealed abuses of women in prisons at the hands of male prison staff to the CEDAW Committee, an issue the Argentine state report scarcely noted.²⁵³ In the case of the CAT, Ecuador's 2009 report spurred the submission of a shadow report from the local Foundation for Integral Rehabilitation of Victims of Violence, detailing ill-treatment in detention that conflicted with the government's account.²⁵⁴ These inconsistencies were in turn echoed in the Committee Against Torture's concluding observations.²⁵⁵ Despite the central role civil society plays in the report-and-review process, overreliance on often unverified information has sparked criticism in the context of the 2020 treaty body review.²⁵⁶ Some suggest that the unbalanced use of shadow reports could "create an ambience of mistrust between Treaty Bodies and Member States."²⁵⁷ Such overreliance potentially undermines the effectiveness of previously discussed socialization and learning mechanisms, given that trust likely influences information processing and persuasion.²⁵⁸

Media Attention

Broader societal mobilization depends at least initially on publicly available information that self-reporting has taken place and the issues on which it focused. This section does not prove that media attention has always led to rights improvements, but it does show that such conditions for public accountability have emerged around the report and review process. Again, we look to Latin America and two treaties (CEDAW and CAT) for evidence that this process seeps into local news sources.²⁵⁹

Figure 5 demonstrates a spike in local press attention to the review processes during the year of review (year 0) for the aggregate of all Latin American countries searched. Moreover, media attention to the reporting process continues after the formal review concludes. In the year following review, the press continues to report on treaty implementation and committee recommendations, compared with the years prior to review. For both the CEDAW and the CAT,

²⁵³ Joint CSO Submission, Women's Human Rights: Argentine State Pending Debts, Alternative Report from Civil Society Organizations in Connection with the Submission of the Sixth Periodic Report of the States Parties (CEDAW/C/ARG/6) to the Committee for the Elimination of All Forms of Discrimination against Women, 46th Period of Sessions (Argentina, 2010), available at https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ARG/INT_CEDAW_NGO_ARG_46_7960_E.pdf.

²⁵⁴ Committee Against Torture, Forty-fifth Sess., Summary Record of the 966th Mtg. (Nov. 9, 2010), para. 65, UN Doc. CAT/C/SR.966 (Nov. 16, 2010).

²⁵⁵ Committee Against Torture, 45th Sess., Concluding Observations of the Committee Against Torture: Ecuador, para. 16, UN Doc. CAT/C/ECU/CO/4-6 (Dec. 7, 2010).

²⁵⁶ See, e.g., OHCHR, Reply of the Republic of Armenia to the OHCHR Questionnaire on Implementation of GA Resolution 68/268, at <https://www.ohchr.org/Documents/HRBodies/TB/HRTD/3rdBiennial/States/Armenia.docx>; OHCHR, Response by China to the Questionnaire on Implementation of GA Resolution 68/268, at <https://www.ohchr.org/Documents/HRBodies/TB/HRTD/3rdBiennial/States/China.doc>; OHCHR, Submission from Singapore to the Questionnaire in Relation to General Assembly Resolution 68/268 on "Strengthening and Enhancing the Effective Functioning of the Human Rights Treaty Body System," at <https://www.ohchr.org/Documents/HRBodies/TB/HRTD/3rdBiennial/States/Singapore.docx>; OHCHR, Thailand's Submission for the Questionnaire in Relation to General Assembly Resolution 68/268, at <https://www.ohchr.org/Documents/HRBodies/TB/HRTD/3rdBiennial/States/Thailand.docx>.

²⁵⁷ OHCHR, Contribution by the Government of Bulgaria to Questionnaire in Relation to General Assembly Resolution 68/268, at <https://www.ohchr.org/Documents/HRBodies/TB/HRTD/3rdBiennial/States/Bulgaria.doc>.

²⁵⁸ Légal, Chappé, Coiffard & Villard-Forest, *supra* note 179 and corresponding text.

²⁵⁹ See **Online Appendix B** for details on the coding scheme and data collection process.

the results peak as expected, most strongly for Mexico, but stories in the Venezuelan and Chilean press are also strongly clustered for the CEDAW. Colombia and Argentina press coverage is similarly strong for the CAT review process. Content analysis of these articles reveals that they frequently are critical of government implementation and often draw attention to Committee recommendations.²⁶⁰ What is discussed in Geneva does not necessarily stay in Geneva.

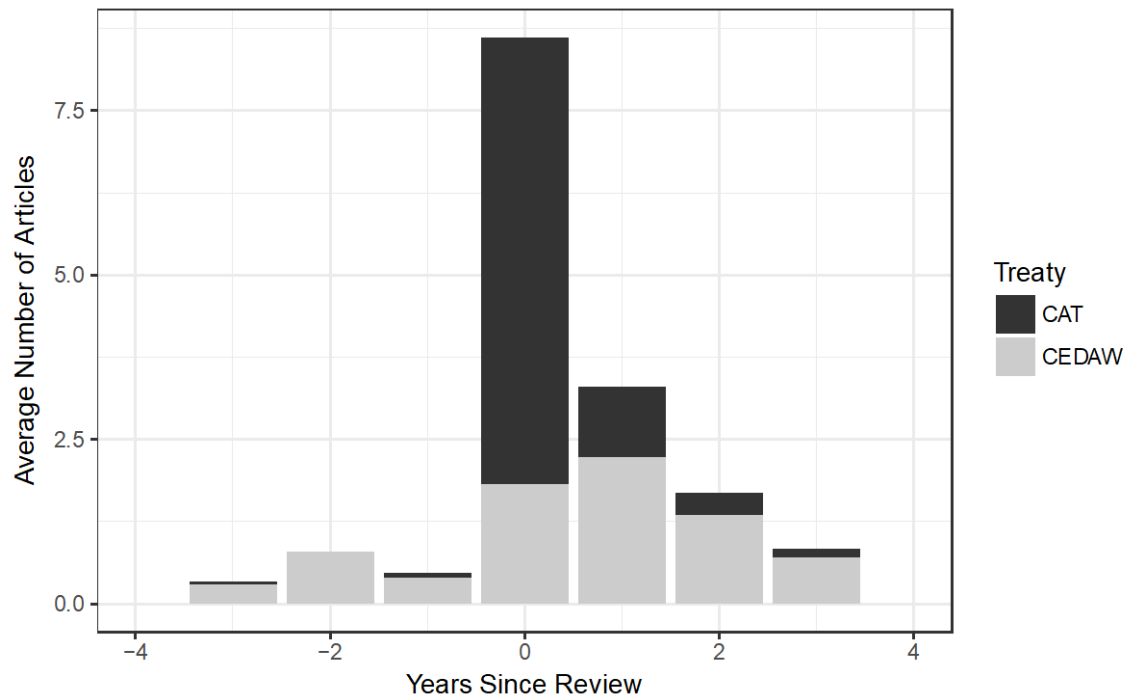


Figure 5. Domestic media coverage of CEDAW and CAT review in Latin America. Average number of domestic newspaper articles that reference the in-person periodic review and/or concluding observations issued by the committee. Total articles within each country’s searchable time period were summed and averaged across publications. Articles are centered on the year of review (0). Coverage of CAT in Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Honduras, Mexico, Nicaragua, Paraguay, Peru, Uruguay, and Venezuela; and of CEDAW in Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Uruguay, and Venezuela.

Contributing to Law Development

Finally, we consider a legal means by which the report-and-review process improves human rights: through judicial decision making. Self-reporting and the role of courts are complements rather than substitutes,²⁶¹ as the negotiators who designed the CERD reporting

²⁶⁰ Creamer & Simmons, *The Dynamic Impact of Periodic Review on Women’s Rights*, *supra* note 2, at 57–60; Creamer & Simmons, *Do Self-Reporting Regimes Matter?*, *supra* note 2.

²⁶¹ Pamela Quinn Saunders, *The Integrated Enforcement of Human Rights*, 45 NYU J. INT’L L. & POL. 97 (2012).

provisions understood.²⁶² The synergy between reporting and review on the one hand and adjudicatory mechanisms of international human rights enforcement on the other is clear. For one thing, the commitment to reporting is empirically consistent with a willingness to be bound to the rule of law through quasi-adjudication (i.e., the individual complaint process). There is a strong positive correlation, for example, between declaring one's state bound by CAT Article 22 (an optional obligation that gives individuals a right to petition for a rule-based decision of the Committee Against Torture) and the likelihood of rendering a high-quality state report.²⁶³ Indeed, an Article 22 commitment is a much stronger predictor of turning in a report than is the propensity to torture itself.²⁶⁴

Furthermore, the treaty bodies themselves render decisions and views that inform and reinforce the jurisprudence of courts. Not only are reporting and adjudication consistent, there is substantial evidence of mutuality between these systems. The self-reporting regime contributes to judicial decision making and vice versa. A recent study of domestic court decisions found numerous citations to state reports, shadow reports, or committee recommendations, suggesting their usefulness in domestic law enforcement.²⁶⁵ They have also been helpful in contributing to regional human rights enforcement.²⁶⁶

To illustrate the contribution of self-reporting to law development, we searched the case law of both the European Court of Human Rights (ECtHR) and the InterAmerican Court of Human Rights (IACtHR) for every reference to a general comment, individual complaints decision, concluding observation, or state report for the oldest six core human rights treaties: CERD, ICCPR, ICESCR, CEDAW, CAT, and the CRC. Not only are documents from the report-and-review process useful for establishing fact patterns in domestic cases, they are becoming common as sources for law elaboration in regional human rights courts. The doctrines developed in these regional courts, in turn, plausibly help to enforce rights on the ground.

The ECtHR

The ECtHR's Grand Chamber frequently references concluding observations, general comments, and individual communications within its judgments, as seen in Figure 6. Many of these references appear in the judgment's section outlining "Relevant International Law and Practice" and consist of quotations of relevant committee interpretations contained within concluding observations and individual complaint decisions. By identifying concluding observations as relevant law, the Court reaffirms that the treaty bodies develop international legal standards that inform and reinforce its own case law. Indeed, the Court makes an effort to note when treaty body interpretations are in line with Strasbourg case law, such as when it decided to follow the "case law" of the Human Rights Committee for ICCPR Article 26 (on discrimination),

²⁶² UN Doc. A/C.3/SR.1344, *supra* note 86.

²⁶³ Although individual communication decisions are not formally binding as a matter of international law, some domestic courts and national laws have sought to make specific orders/reparations enforceable domestically. See Koldo Casla, *Supreme Court of Spain: UN Treaty Body Individual Decisions Are Legally Binding*, EJIL:TALK! (Aug. 1, 2018), at <https://www.ejiltalk.org/supreme-court-of-spain-un-treaty-body-individual-decisions-are-legally-binding>.

²⁶⁴ Creamer & Simmons, *Ratification, Reporting and Rights*, *supra* note 26, at 596.

²⁶⁵ Saunders, *supra* note 261.

²⁶⁶ See, e.g., Angelika Nußberger, *The ECtHR's Use of Decisions of International Courts and Quasi-judicial Bodies*, in JUDICIAL DIALOGUE AND HUMAN RIGHTS 419, 430 (Amrei Müller ed., 2017).

which is similar to Article 1 of Protocol No. 12 to the European Convention.²⁶⁷ In addition, both concurring and dissenting opinions have drawn heavily on the treaty bodies' normative output to establish applicable international law standards and to help clarify the legal reasoning in the majority judgment.²⁶⁸

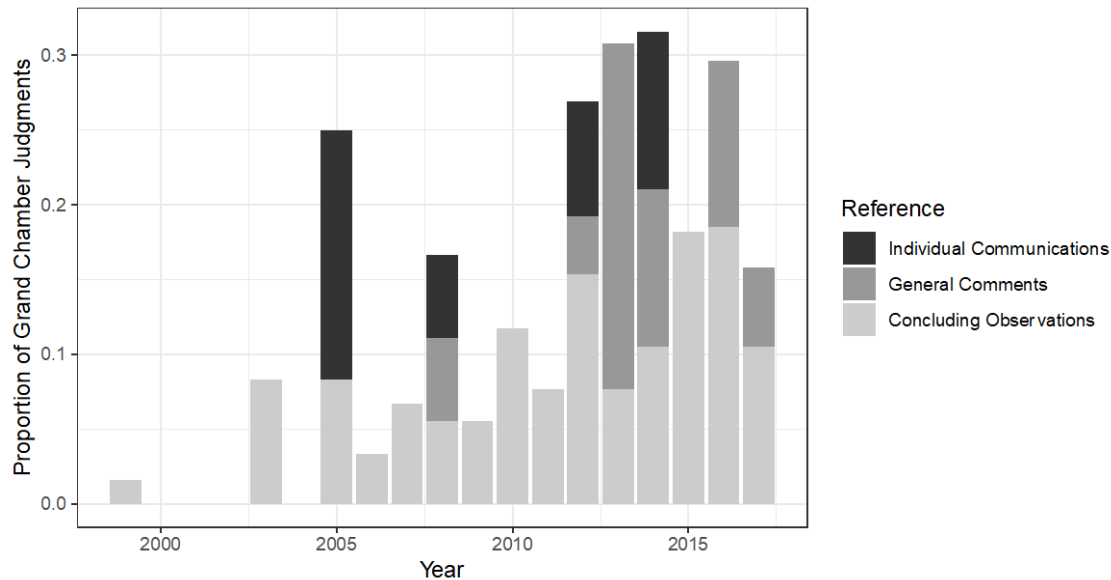


Figure 6. European Court of Human Rights. References to individual communications, general comments, and concluding observations from the report-and-review process for the CERD, ICCPR, ICESCR, CEDAW, CAT, and CRC as a proportion of total Grand Chamber judgments.

Sometimes the ECtHR draws directly on treaty body views when developing its own, region-specific legal principles enforceable on European countries. In *Stoll v. Switzerland*, the Court drew from the language found within the Human Rights Committee's concluding observations on a United Kingdom report to determine whether Switzerland's interference with freedom of expression pursued a legitimate aim under Convention Article 10(2).²⁶⁹ It held that the concepts of national security and public safety "need to be applied with restraint and to be interpreted restrictively," citing the Human Rights Committee's concluding observations as falling "along the same lines."²⁷⁰ Similarly, in *Maslov v. Austria* the Court drew from a Committee on the Rights of the Child general comment and concluding observations on Austria's report to stress that the "obligation to take the best interests of the child into account includes an obligation to facilitate his or her reintegration" into society.²⁷¹

²⁶⁷ *Sejdić and Finci v. Bosnia and Herzegovina*, 2009-VI Eur. Ct. H.R. 273, para. 55.

²⁶⁸ *See, e.g.*, Concurring Opinion of Judge Pinto de Albuquerque, *Hirsi Jamaa and Others v. Italy*, 2012-II Eur. Ct. H.R. 1; Concurring Opinion of Judge Pinto de Albuquerque, Joined by Judge Vučinić, *De Souza Ribeiro v. France*, 2012-VI Eur. Ct. H.R. 139; Joint Concurring Opinion of Judges de Gaetano, Pinto de Albuquerque, Wojtyczek and Dedov, *Paradiso and Campanelli v. Italy*, 2017 Eur. Ct. H.R. 54.

²⁶⁹ *Stoll v. Switzerland*, 2007-V Eur. Ct. H.R. 205.

²⁷⁰ *Id.*, para. 54; Human Rights Committee, Concluding Observations: United Kingdom, para. 21, UN Doc. CCPR/CO/73/UK (Dec. 6, 2001).

²⁷¹ *Maslov v. Austria*, 2008-III Eur. Ct. H.R. 301, para. 82.

The IACtHR

The IACtHR cites a range of committees’ general comments and concluding observations even more frequently than does the ECtHR (Figure 7).²⁷²

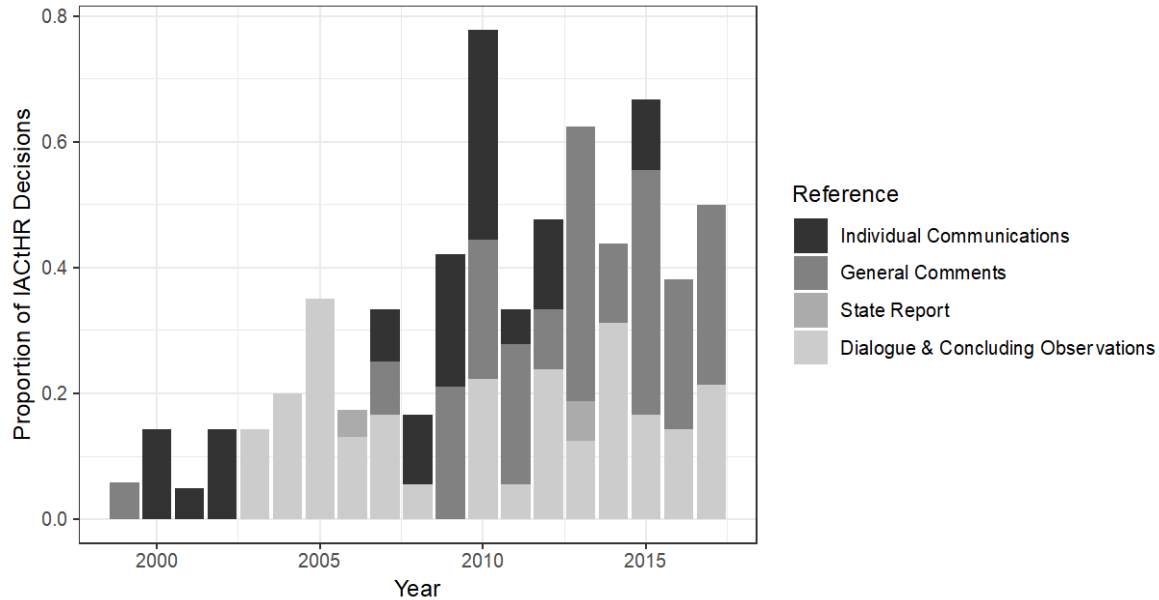


Figure 7. Inter-American Court of Human Rights. References to individual communications, general comments, state reports, and dialogue/concluding observations from the report-and-review process for the CERD, ICCPR, ICESCR, CEDAW, CAT, and CRC as a proportion of total judgments.

In a case challenging Costa Rica’s prohibition of in vitro fertilization, for example, the Court drew from the Human Rights Committee’s and the CEDAW Committee’s concluding observations and comments to help interpret whether Convention Article 4(1) on the right to life requires the absolute protection of the embryo. Citing twenty-two separate concluding observations, it noted how the Human Rights Committee understands “the right to life of the mother is violated when laws that restrict access to abortion force women to resort to unsafe abortion, exposing them to death.” This interpretation permitted the Court to “state that an absolute protection of the prenatal life or the life of the embryo cannot be inferred from the ICCPR.”²⁷³ It similarly referenced CEDAW Committee concluding observations to establish that a “total ban on abortion, as well as its criminalization under certain circumstances, violates the provisions of [CEDAW].”²⁷⁴ This judgment further refined and reaffirmed the Court’s reproductive health jurisprudence to synergistically influence national case law in the region.²⁷⁵

²⁷² Neuman, *supra* note 122, at 111 (arguing that this process may undermine the legitimacy of law that states in the Americas have not explicitly agreed to).

²⁷³ Artavia Murillo et al. (“In vitro fertilization”) v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 257, para. 226, n. 355 (Nov. 28, 2012).

²⁷⁴ *Id.*, para. 228.

²⁷⁵ Johanna B. Fine, Katherine Mayall, and Lilian Sepulveda, *The Role of International Human Rights Norms in the Liberalization of Abortion Laws Globally*, 19 HEALTH & HUM. RTS. 69 (2017).

The IACtHR also pointed to interpretations of the treaty bodies in the area of civil and political rights. Concluding observations have informed the Court's findings on the incompatibility of amnesty laws for serious human rights violations with international law²⁷⁶ and the risk to human rights of permitting military units to act as judicial police.²⁷⁷ In a case involving the lethal use of force against Haitian migrants in the Dominican Republic, the Court drew from concluding observations of the Human Rights Committee and Committee on the Elimination of Racial Discrimination regarding the government's treatment of such migrants to support a finding that there was de facto discrimination that led to a violation of their rights.²⁷⁸ Similarly, it drew from observations and recommendations by these two committees on Chile's Counter-Terrorism Act to support its finding that the government was disproportionately applying it to members of the Mapuche indigenous people, in violation of their right to equal protection.²⁷⁹ It also directly incorporated recommendations of treaty bodies. In a case involving the death of 107 suspected MS-13 gang members in a Honduran prison, the Court ordered reparations that included recommendations made by the committees for ICCPR, CAT, and CRC to modify or repeal the Penal Code's definition and application of the offense of unlawful association.²⁸⁰ This case in particular helped develop the Court's relatively sparse jurisprudence on organized crime by requiring greater specificity on the offense of unlawful association in domestic criminal laws, an issue likely to appear with greater frequency before the Court in future years.²⁸¹

These citations do not, of course, prove that states comply readily with these institutions in all cases. Rather, they demonstrate the mutually reinforcing jurisprudential relationship that plausibly strengthens and clarifies the rule of law. Existing studies have provided the causal and contextual evidence of state compliance with the decisions of international and regional courts.²⁸² Some studies suggest that law development and mobilization mechanisms may in fact interact,²⁸³ since compliance with regional courts often depends on the political will to abide by these institutions' decisions.²⁸⁴ To the extent that the report and review process elaborates standards that inform the decisions of regional and other courts, the causal pathway from reporting to improved human rights practice is strengthened. Judicial decision making is thus another important mechanism that helps explain the relationship between regular reporting and better human rights outcomes overall.

²⁷⁶ *Gelman v. Uruguay*, Merits and Reparations, Judgment Inter-Am. Ct. H.R. (ser. C) No. 221, para. 28 (Feb. 24, 2011) (holding that Uruguay's 1986 amnesty law violated the Convention).

²⁷⁷ *Cabrera Garcia and Montiel Flores v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 220, para. 86 (Nov. 26, 2009) (holding that military jurisdiction is not appropriate to investigate any form of human rights violation).

²⁷⁸ *Nadege Dorzema et al. v. Dominican Republic*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 251, para. 170 (Oct. 24, 2012).

²⁷⁹ *Norín Catrimán et al. (Leaders, members and activist of the Indigenous Mapuche People) v. Chile*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 279, paras. 165, 218 (May 29, 2014).

²⁸⁰ *Pacheco Teruel et al. v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 241, para. 98(a) (Apr. 27, 2012).

²⁸¹ Laura Salvadego, *The Notion of Organised Crime and the American Convention on Human Rights, in REDEFINING ORGANISED CRIME: A CHALLENGE FOR THE EUROPEAN UNION?* 145, 152 (Stefania Carnevale, Serena Forlati, Orsetta Giolo eds., 2017).

²⁸² Darren Hawkins and Wade Jacoby, *Partial Compliance: A Comparison of the European and Inter-American Courts of Human Rights*, 6 J. INT'L L & INT'L RELS. 35 (2010).

²⁸³ Par Engstrom, *Rethinking the Impact of the Inter-American Human Rights System, in THE INTER-AMERICAN HUMAN RIGHTS SYSTEM: IMPACT BEYOND COMPLIANCE 1* (Par Engstrom ed., 2019).

²⁸⁴ COURTNEY HILLEBRECHT, *DOMESTIC POLITICS AND INTERNATIONAL HUMAN RIGHTS TRIBUNALS: THE PROBLEM OF COMPLIANCE* (2014).

IV. CONCLUSION

This Article has explored four mechanisms through which state self-reporting can lead to positive consequences. Elite socialization, learning and capacity development, domestic political mobilization, and law development all plausibly explain the correlation between iterative reporting and improvements in human rights. The central contribution has been to demonstrate that improved human rights practices on the ground are theoretically and evidentially connected to the report and review process. Existing research has shown there is a statistically significant relationship between cumulative participation in the report and review process for the case of the CEDAW²⁸⁵ and the CAT.²⁸⁶ These four mechanisms help explain this relationship. Moreover, evidence from the self-reporting process itself underscores that it can be meaningful. In this sense, the “proof” of a causal relationship between reporting on the one hand and improvement in rights outcomes on the other lies in a careful examination of how the process unfolds and strengthens socialization, learning, political mobilization, and legal rules and standards.

In this final Part we consider possible unintended consequences of human rights self-reporting and highlight policy recommendations.

Good Intentions with Unintended Consequences?

A finding that self-reporting “works”—even when states have an incentive to shirk and prevaricate—will strike some observers as hopelessly naïve. Critics look at the proliferation of treaty obligations and assert that the reporting system is breaking under its own unwieldy weight.²⁸⁷ “Reporting fatigue” is a common diagnosis of the problem²⁸⁸ and a major reason for reporting delinquency.²⁸⁹ But evidence of serious reporting fatigue is weak. Failure to report is best explained by a lack of state capacity, not by the weight of the requirements. In fact, research demonstrates that the more human rights treaties a state becomes party to, the more likely it is to turn in a report, which does not support a theory of fatigue.²⁹⁰ Similarly, reporting in one time period does not reduce the probability of doing so later, as ought to be the case if fatigue contributes to reporting delinquency.²⁹¹

²⁸⁵ Creamer & Simmons, *The Dynamic Impact of Periodic Review on Women’s Rights*, *supra* note 2.

²⁸⁶ Creamer & Simmons, *Do Self-Reporting Regimes Matter?*, *supra* note 2.

²⁸⁷ HAFNER-BURTON, *supra* note 6, at 99; ERIC A. POSNER, *THE TWILIGHT OF HUMAN RIGHTS LAW* 26, 40–43, 93, 138 (2014).

²⁸⁸ Malcolm D. Evans, *Challenging Conventional Assumptions: The Case for a Preventive Approach to the Protection of the Freedom of Religion or Belief*, in *CHANGING NATURE OF RELIGIOUS RIGHTS UNDER INTERNATIONAL LAW* 25, 39 (Malcolm Evans, Peter Petkoff & Julian Rivers eds., 2015).

²⁸⁹ John Morijn, *New Discussions on UN Human Rights Treaty Monitoring Reform: Using the Momentum While Acknowledging Financial and Political Realities*, *EJIL:TALK!* (Jan. 5, 2012), at <http://www.ejiltalk.org/new-discussions-on-un-human-rights-treaty-monitoring-reform-using-the-momentum-while-acknowledging-financial-and-political-realities>. See also JULIE MERTUS, *THE UNITED NATIONS AND HUMAN RIGHTS: A GUIDE FOR A NEW ERA* 64 (2009); Rachael Lorna Johnstone, *Cynical Savings or Reasonable Reform? Reflections on a Single Unified UN Human Rights Treaty Body*, 7 *HUM. RTS. L. REV.* 173, 179–184 (2007); Hanna Beate Schöpp-Schilling, *Treaty Body Reform: The Case of the Committee on the Elimination of Discrimination Against Women*, 7 *HUM. RTS. L. REV.* 201 (2007).

²⁹⁰ Creamer & Simmons, *Do Self-Reporting Regimes Matter?*, *supra* note 2; Creamer & Simmons, *Ratification, Reporting and Rights*, *supra* note 26.

²⁹¹ *Id.*

None of the qualitative reporting patterns we discussed above fit a “fatigue” profile. Reports are generally of demonstrably higher quality over time, increasingly responsive to the treaty bodies, and consistently provide relevant data. In fact, a closer look at the reports themselves shows that their quality improves as more reports are turned in. This pattern is not consistent with reporting fatigue. But to the extent that states are tired of rendering multiple reports, reforms aim to address such concerns through a single Common Core Document for all treaty bodies, harmonized reporting guidelines, and the simplified reporting procedure.²⁹² Fatigue is not fundamental to a self-reporting system; many issues can be streamlined and simplified. Indeed, a number of reforms proposed as part of the 2020 treaty body review process aim to do just that.

Perhaps a more insidious critique is that reporting may become a bureaucratized end in itself. The goal of this entire exercise is ultimately to improve human rights,²⁹³ not to collect reports, write recommendations, or even improve the compliance rate with concluding observations per se. When bureaucrats focus on the procedures of reporting they risk falling prey to “regulatory ritualism,” a phrase used to characterize rote adherence to institutionalized procedures while losing focus on rights outcomes themselves.²⁹⁴ Treaty-body periodic review risks fetishizing submission of reports to the detriment of improvements in human rights practices on the ground.²⁹⁵

It is thus crucial to understand how and why self-reporting and review produce results. The magnitude of such effects is modest, but clearly detectable. The self-reporting process is evolutionary, not revolutionary, and is certainly one part of a wider ecosystem of human rights accountability. But research demonstrates that repeat participation in the process sometimes results in important improvements.²⁹⁶ Moreover, the proof—the why and the how—is in the process: engagement quality is improving, not declining. Ritualism may be a risk, but even actors who think they are engaged in ritual may be socialized into meaningful dialogue. This Article has demonstrated that eager publics and alert press reporters have not permitted the process to become meaninglessly performative across the board.

Policy Recommendations

Self-reporting systems are dynamic and change over time. They start low-key but implicitly ratchet up the reputational consequences of non-cooperation, even in the absence of any formal capacity to punish or enforce standards.²⁹⁷ Reporting expectations increase with both the reporting behavior of peers and mobilization by civil society. Over time, the oversight committees themselves help clarify these expectations.

²⁹² See reforms discussed in note 127 *supra* and corresponding text.

²⁹³ UN Doc. A/44/668, *supra* note 3, paras. 31–33.

²⁹⁴ Hilary Charlesworth & Emma Larking, *Introduction: The Regulatory Power of the Universal Periodic Review*, in *HUMAN RIGHTS AND THE UNIVERSAL PERIODIC REVIEW: RITUALS AND RITUALISM* 1, 7–8 (Hilary Charlesworth & Emma Larking eds., 2014).

²⁹⁵ For a similar argument about the Human Rights Council and Universal Periodic Review, see Heather Collister, *Rituals and Implementation in the Universal Periodic Review and the Human Rights Treaty Bodies*, in Charlesworth & Larking, *id.*, at 109.

²⁹⁶ Creamer & Simmons, *The Dynamic Impact of Periodic Review on Women’s Rights*, *supra* note 2; Creamer & Simmons, *Do Self-Reporting Regimes Matter?*, *supra* note 2.

²⁹⁷ Kenneth W. Abbott & Duncan Snidal, *Taking Responsive Regulation Transnational: Strategies for International Organizations*, 7 *REG. & GOV.* 95 (2013).

Of course, critics of periodic review are right about a number of its shortcomings. In light of the General Assembly’s 2020 review of measures to strengthen the treaty-body system, it is imperative to consider what our findings can tell us about reforms that would improve the system’s capacity to enhance rights protections. We suggest the following set of policy recommendations that would reinforce the operation of the mechanisms identified herein as central to the quality of the self-reporting process.

First, treaty bodies should increase efforts to encourage states to participate, especially to submit their first report, since doing so familiarizes governments with the process. The positive returns to reporting imply that treaty bodies should also work hard to get states to return to the process if they have been absent.²⁹⁸ This could be done via public praise for participation or media releases that showcase exemplary reporters. To the extent that greater participation is hampered by resource constraints, proposals to hold reviews in OHCHR’s regional offices via videoconference with the committees have some merit.²⁹⁹ In-person dialogues may be more conducive to socialization than virtual interactions,³⁰⁰ but financial considerations currently prevent a broad range of government officials from less resourced states from attending the review process. The benefits of frequent and broad participation must be balanced against the less potent influence of persuasion through a virtual dialogue.

Second, as socialization research makes clear, the nature of the dialogue with treaty bodies is central to successful internalization of rights norms. Committee members’ language and tone matter. Many governments have suggested the dialogue should follow a more “positive”³⁰¹ and “constructive”³⁰² narrative geared toward a “positive impact on the ground through implementation,”³⁰³ which would facilitate socialization and learning. Despite an increasing turn to grades and rankings at the international level,³⁰⁴ we discourage the use of performance “grades” by the treaty bodies.³⁰⁵ Persuasion is potentially undermined by a superficial scramble to avoid low marks.

Expertise is also central to the process of persuasion, suggesting that the independence and professional qualifications of the treaty body members should be a focus of reform efforts.³⁰⁶ A number of state comments for the 2020 review express support for or concern about members’ independence and impartiality.³⁰⁷ Several proposals seek to ensure the expertise of members,

²⁹⁸ Creamer & Simmons, *The Dynamic Impact of Periodic Review on Women’s Rights*, *supra* note 2; Creamer & Simmons, *Do Self-Reporting Regimes Matter?*, *supra* note 2.

²⁹⁹ Response by the Group of Small States, *supra* note 197.

³⁰⁰ BRADNER & MARK, *supra* note 170 and corresponding text.

³⁰¹ Response by the Group of Small States, *supra* note 197.

³⁰² OHCHR, Non-paper on 2020 Review of the UN Human Rights Treaty Bodies System Submitted by Costa Rica and 43 Other States (June 20, 2019), at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CHAIRPERSONS/CHR/31/28571&Lang=en.

³⁰³ *Id.*

³⁰⁴ Judith G. Kelley & Beth A. Simmons, *Introduction: The Power of Global Performance Indicators*, 73 INT’L ORG. 491 (2019).

³⁰⁵ The treaty body chairs have discussed, in the context of a common aligned procedure for follow-up to concluding observations, employing a grading system to evaluate state implementation of prioritized recommendations. *See* UN Doc. HRI/MC/2018/4, *supra* note 159, at 11(h).

³⁰⁶ *See* UNGA, 67th Sess., Guidelines on the Independence and Impartiality of Members of the Human Rights Treaty Bodies (“Addis Ababa Guidelines”), UN Doc. A/67/222, Annex I (Aug. 2, 2012).

³⁰⁷ *See, e.g.*, Response by Cuba, *supra* note 155; OHCHR, Comments from Germany to the Questionnaire on Implementation of GA Res. 68/268, available at <https://www.ohchr.org/Documents/HRBodies/TB/HRTD/3rdBiennial/States/Germany.pdf> (expressing concern that,

through an external assessment of candidates' qualifications and a transparent selection process.³⁰⁸ Importantly, both the dialogue's quality and reviewers' expertise distinguish it from the peer-review process of the Universal Periodic Review, which should be seen as a complement and not a substitute to self-reporting under human rights treaties.³⁰⁹

Third, the composition of delegations sent to Geneva—and particularly the representatives' connectedness to domestic policy implementation—improves the chances for relevant lessons to seep into policy discussions back home. This suggests that the treaty bodies should discourage delegations dominated by diplomats and instead encourage high-level ministers as well as lower-level officials who will be intimately involved in the technical implementation of specific recommendations. This includes members of the legislative and judicial branches, and officials involved in developing and implementing treaty-specific policies, such as police chiefs for the CAT.

Fourth, successful learning and capacity development depend on interactive dialogue, geared toward problem-solving and resulting in a limited set of priority recommendations that are targeted and actionable.³¹⁰ The effectiveness of such frank discussion would be further strengthened by using “smaller and more flexible” committee compositions and enabling government delegates to seek advice from the committee members on laws or policies during the dialogue itself.³¹¹

Fifth, we support “bring[ing] the Treaty Body system closer to the people on the ground,”³¹² by holding some committee meetings away from Geneva and within the region of the countries under review. This would enable committee members to “engage in dialogue with people on the local level on the ground,”³¹³ and increase the process's visibility and accessibility for the public, local media, and domestic civil society organizations unable to attend sessions in Geneva. The OHCHR and treaty body members should proactively disseminate information on the report-and-review process and the treaty bodies' concluding observations. Country-specific social media campaigns to inform the broader public about the process in a constructive manner could complement the committees' requests to each state to disseminate widely its report and concluding observations. Reforms aimed to promote dialogue and coordination with regional human rights courts could further reinforce law development as well.³¹⁴

in light of current pushback regarding human rights, the reform process “could be mis-used to further weaken the UN human rights system”).

³⁰⁸ UN Doc. A/66/860, *supra* note 4, at 75; Geneva Academy, *Optimizing the UN Treaty Body System: Academic Platform Report on the 2020 Review* 38–39 (May 2018), available at <https://www.geneva-academy.ch/joomlafiles/docman-files/Optimizing%20UN%20Treaty%20Bodies.pdf>.

³⁰⁹ Martha Finnemore, *International Organizations as Teachers of Norms: The United Nations Educational, Scientific, and Cultural Organization and Science Policy*, 47 INT'L ORG. 565 (1993); Johnston, *supra* note 167.

³¹⁰ See Non-paper on 2020 review, *supra* note 302; OHCHR, Responses by Australia, Estonia, Finland, Honduras, and Japan to the Questionnaire on Implementation of GA Res. 68/268, at <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/3rdBiennialReportbySG.aspx>; UN Doc. HRI/MC/2018/4, *supra* note 159.

³¹¹ OHCHR, Response by the Government of Finland to the Questionnaire on Implementation of GA Res. 68/268, at <https://www.ohchr.org/Documents/HRBodies/TB/HRTD/3rdBiennial/States/Finland.docx>.

³¹² Christof Heyns & Willem Gravett, *Bringing the UN Treaty Body System Closer to the People*, UNIVERSAL RTS. GROUP BLOG (Aug. 14, 2017), at <https://www.universal-rights.org/blog/bringing-un-treaty-body>.

³¹³ *Id.*

³¹⁴ Non-paper on 2020 review, *supra* note 302; OHCHR, Responses by Estonia, France, and Honduras to the Questionnaire on Implementation of GA Res. 68/268, at <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/3rdBiennialReportbySG.aspx>.

Finally, since reporting can be so useful, it should be done more efficiently. A number of proposals have been made to consolidate or cluster reports, to alleviate the burden of multiple reporting requirements for both states and the treaty bodies. The Geneva Academy of International Humanitarian Law and Human Rights has spearheaded these proposals, suggesting two variations.³¹⁵ Under the first model, a state would be reviewed every seven to eight years by all relevant treaty bodies during the same week on the basis of a single report. We advise against institutionalizing an eight-year reporting gap, since the review process must cumulatively repeat to affect rights practices on the ground.³¹⁶ Treaty obligations and committee recommendations must remain salient for government officials, the media, civil society, and the broader public. Without sustained attention, the mechanisms outlined above would be much less effective.³¹⁷ Relatedly, a single consolidated review would unnecessarily limit the attention certain issues receive within national public discourse and hinder meaningful engagement with highly mobilized CSOs around certain issue-specific treaties (i.e., CERD, CEDAW, CRC). Too much consolidation in a single report-and-review process could make it harder for organizations to access the process and garner the committees' attention.³¹⁸

Under the second proposed model, states would be reviewed by all relevant committees over an eight-year cycle, but clustered around two reviews by different committees at four-year intervals. In principle, we are not opposed to temporal clustering of reviews, with one focusing on ICCPR and ICESCR obligations and the second on issue-specific treaties. However, as with the first proposed model, we would discourage extending the periodicity of each review cluster to eight years.

Conversations involving periodic reporting are impactful when they go beyond bureaucratized routines bent on satisfying a panel in Geneva and instead contribute to domesticizing international human rights in law and practice. Much of the action must necessarily take place outside of Geneva, in law- and policy-making settings. Criminalizing gender-based violence, prohibiting gender discrimination in public educational systems, guaranteeing freedom of association, and reforming prisons all depend first on implementing legislation.³¹⁹

Reviewing such legislation is beyond the scope of this Article. We recognize that implementation has in many cases been slow, but there is some evidence that governments have responded to higher-quality report-and-review interactions over time. Legislatures have begun—gradually and selectively—to pass laws that address shortcomings identified by the treaty bodies.

In African countries, the reporting process has helped develop the capacity necessary to make important legislative changes in a range of economic, social, and cultural rights of vulnerable persons, including legislation to improve access to education and nutrition in Namibia and progressive anti-human trafficking legislation in Algeria. Ghana, Uganda, and Zimbabwe have

³¹⁵ Geneva Academy, *supra* note 308, at 16–24.

³¹⁶ Creamer & Simmons, *The Dynamic Impact of Periodic Review on Women's Rights*, *supra* note 2; Creamer & Simmons, *Do Self-Reporting Regimes Matter?*, *supra* note 2.

³¹⁷ See OHCHR, Response of Israel to the Questionnaire on Implementation of GA Res. 68/268, at <https://www.ohchr.org/Documents/HRBodies/TB/HRTD/3rdBiennial/States/Israel.docx>.

³¹⁸ Comments from Germany, *supra* note 307; OHCHR, Submission from the Center for Reproductive Rights to the Questionnaire on Implementation of GA Res. 68/268, at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CHAIRPERSONS/IFS/8938&Lang=en.

³¹⁹ Committees recognize the centrality of the legislature to ensuring treaty compliance. See, e.g. Committee on the Elimination of Discrimination Against Women, 46th Sess., Concluding Observations of the Committee on the Elimination of Discrimination against Women: Argentina, para. 10, UN Doc. CEDAW/C/ARG/CO/6 (July 13, 2010).

also introduced significant programs resulting from conversations with the Committee on the Rights of Persons with Disabilities.³²⁰ CEDAW has been brought into legislative debates in Latin America relating to wage equality, decriminalizing abortion, and the minimum age for marriage.³²¹ In Mexico, for example, reforms of a 2007 Law of Access of Women to a Life Free From Violence (Ley General de Acceso de las Mujeres a una Vida Libre de Violencia)³²² relied on CEDAW committee recommendations.³²³ Legislators in Argentina referred to CAT committee observations to call for prison reform.³²⁴ Of course, conversations with expert committees cannot force implementation. But in many cases, bringing these perspectives into domestic debates emphasizes the gravity and urgency of an issue and gives domestic actors additional persuasive leverage. Increasingly, there is evidence that this is occurring.³²⁵

Self-reporting systems are increasingly pervasive in international law and institutions. As the history and development of the human rights treaty system shows, in many cases they are considered “bare minimum” enforcement tools in areas where states are especially sensitive to external intrusions into their sovereignty. However, we have demonstrated that treaty ratification sets in motion an institutional process that engages states constructively. None of this occurs in a political, social, or institutional vacuum. Persuasion, social pressure, and learning take place during the report-and-review process.

Over time, governments develop some capacity and expertise to collect and analyze information, detect violations, and deal with them in their domestic settings. Civil society organizations offer additional and sometimes contradictory information, mobilize around the reporting process, and articulate demands for change. Regional courts have increasingly looked to the expert committees’ concluding observations to support their judgments. The reporting system therefore has the potential to reverberate in domestic and regional politics, policy, and law and thereby improve the realization of human rights on the ground.

³²⁰ Connie de la Vega, Kokebe Zeleke & Esther Wilch, *The Promotion of Economic, Social, and Cultural Rights of Vulnerable Groups in Africa Pursuant to Treaty Obligations: CRC, CEDAW, CERD & CRPD*, 14 WASH. U. GLOB. STUD. L. REV. 213, 217, 238–39 (2015).

³²¹ See, e.g., Committee on the Elimination of Discrimination Against Women, Concluding Comments of the Committee on the Elimination of Discrimination Against Women: Chile, paras 21–22, UN Doc. CEDAW/C/CHI/CO/4 (Aug. 16, 2006); República de Chile, Diario de Sesiones de la Cámara de Diputados, Legislatura 355a, Sesión 59 (Aug. 2, 2007); República de Chile, Diario de Sesiones de la Cámara de Diputados, Legislatura 362a, Sesión 113 (Jan. 13, 2015).

³²² Ley General de Acceso de las Mujeres a una Vida Libre de Violencia, Nueva Ley Publicada en el Diario Oficial de la Federación el 1 de Febrero de 2007 (Reformada 20 Enero 2009), Última Reforma Publicada en el Diario Oficial de la Federación 17 Diciembre 2015.

³²³ La Cámara de Senadores del Congreso de los Estados Unidos Mexicanos, Versiones Estenográficas, Legislatura LXII, Año III, Sesión Ordinaria (24 Junio 2015); La Cámara de Diputados del Congreso de los Estados Unidos Mexicanos, Diario de los Debates, Legislatura LXIII, Año I, Primer Período Ordinario, Número de Diario 13 (8 Octubre 2015).

³²⁴ República Argentina, Cámara de Diputados de la Nación, Dirección de Taquígrafos, Periodo 132, 51a. Reunión, 1a. Sesión Ordinaria de Prórroga (Especial), 74 (4 Diciembre 2014).

³²⁵ Creamer & Simmons, *The Dynamic Impact of Periodic Review on Women’s Rights*, *supra* note 2, at 60–70; Creamer & Simmons, *Do Self-Reporting Regimes Matter?*, *supra* note 2.