



Advancing Digital Rights through UN Treaty Body Litigation

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I. Introduction

For at least a decade, the United Nations (“UN”) has sought to define and promote digital rights for the international community. In the face of resistance from authoritarian-minded governments, UN bodies have not always articulated fundamental norms in the most robust way, and yet the Human Rights Council and General Assembly have succeeded in establishing the baseline principle that offline guarantees apply equally in the online environment.¹ These political institutions, in turn, have incrementally reinforced how human rights should apply in digital spaces. The High Commissioner for Human Rights and independent experts of the Human Rights Council have helped create a normative framework for digital rights in a number of areas, from security, surveillance and privacy to freedom of expression, hate speech, artificial intelligence, and content governance. In turn, advocates, legislators and policymakers worldwide have used UN resolutions and reports as tools to promote digital rights. It is now critical to translate these normative standards into jurisprudence at the global level, case law that can influence legal and policy development at national, regional and international levels.

UC Irvine School of Law’s International Justice Clinic (“the Clinic”) recently launched its Treaty Body Litigation Initiative (“the Initiative”), partnering in its implementation with the International Center for Not-for-Profit Law (ICNL). The Initiative seeks to develop digital rights jurisprudence at the global level through UN treaty bodies. This jurisprudence would serve as actionable guidance for advocates, courts, legislators, policymakers and even technology companies worldwide. Also, through this Initiative, the Clinic will seek meaningful remedies for victims of digital rights violations. This paper explains the initial findings of the nascent Initiative.

Human rights that are either exercised or restricted in the context of digital technologies are what we refer to in this report as **digital rights**. Digital rights encompass a wide range of human rights including, but not limited to, access to information, access to justice, freedom of thought, conscience and religious belief, freedom of expression and opinion, freedom of association and assembly, the right to public participation, and the right to privacy. While human rights advocates may pursue their claims of violation of these or other rights in a number of national and regional courts and tribunals, one set of forums often overlooked is the UN human rights **treaty bodies**. A treaty body is a committee of experts dedicated to monitoring, interpreting, and implementing one of the core human rights treaties in the UN system. Eight of the nine existing human

¹ “[T]he same rights that people have offline must also be protected online.” Human Rights Council, [Resolution 38 on the promotion, protection and enjoyment of human rights on the Internet](#), UN Doc. A/HRC/38/L.10.

rights treaty bodies have an **individual complaint mechanism** by which victims of a human rights violation may bring an action against the infringing state before the treaty body.

The research conducted by the International Justice Clinic reveals that while the eight human rights treaty bodies have handled relatively few cases pertaining directly to digital rights issues, they have considered digital rights issues and have demonstrated interest in adjudicating such issues in a number of emerging areas, of which we identify five. Those areas and the nuances between the different bodies will be explained in detail in this paper.

This report was researched and written by Honoka Ozeki, Emily Livermore, and Eva Shen. Professor David Kaye and Digital Rights Fellow Sofía Jaramillo Otoy supervised the project and edited the report.

1. SCOPE AND METHODOLOGY

The research on the treaty bodies and their individual complaints mechanisms was conducted through publicly available information, particularly material made available on the website of the United Nations Human Rights Office of the High Commissioner (“OHCHR”).²

The research on digital rights issues addressed by the treaty bodies was conducted through a thorough review of Views, Concluding Observations and General Comments³ by the Committee on the Elimination of Racial Discrimination (“CERD”), Committee on Economic, Social and Cultural Rights (“CESCR”), Human Rights Committee (“HR Committee”), Committee on the Elimination of Discrimination against Women (“CEDAW”), Committee on the Rights of the Child (“CRC”), and Committee on the Rights of Persons with Disabilities (“CRPD”).

Out of the nine treaty bodies, this report focuses on the aforementioned six committees, and largely excluded the Committee against Torture (“CAT”), Committee on Migrant Workers (“CMW”), and Committee on Enforced Disappearances (“CED”). CMW was excluded because its individual complaint mechanism is not yet in effect.⁴ CAT and CED have not yet addressed digital rights through individual complaints.

In regards to the Views, the search was limited to those available through the OHCHR Jurisprudence database in English as of 30 November 2021.⁵ This database appears incomplete, missing a number of cases from each treaty body.⁶

² OHCHR, <https://www.ohchr.org/EN/pages/home.aspx>.

³ We explain below the role played by these various treaty body functions and outputs.

⁴ UN, [International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#) art. 77, Dec. 18, 1990.

⁵ OHCHR, *Jurisprudence*, <https://juris.ohchr.org/>.

⁶ Some recent decisions of the HR Committee have been found through the OHCHR News and Events page, but some cases were unavailable altogether, such as for CEDAW.

In order to identify any cases with a digital rights component, the report limits Views to those classified as “Adoption of Views” and “Opinion,” decisions on the merits by treaty bodies that included one or more of the following terms: internet, digital, surveillance, online, electronic, technology, digital, media, and hate speech. Note that no key words were used to limit the search results for CRC or CERD. This key term search through the OHCHR Jurisprudence database is limited in that the database only allows for exact word searches, and thus it is possible that there are unidentified gaps in our research.

Through this method, 118 Adoptions of Views/Opinions were reviewed for HR Committee, 3 for CRPD, 60 for CERD, and 74 for CRC. As there were no cases for CEDAW and CESCRC that resulted from these limiting searches, all 38 Adoption of Views available for CEDAW and all 10 Adoption of Views for CESCRC were reviewed.

A review of country periodic reports or concluding observations was primarily limited to those conducted in the past decade, from 2010 to 2021, as treaty bodies have only recently begun addressing human rights in the digital space. Our review of concluding observations included the following: 56 for CESCRC, including all Concluding Observations from 2019 to November 2021 and a sampling from 2010 to 2018; 54 for CEDAW, including all Concluding Observations from 2019 to November 2021 and a sampling from 2010 to 2018; 115 for HR Committee, 100 for CRPD; 142 for CRC, including CRC-OP-AC and CRC-OP-SC; 94 for CERD.

In addition to Views and country reports, we reviewed recent General Comments issued by the treaty bodies. We reviewed CESCRC General Comment Nos. 14 to 25, from 2000 to 2021; HR Committee General Comment Nos. 32 to 37, from 2007 to 2021; CEDAW General Comments Nos. 28 to No. 38, from 2010 to 2021; CRPD General Comment Nos. 1 to 7, from 2014 to 2021; CRC General Comment Nos. 1 to 25, from 2001-2021; CERD General Comment Nos. 1 to 36, from 1972-2021. See Figure 2 below.

The Treaty Bodies also issue formal statements, such as ones regarding events like the COVID-19 global pandemic.⁷ These statements do not typically include formal interpretation of the treaties, but they do issue recommendations for treaty compliance in the context of events like the global pandemic. We did not expect many of these statements to substantively address digital rights issues, therefore, we did not include formal statements in our initial body of research. However, reviewing such statements could provide additional insights as this Initiative develops.

⁷ See U.N., Econ. & Soc. Council, Comm., Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights, [U.N. Doc. E/C.12/2020/1](#).

Table 2. Scope

Document Type	Treaty Body	Number of Documents Reviewed	Limitations
Views/Opinions	CERD	60	From 2011 - 2021
	CESCR	10	
	HR Committee	118	
	CEDAW	38	
	CRC	74	From 2011 - 2021
	CRPD	3	
General Comments/ Recommendations	CERD	3	From 2011 - 2021
	CESCR	12	From 2000 - 2021
	HR Committee	6	From 2007 - 2021
	CEDAW	11	From 2010 - 2021
	CRC	25	From 2001 - 2021
	CRPD	36	From 1972 - 2021
Concluding Observations	CERD	94	From 2011 - 2021; filtered with HR themes
	CESCR	56	From 2019 - November 2021 and a sampling from 2010 - 2018
	HR Committee	115	
	CEDAW	54	2019 - November 2021 and a sampling from 2010 - 2018
	CRC	142	From 2011 - 2021; filtered with HR themes
	CRPD	100	

II. Introduction to Treaty Bodies

The UN treaty bodies are committees of independent experts with recognized competence in human rights that are responsible for monitoring and implementing a specific human rights treaty. Each committee is composed of ten to twenty-five experts who are nominated and elected by state parties for a renewable four-year term.⁸ Since the adoption of the first human rights treaties in 1966⁹, all UN Member states have ratified at least one core international human rights treaty, and eighty percent have ratified four or more.¹⁰

Table 3. Treaty Bodies

Treaty Body	Corresponding Treaty	State Parties
Committee on the Elimination of Racial Discrimination (CERD)	International Convention on the Elimination of All Forms of Racial Discrimination	182
Committee on Economic, Social and Cultural Rights (CESCR)	International Covenant on Economic, Social and Cultural Rights	171
Human Rights Committee (HR Committee)	International Covenant on Civil and Political Rights	173
Committee on the Elimination of Discrimination against Women (CEDAW)	Convention on the Elimination of All Forms of Discrimination against Women	189
Committee against Torture (CAT)	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment	171
Committee on the Rights of the Child (CRC)	Convention on the Rights of the Child	196
Committee on Migrant Workers (CMW) ¹¹	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	56
Committee on the Rights of Persons with Disabilities (CRPD)	International Convention on the Rights of Persons with Disabilities	182
Committee on Enforced Disappearances (CED)	International Convention for the Protection of All Persons from Enforced Disappearance	63

The substantive scope of each treaty body matches the scope of its governing treaty, and each has its own legal competence to interpret the text of the treaty

⁸ OHCHR, [Monitoring the core international human rights treaties](#)

⁹ UN, [International Convention on the Elimination of All Forms of Racial Discrimination](#). 7 March 1966; UN, [International Covenant on Economic, Social and Cultural Rights](#). 16 December 1966; [International Covenant on Civil and Political Rights](#). 16 December 1966.

¹⁰ OHCHR, [Human Rights Bodies](#).

¹¹ For the CMW, the individual complaint mechanism has not yet entered into force (ten state parties to the Convention need to make a declaration accepting the individual complaint mechanism), and this project thus does not concern the scope of the CMW. See OHCHR, [Human Rights Bodies - Complaints Procedures](#).

and to supervise state compliance principally by means of state reporting, investigations and complaint procedures.¹² However, the tools and outputs available to each treaty body are essentially the same, with some variations.

The three main activities of the treaty bodies include: (1) considering state parties' periodic reports and issuing recommendations in the form of concluding observations or recommendations, (2) developing general comments or recommendations interpreting treaty provisions, and (3) adopting views on individual communications when the state party has formally accepted its individual complaint mechanism.¹³ They may conduct investigations through country visits and thematic discussions related to their treaties.¹⁴ Although the treaty bodies can also monitor through inquiry procedures and the examination of inter-state complaints, but both mechanisms have played a marginal role in practice, as they have been rarely used.¹⁵ Some treaty bodies also issue early warnings (CERD and CRPD) and urgent actions (CERD, CRPD and CED) to prevent the deterioration of a human rights situation in a specific country. CAT and HR Committee have only rarely undertaken *ad hoc*, special reviews in cases of urgent and widespread violations of human rights.¹⁶

2. CONSIDERATION OF STATE PARTIES' REPORTS AND CONCLUDING OBSERVATIONS

When a country ratifies a treaty, it assumes a “legal obligation to implement the rights recognized in that treaty.”¹⁷ For example, article 2 of the ICCPR states that state parties to the covenant shall “respect and [] ensure . . . the rights recognized in the present Covenant.” Similarly, article 2 of the ICERD requires state parties to “condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms.” However, recognition of rights in a treaty is not sufficient to guarantee that they will be enjoyed in practice. Therefore, reporting is a core element of monitoring compliance in the universal human rights system. The treaty bodies review national implementation of the treaty they monitor state by state, based on reports that state parties are obligated to submit at periodic intervals.

Each treaty body has developed its own procedures and methodologies, which are articulated in the rules of procedure and reporting guidelines. Within one or two years after a state has acceded to or ratified a human rights treaty, it is required to submit to the relevant treaty body (except under the OPCAT) an initial report which offers information about the progress reached in the

¹² The Oxford Handbook of United Nations Treaties 378, (Simon Chesterman et al. eds. 2019) [hereinafter *The Oxford Handbook*].

¹³ Kerstin Mechlem, *Treaty Bodies and the Interpretation of Human Rights*, 42 VAND. J. TRANSNAT'L L. 905, 922 (2009).

¹⁴ See OHCHR, [Monitoring the core international human rights treaties](#).

¹⁵ *Id.* In fact, the inter-state communications submitted to CERD in 2018 was the first one in history. See OHCHR, Committee on the Elimination of Racial Discrimination, [Inter-state communications](#).

¹⁶ ISHR, [Understanding the Treaty Bodies](#).

¹⁷ OHCHR, [What treaty bodies do](#).

implementation since the state became party to the treaty.¹⁸ Thereafter, periodic reports are due every two (ICERD), four (CEDAW, CRPD), or five (ICESCR, CRC) years. No specific periodicity is envisaged in the ICCPR. Article 40 of the ICCPR gives the HR Committee discretion to decide when periodic reports are to be submitted, but they are usually due every four years.¹⁹

In addition to the state parties' report, committees receive information from other sources, including NGOs, national human rights institutions (NHRIs), UN agencies, the press, other intergovernmental organizations, and professional groups and academic institutions.²⁰ Using that information, the treaty body examines the reports together with government representatives in a “constructive dialogue” during its regular session.²¹ The committee then publishes its concerns and recommendations as “Concluding Observations,” in which it states whether the state concerned was acting in conformity with its treaty obligations and explains the relevance of a treaty to a specific situation.

All treaty bodies request information on implementation of previous recommendations to be included in the state party's next periodic report, and all, except the CRC, have formal procedures to follow up on the implementation of specific Concluding Observations.²² The Concluding Observations show how a treaty should be interpreted in specific situations in each country and provide authoritative guidance to the state to further the implementation of human rights obligations.

3. GENERAL COMMENTS

General Comments are another important legal tool for the “effective and coherent implementation of the purpose and objectives of the international human rights treaties.”²³ All treaty bodies, except for the SPT, issue “general comments” or “general recommendations” that serve as authoritative guides for states on how to implement and interpret the relevant treaties. They provide guidance for states regarding the scope of a treaty and specific human rights issues, outline actions which would be considered potential violations of treaty rights and offer advice to states on best practices for compliance under the applicable treaty.²⁴ Additionally, general comments lend interpretive assistance to the decision of individual complaints as complainants can invoke these texts.²⁵

¹⁸ Each treaty specifies the timeline. For instance, see Article 9 of ICERD.

¹⁹ “The general rule . . . is that State parties should present their periodic report to the Committee every four years.” OHCHR, Hum. Rts. Comm., [Working methods](#).

²⁰ See e.g., *Working methods of the Committee on the Rights of Persons with Disabilities adopted at its fifth session*, CRPD/C/5/4 Part J.

²¹ *Id.* at Part A.

²² U.N., Hum. Rts. Instruments, *Note by the Secretariat: Procedures of the human rights treaty bodies for following up on concluding observations, decisions and views*, U.N. Doc. HRI/MC/2017/4, para. 5 (May 5, 2017).

²³ G.A., *Note by the Secretary-General: Implementation of human rights instruments: Report of the Chairs of the human rights treaty bodies on their twenty-seventh meeting*, U.N. Doc. A/70/302, para. 90 (Aug. 7, 2015).

²⁴ The Oxford Handbook, *supra* note 11, at 384; Mechlem, *supra* note 12.

²⁵ *Id.*

General comments are addressed to state parties collectively and are developed and adopted through three basic stages — consultations, drafting, and adoption—, with some variance between committees. Some committees “incorporate expert advice from various stakeholders and NGOs into the drafting of general comments.”²⁶ While not legally binding, these documents are relied on by the individual committees and can be powerful tools in human rights advocacy. Some have had influence on the development of human rights law at the international and regional levels, and, increasingly, “they are cited by international, regional, and national courts in their judgments.”²⁷

There is a broad scope of material that may be addressed in a general comment. It may focus on a particular treaty article and provide a detailed interpretation of that article along with various considerations states should make while implementing it.²⁸ It may also focus on a single, larger human rights issue such as the role of human rights institutions or the rights of minorities.²⁹ The broad scope of general comments makes them a valuable tool for better understanding the rights protected by a treaty.

The general comment mechanism is additionally made valuable because it allows treaty bodies to address human rights issues in light of known circumstances of the modern day. In CESCR’s General Comment No. 25, for example, the Committee addresses ICESCR Article 15(b)(1) and everyone’s right to enjoy the benefits of scientific progress and its applications in the context of “emerging technologies.”³⁰ Specifically, CESCR notes that emerging technologies may create new ways for one to enjoy her economic, social, and cultural rights, but they could also intensify social inequalities due to inequitable access to those technologies.³¹ This example highlights the necessity of general comments as a tool for understanding and implementing treaties in a dynamic society as well as the value of these documents as a tool for assessing treaty body interest in developing human rights issues.

4. ADOPTING VIEWS ON INDIVIDUAL COMMUNICATIONS

An individual complaint, also called an individual communication, is a “complaint by or on behalf of an individual alleging that their rights under one of the treaties have been violated by a state party,” given certain requirements are met.³² This is the most court-like function of the treaty bodies as it leads to a specific decision about claimed violations and can result in various forms of redress for the complainant. Because individuals may submit complaints without cooperation by

²⁶ G.A., *supra* note 22, para. 91.

²⁷ The Oxford Handbook, *supra* note 11, at 384.

²⁸ OHCHR, [Human Rights Treaty Bodies - General Comments](#).

²⁹ *Id.*

³⁰ CESCR, *General Comment 25 on science and economic, social and cultural rights*, U.N. Doc. E/C.12/GC/25 (Apr. 30, 2020).

³¹ *Id.* ¶ 73.

³² ISHR Academy, [Understanding the Treaty Bodies](#). The individual complaint mechanism of the CMW is not yet in effect as of May 2022.

their state, this mechanism allows advocates to obtain remedies for their clients outside of domestic and regional courts, as well as conduct strategic litigation at the UN level. Individual complaint procedures before the treaty bodies are of great practical importance even though the legal status of decisions reached might be controversial for some. Some human rights literature has claimed that views adopted by the HR are, “although formally not binding, to a great extent comparable to judicial decisions.”³³ The HR Committee has stated in its general comment that “the Views issued by the Committee . . . exhibit some of the principal characteristics of a judicial decision.”³⁴ The HR Committee has in fact succeeded, by virtue of its well-regarded jurisprudence, in obtaining *de facto* recognition of its decisions in many cases.³⁵ As of today “CESCR, HR Committee (since 2019), CAT, CRC and CRPD accept submissions from third parties (*amicus curiae*).”³⁶ The next section will explore in depth this main output of the Treaty Bodies.

Other than the three main tasks discussed above, the treaty bodies are also equipped with other tools to promote the objectives of its corresponding treaty and ensure the compliance of the state parties. For example, “days of general discussion” (also referred to as “thematic debates” or “thematic discussions”) was adopted by the treaty bodies “to discuss issues of general concern to the implementation of their respective treaties and provide guidance to state parties.”³⁷ In 2014, CRC had a Day of General Discussion focused on “Digital Media and Children’s Rights” to analyze the effects of children’s engagement with social media and information and communications technologies. The objective was “to better understand the impact on and role of children’s rights in this area and develop rights-based strategies to maximize the online opportunities for children while protecting them from risks and possible harm.”³⁸ These discussions and debates are also organized in the preparation of a general comment.³⁹

³³ Geir Ulfstein, THE OXFORD GUIDE TO TREATIES PART IV TREATY APPLICATION, 17 TREATY BODIES AND REGIMES 425 (Duncan B. Hollis ed, 2d ed. 2020).

³⁴ HR Comm., *General Comment No. 33: The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights*, 94th Sess., adopted Nov. 5, 2008, U.N. Doc. CCPR/C/GC/33, para. 11.

³⁵ Walter Kälin & Jörg Künzli, THE LAW OF INTERNATIONAL HUMAN RIGHTS PROTECTION 214 (2d ed. 2019).

³⁶ Geneva Academy, [Treaty Bodies’ Individual Communication Procedures: Providing Redress and Reparation to Victims of Human Rights Violations](#) (2019), p. 12.

³⁷ U.N., Hum. Rts. Instruments, *Note by the Secretariat: Other activities of the human rights treaty bodies and participation of stakeholders in the human rights treaty body process*, U.N. Doc. HRI/MC/2013/3, para. 19, (Apr. 22, 2013).

³⁸ Comm. on the Rts. of the Child, [Report of the 2014 Day of General Discussion “Digital Media and Children’s Rights](#), para. 2,.

³⁹ For example, CEDAW and CAT convene open discussions in the context of the preparation of general comments, whereas CESCR organizes these on an ad hoc basis, and it may decide to invite general participation or restrict it to a limited number of experts. U.N., Hum. Rts. Instruments, *supra* note 36, para. 19.

III. Individual Complaint Mechanism

All the treaty bodies, except CMW⁴⁰, that support the core human rights treaties implement optional individual complaint procedures, and they have set up procedures to handle individual complaints.

When the complaint has been registered and listed for consideration, the complainant will be informed, and the case is transmitted to the state party concerned to give it an opportunity to comment. The key elements one should be aware of to ensure an individual complaint is formally considered by a treaty body are described below.⁴¹

Theoretically, as is customary in international judicial or arbitral proceedings, there are two main phases in the treaty bodies' handling of an individual complaint: admissibility and merits. The first deals with essentially procedural matters, such as whether domestic remedies have been exhausted; the second concerns the substance of the alleged violation.⁴²

1. ADMISIBILITY REQUIREMENTS

a. Competence of the Committee

None of the treaties automatically provides for the treaty bodies to receive individual complaints. A treaty body's competence to entertain an individual complaint depends upon the subject state having formally accepted its individual complaint mechanism, either by becoming party to a protocol or by making a declaration with the UN Secretary-General pursuant to a provision of the treaty.⁴³ This means that a complaint may only be brought against a state that satisfies two conditions. First, the state "must be a party to the treaty in question, having ratified or otherwise accepted it."⁴⁴ Second, it "must have recognized the competence of the committee established under the relevant treaty to consider complaints from individuals" by accepting an additional protocol or issuing a declaration.⁴⁵

⁴⁰ For the CMW, the individual complaint mechanism has not yet entered into force (ten state parties to the Convention need to make a declaration accepting the individual complaint mechanism).

⁴¹ OHCHR, [Individual Complaint Procedures under the United Nations Human Rights Treaties. Fact Sheet No. 7. Rev. 2.](#)

⁴² The Oxford Handbook of International Human Rights Law, Part V Institutions and Actors (Dinah Shelton ed., 2013).

⁴³ ISHR, [A Simple Guide to the UN Treaty Bodies.](#)

⁴⁴ OHCHR, [Complaints procedures under the human rights treaties.](#) To check whether a state is a party to the treaty, consult the Status of Ratification on the OHCHR website here: <https://indicators.ohchr.org/>

⁴⁵ OHCHR, *supra* note 40. In practice, additional barriers to bringing a complaint before a committee may arise if the state made reservations at the time of ratification. Reservations are formal statements by which states

In the case of the HR Committee, CEDAW, CRPD, ICESCR, and CRC, a state recognizes the Committee’s competence by becoming a party to another optional treaty, the Optional Protocol to the Covenant or the Optional Protocol to the Convention. In the case of the CAT Convention and the ICERD, states recognize the Committee’s competence by making a declaration to that effect under articles 22 and 14 of the Convention, respectively.

Table 4. State Parties Accepting Individual Complaint Procedures⁴⁶

Treaty Body	Method for Accepting Individual Complaint	State Parties	State Parties Accepting Individual Complaint Jurisdiction
CERD	Declaration under Article 14 of ICERD	182	59
CESCR	OP-ICESCR	171	17
HR Committee	ICCPR-OP	173	116
CEDAW	OP-CEDAW	189	110
CAT	Declaration under Article 22 of CAT	171	70
CRC	Third OP on a communications procedure	196	40
CMW	Declaration under Article 77 of ICRMW (not yet in force)	56	N/A
CRPD	OP-CRPD	182	99
CED	Declaration under Article 31 of the ICED	63	23

b. Ratione Personae

Any individual can file a complaint before a treaty body, alleging a violation of their rights under the corresponding treaty.⁴⁷ A complaint may also be filed by a third party on behalf of an individual who has either given written consent or who is incapable of doing so, for instance a victim of enforced disappearance or someone in prison without access to the outside world.⁴⁸ Some treaty bodies (i.e. CESCR, CERD, CEDAW, CRPD and CRC) additionally allow complaints to be submitted on behalf of groups of individuals whose rights have been violated. In such cases where consent cannot be provided, the author of the complaint must justify the lack of consent. Although legal advice usually improves the quality of the submissions, obtaining a legal representative is not required to file an individual complain.⁴⁹

Victimhood: A complaint must show that the victim was “personally and directly

limit the obligations that they accept under a particular provision of a treaty, and they can be used to limit the treaty bodies’ competence to examine certain complaints. A list of reservations can be found at <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.

⁴⁶ As of May 2022. Compiled from: UN, [Treaty Collection](#). Each state’s acceptance of each treaty and corresponding individual complaint mechanisms can be found at <https://indicators.ohchr.org/>

⁴⁷ OHCHR, [Human Rights Bodies - Complaints Procedures](#).

⁴⁸ OHCHR, [Individual Complaint Procedures under the United Nations Human Rights Treaties. Fact Sheet No. 7. Rev. 2.](#)

⁴⁹*Id.*

affected by the law, policy, practice, act or omission of the state party” which constitutes the object of the complaint.⁵⁰ The treaty bodies will not review challenges to a law or state policy or practice in the abstract (*actio popularis*). For instance, in alleging a violation caused by a state’s law, the complaint must show that the victim was personally affected, challenging the way legislation was applied to the victim, in particular whether the alleged interference was provided by law.⁵¹

In access to information claims, an individual member of the public can show they were directly affected by the refusal of the state party’s authorities to make available to them, on request, certain information of public interest.⁵² Furthermore, journalists and human rights defenders have special interest because of their roles in “creation of forums for public debate and the forming of public or... individual opinions.”⁵³ In privacy claims regarding a state’s storage of personal information, HR Committee does not require a showing that the author has had their information taken and stored by the state, or penalized for refusing to do so, as long as there is a statutory obligation for them to do so that could result in imminent criminal punishment.⁵⁴

c. *Ratione materiae.*

The violations in the complaint must be covered by the applicable treaty, meaning that the alleged violation must relate to a right protected by the treaty.⁵⁵

d. *Ratione Temporis.*

The treaty bodies cannot review a complaint if the related events occurred before the entry into force of the respective treaty or individual complaint mechanism for the state party concerned. Exceptions can be made, for instance, when the violation is ongoing, or when, after the entry into force of the complaint mechanism, a domestic law, a decision by the government, or a judgment confirm or revive a violation that occurred prior to that date.⁵⁶

⁵⁰ *Id.*

⁵¹ HR Comm., Communication No. 35/1978, *Shirin Aumeeruddy-Cziffra and 19 other Mauritian women v. Mauritius*, U.N. Doc. CCPR/C/12/D/35/1978.

⁵² HR Comm., Communication No. 1470/2006, *Toktakunov v Kyrgyzstan*, U.N. Doc. CCPR/C/101/D/1470/2006, para. 6.3. *But see*, Sarah Joseph & Melissa Castan, *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS, AND COMMENTARY* para. 3.06 (3d ed. 2013) (describing different standards for victimhood in *SB v Kyrgyzstan*, U.N. Doc. CCPR/C/96/D/1877/2009, where the Committee found a person who requested information failed to demonstrate victimhood because personal interest in the information was not sufficiently shown).

⁵³ HR Comm., *supra* note 60.

⁵⁴ HR Comm., Communication No. 3163/2018, *Madhewoo v Mauritius*, U.N. Doc. CCPR/C/131/D/3163/2018.

⁵⁵ OHCHR, [Individual Complaint Procedures under the United Nations Human Rights Treaties. Fact Sheet No. 7. Rev. 2.](#)

⁵⁶ *See, e.g.*, HR Comm., Communication No. 586/1994, *Adam v Czech Republic*, U.N. Doc. CCPR/C/57/D/586/1994, para. 6.3 (alleged violations will be admissible under *ratione temporis* “although [they] took place before the entry into force of the [ICCPR] and of the [OP],” because “the new legislation . . . has continuing consequences subsequent to the entry into forcep[.]”).

e. Exhaustion of Domestic Remedies.

The complainant must have exhausted all available domestic remedies before bringing a case to a treaty body, meaning “that the claims must have been brought to the attention of the relevant national authorities, up to the highest available instance in the state concerned.”⁵⁷ The complainant “should also detail the steps taken to exhaust the remedies available in the state party against which the complaint is directed.”⁵⁸ There are two specific exceptions to the exhaustion of domestic remedies requirement: 1) when “the application of the remedies is unreasonably prolonged”⁵⁹ or 2) when the remedy is “unlikely to bring effective relief.”⁶⁰ Remedies that endanger complainants are also considered futile.⁶¹ The reasons for not exhausting domestic remedies should be included in the complaint.

If a complaint is considered inadmissible because the exhaustion of domestic remedies requirement was not met, it “may be resubmitted if available domestic remedies are subsequently exhausted without satisfaction.”⁶²

f. Time Limits

It is advisable to submit the individual complaint as soon as possible (see exhaustion of domestic remedies above).⁶³ A delay in the submission “may make it difficult for the state party to respond properly and for the treaty body to evaluate the factual background thoroughly.”⁶⁴

Some treaty bodies have a formal time limit within which complaints must be submitted. CERD “will deem a complaint inadmissible if it is submitted after six months have lapsed between the exhaustion of domestic or international remedies and the submission of the complaint.”⁶⁵ Similarly, an individual complaint is deemed inadmissible to CESCRC and CRC if it is submitted more than one year after the exhaustion of domestic remedies, where the HR Committee has set the time limit to five years.⁶⁶ Exceptions can be made in cases where the author is able to show that it was not possible to submit the complaint within that time frame, or where violations are ongoing.⁶⁷

⁵⁷ OHCHR, *supra* note 40; *see e.g.*, ICCPR-OP1, Arts. 2 and 5(2)(b).

⁵⁸ OHCHR, *supra* note 40.

⁵⁹ See ICCPR-OP1, art. 5(2)(b); ICESCR-OP, art. 3(1); CERD, art. 14(7)(a); OP-CEDAW, art. 4(1); CAT, art. 22(5)(b); OPCRC-IC, art. 7(e); OP-CRPD, art. 2(d); ICPED, art. 31(2)(d).

⁶⁰ See OP-CEDAW, art. 4(1); CAT, art. 22(5)(b); OPCRC-IC, art. 7(e); OP-CRPD, art. 2(d).

⁶¹ CCPR/C/64/D/594/1992 at para. 6.4.

⁶² Sarah Joseph, et al. [A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies](#). In: OMCT Handbook Series Vol. 4. P. 65.

⁶³ ILGA, [UN Treaty Bodies Strategic Litigation Toolkit – Part 1: United Nations Treaty Bodies’ jurisprudence on sexual orientation, gender identity, gender expression and sex characteristics](#).

⁶⁴ OHCHR, [Human Rights Treaty Bodies - Individual Communications](#).

⁶⁵ ISHR, [A Simple Guide to the UN Treaty Bodies](#), at p. 24. Article 14 (5) of the ICERD states that “petitioner shall have the right to communicate the matter to the Committee within six months”.

⁶⁶ ILGA, [UN Treaty Bodies Strategic Litigation Toolkit – Part 1: United Nations Treaty Bodies’ jurisprudence on sexual orientation, gender identity, gender expression and sex characteristics](#).

⁶⁷ Geneva Academy, *supra* note 35, at 14.

g. *Lis pendens* rule

The treaty bodies will not consider a complaint that is either under examination or has been examined by another international body or a regional mechanism such as Inter-American Commission on Human Rights.⁶⁸ As an exception, this rule does not apply to individual communications submitted to the CERD.⁶⁹ The HR Committee will not consider complaints that are being examined at *the same time* by a relevant international or regional body.⁷⁰ In *X v. Netherlands*, the HR Committee noted that “a single-judge formation of the European Court of Human Rights found that the author’s complaint, which had been filed against the Netherlands and which dealt with the same facts as those addressed in this communication, was inadmissible. Given that the complaint is no longer being examined by the European Court, the Committee considers that there are no obstacles to consideration of the communication under article 5 (2) (a) of the Optional Protocol.”⁷¹ In *Wright v. Jamaica*, the HR Committee admitted the complaint because “the case submitted by the author to the Inter-American Commission on Human Rights is no longer being examined by that body.”⁷² In this case the Inter-American Commission had already found a violation of the complainant’s rights.

h. Interim Measures

At any stage before the case is considered, the complainant may ask the treaty bodies to request that a state implement “interim measures” with regard to the complaint.⁷³ Interim measures are made under treaty bodies’ discretion and are issued only when there is a perceived danger that the alleged victim will suffer irreparable harm before the final decision⁷⁴. Commonly, interim measures are granted to “prevent actions that cannot later be undone, like the execution of a death sentence or a deportation.”⁷⁵ Interim measures can also be requested to protect other rights under the relevant covenants. For example, the HR Committee granted an interim measure and requested Brazil “to take all necessary measures to ensure that [former president] Lula can enjoy and exercise his political rights while in prison, as candidate in the 2018 presidential elections. This includes having appropriate access to the media and members of

⁶⁸ However, the committees have adopted a broad interpretation of forum conflict and have admitted complaints despite an apparent jurisdictional conflict when the other human rights procedure did not examine the “same matter”. Geneva Academy, *supra* note 36, fn. 34.

⁶⁹ A pending procedure dealing with the same matter is not mentioned as a ground of inadmissibility in CERD, art. 14.

⁷⁰ Sarah Joseph, et al. *A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies*, In: OMCT Handbook Series Vol. 4. P. 65.

⁷¹ *X v. Netherlands*, Communication No. 2729/2016, Views of 9 September 2016, U.N. Doc. CCPR/C/117/D/2729/2016, para. 4.2

⁷² *Wright v. Jam.*, Comm. 349/1989, U.N. Doc. A/47/40, at 300 (HRC 1990), para. 5.2.

⁷³ *Id.*; see e.g. art. 5, OP to CEDAW.

⁷⁴ See, e.g., Human Rights Committee, Rules of Procedure of the Human Rights Committee, UN Doc. CCPR/C/3/Rev. 12, Rule 94(1) (stating that the Committee may request “such interim measures as the Committee considers necessary to avoid possible actions which could have irreparable consequences for the rights invoked by the author”).

⁷⁵ OHCHR, *supra* note 40, at 6.

his political party. The Committee also requested Brazil not to prevent him from standing for election in the 2018 presidential elections, until his appeals before the courts have been completed in fair judicial proceedings.”⁷⁶

When a treaty body requests the state party to implement an interim measure, it does not imply that the complaint gives rise to actual violations by the state, nor that it is even admissible.⁷⁷

i. Format and Content of the Complaint⁷⁸

The treaty bodies consider individual complaints based mostly on the information provided by the parties. Although no particular format is required for the individual complaint, the use of the model complaint forms and guidelines is recommended.⁷⁹ Usually, treaty bodies consider only written complaints and do not use oral or audio-visual evidence.⁸⁰ Communications should generally also be submitted in one of the official UN languages (Arabic, Chinese, English, French, Russian and Spanish). In general, the complaint should provide basic personal information of the victim, all the facts on which the complaint is based, and why the facts described constitute a violation of the treaty in question. Submissions must not be anonymous.⁸¹ However, if the complainant requests it, their identity can be anonymized in the final decision of the Committee.⁸²

2. MERITS

Once a complaint is deemed admissible, the treaty body will then consider the merits of the complaint in a closed session, based on the response of the state and the material submitted by the complainant.⁸³ The general comments or general recommendations guide what the treaty bodies consider falling within the scope of the relevant treaty and how they interpret its provisions.⁸⁴ To minimize bias or the perception of it, treaty bodies generally adopt rules of procedure that prevent state parties from participating in discussions of, or decision-making on, their own states’ alleged violations, or will at least limit such involvement.⁸⁵ If the Committee decides that there has been no violation of the treaty, no action is taken against the state. If, on the other hand, the Committee finds a violation has occurred, it would issue decisions (also called “views” or “opinions”) for the state to address the issue and remedy the

⁷⁶ OHCHR, [Information note on Human Rights Committee: Lula: Interim measures](#), 17 August 2018

⁷⁷ See OHCHR, *supra* note 40.

⁷⁸ For details on what information should be included in the complaint, see OHCHR, *supra* note 39.

⁷⁹ Model complaint form can be found on each treaty body’s web page. See e.g., Model Complaint Form at <https://ohchr.org/en/hrbodies/cerd/pages/cerdindex.aspx>, available in four languages.

⁸⁰ Geneva Academy, *supra* note 35, at 13.

⁸¹ See e.g., art. 2 (a), OP to CPRD.

⁸² See OHCHR, *supra* note 40; OHCHR, [Guidance for Submitting an Individual Communication to the UN Treaty Bodies](#).

⁸³ Although admissibility and merits were originally two separate stages, they are generally telescoped into one to save the time of the Committee, the states parties, and the complainants, unless the committee grants the state party’ request to split the two phases.

⁸⁴ ISHR, [A Simple Guide to the UN Treaty Bodies](#).

⁸⁵ G.A., *Implementation of Human Rights Instruments*, U.N. Doc. A/67/28442, para. 36 (July 2012).

situation.

Although the decisions of the treaty bodies are not legally binding, they “exhibit some important characteristics of a judicial decision.”⁸⁶ Non-compliance manifests extreme disrespect and is heavily condemned by the relevant human rights body. For example, in *Piandiong v Philippines*, the HR Committee claimed that a state “commits grave violations of its obligations under the Optional Protocol if it acts to prevent or frustrate consideration by the Committee of a communication . . . or to render examination by the Committee moot and the expression of its Views nugatory and futile.”⁸⁷

3. REMEDIES

Remedies range between treaty bodies but can generally be divided into (1) remedy for the specific victim and (2) recommendations for non-repetition by state offenders.

In most cases, treaty bodies recommend some kind of compensation for the victim, such as reimbursement of legal fees and compensation for damages, including moral damages.⁸⁸ In addition to financial compensation, treaty bodies can recommend that the state issue the victim an apology, release from detention, provide for a new trial, or provide mental and physical care.⁸⁹ Although the HR Committee tends to only issue general recommendations for compensation of damages and fees, all other treaty bodies regularly issue various recommendations tailored to the victim’s specific needs.⁹⁰

In addition to recommendations targeted at obtaining relief for the victim, decisions by treaty bodies often include measures aimed at guaranteeing non-repetition of the violations addressed. Recommendations can be general, for the state to take steps to avoid similar steps in the future,⁹¹ or specific, such as the revision of a law, its application, or administrative procedures;⁹² organizing training programs for law enforcement or immigration officials;⁹³ or ensuring effective remedies through measures such as guaranteed legal representation free of charge for minors.⁹⁴

Remedies recommended by treaty bodies are similar to those issued by regional

⁸⁶ HR Comm., *supra* note 34, para. 13.

⁸⁷ HR Comm., Communication No. 869/1999, *Piandiong et al v Philippines*, U.N. Doc. CCPR/C/70/D/869/1999.

⁸⁸ *See, e.g.* HR Comm., Communication No. 2955/2017, *Zhukovsky v Belarus*, U.N. Doc. CCPR/C/127/D/2955/2017; CESCR, Communication No. 22/2017, *S.C. and G.P. v Italy*, U.N. Doc. E/C.12/65/D/22/2017.

⁸⁹ *See, e.g.* CESCR, *supra* note 64, paras. 13-14; CERD, Communication No. 56/2014, *V.S. v Slovakia*, U.N. Doc. CERD/C/88/D/56/2014, para. 9.

⁹⁰ *See, e.g. Id.*; CEDAW, No. 138/2017, *S.F.M. v Spain*, U.N. Doc. CEDAW/C/75/D/138/2018, para. 8; CRC, Communication No. 63/2017, *C.O.C. v Spain*, U.N. Doc. CRC/C/86/D/63/2018, para. 10.

⁹¹ HR Comm., *supra* note 61, para. 9

⁹² *See, e.g.* CESCR, *supra* note 70.

⁹³ *See, e.g.*, CERD, *supra* note 71, CRC, *supra* note 72.

⁹⁴ CRC, *supra* note 72.

courts such as the Inter-American Court of Human Rights and the European Court of Human Rights, which also issue a broad range of remedies including reparations or changes to legislation.⁹⁵

4. PROCESS FOR CONSIDERATION OF INDIVIDUAL COMMUNICATIONS

After the complainant submits their communication, the Petitions and Urgent Actions Section of the OHCHR starts a pre-screening process. The treaty bodies have set up special rapporteurs (HR Committee, CAT, CRPD, CED) or a working group (CEDAW, CERD, CESC, CRC) in charge of new communications.⁹⁶ If the complaint has all the required information, the section sends a summary of the case to the special rapporteur or working group. The special rapporteur or working group decides based on the summary “whether there is sufficient information to proceed with registering the communication. If so, the case is assigned a number and added to the docket of communications of the relevant treaty body.”⁹⁷ The secretariat of the OHCHR may contact the complainant to request additional information or for resubmission, in case the complaint lacks essential information or the facts are not clear.⁹⁸ If there is not enough information or as a general practice it takes longer than a year to respond, the communication is not registered and it is archived (the complainant does get a communications stating why the process did not continue).⁹⁹

When the special rapporteur or working group decides to register a case, the official consideration begins, and it corresponds to the admissibility and merits stages discussed above. These “two stages may take place simultaneously, or consecutively, as decided by the committee or as requested by the concerned State.”¹⁰⁰ After the cases is registered, the petition is sent to the state which has six months to address the admissibility and merits of the petition.¹⁰¹ The petitioners then are allowed to respond, usually within two months, to the state’s comments. States can also request that the admissibility of the individual communication be examined separately. It “takes a minimum of 12 months for an individual communication to be ready for consideration by the relevant committee. In practice, it takes two to three years.”¹⁰²

The committees have also set up working groups on individual communications.

⁹⁵ See, e.g., Eur. Ct. H.R., [Life of an Application](#); Org. of Am. States, [Inter-Am. Comm’n H.R. Petition and Case System Z](#) (2010).

⁹⁶ Geneva Academy, *supra* note 35, at 14.

⁹⁷ ISHR, [A Simple Guide to the UN Treaty Bodies](#), p. 29-30.

⁹⁸ OHCHR, [Individual Communications](#)

⁹⁹ Geneva Academy, *supra* note 35, at 14; OHCHR, [Individual Communications](#).

¹⁰⁰ ISHR, [A Simple Guide to the UN Treaty Bodies](#), p. 30.

¹⁰¹ “The deadline is three months under ICERD and four months under the ICED. At this stage of the procedure, CERD only requests a reply from the state party on admissibility” Geneva Academy, [Treaty Bodies’ Individual Communication Procedures: Providing Redress and Reparation to Victims of Human Rights Violations](#) (2019), p. 16.

¹⁰² Geneva Academy, *supra* note 35, at 16.

This working groups are in charge of reviewing the communications, together with the secretariat of the OHCHR, and preparing recommendations to the plenary of the relevant Committee.¹⁰³ Generally, the Committees discuss the cases in closed sessions. CAT, CERD and CRC do provide for some oral proceedings.¹⁰⁴

There is no appeal against a decision made by a Committee. If the treaty body decides that there was a violation, the state party must provide information - within 180 days - about the steps taken to comply with the recommendations (see next section). If the Committee decides that there was no violation or that it is inadmissible, the case is closed.¹⁰⁵

5. FOLLOW-UP PROCEDURES

Although the UN system has no political organ with a mandate to follow up treaty body decisions, all the treaty bodies that consider individual complaints have adopted “follow-up procedures” to ensure that the states enforce their decisions.¹⁰⁶ By accepting the competence of a treaty body’s individual complaint mechanisms, states have accepted the obligation to respect the body’s recommendations. Further, the obligations of a state under the treaties include the requirement of a state providing a remedy.¹⁰⁷ Some countries have established domestic mechanisms to give effect to views, such as enabling the reopening of domestic court cases, however, these mechanisms are not common, and their effectiveness is not clear in ensuring compliance.¹⁰⁸

The follow-up procedures ensure the victim’s complaint and the treaty body’s decision have reached the national authorities. After a violation is found, the state party has a time window of six to twelve months, to take appropriate measures to redress the victim’s damages. The effect is two-fold. The states must inform the treaty body of any actions taken to implement the remedies issued. On the other hand, “the treaty body also assesses whether the actions taken constitute a satisfactory remedial response to the violations.”¹⁰⁹

In the case where they receive no response from the state or see that the state has not sufficiently complied, the treaty body will continue dialogue with the state, ultimately publishing its concerns on noncompliance in its annual reviews if the state refuses to comply.¹¹⁰ In addition, they are able to put diplomatic

¹⁰³ Geneva Academy, *supra* note 35, at 16.

¹⁰⁴ OHCHR, *supra* note 40, at 9.

¹⁰⁵ See OHCHR, *supra* note 40.


¹⁰⁶ The HR Committee, for example, requests the state party to report within 180 days on the measures taken after a violation is found. See ICCPR, art. 2(3); HR Comm., *supra* note 63, para. 14.

¹⁰⁷ See ICCPR, art. 2.

¹⁰⁸ Machiko Kanetake, *UN Human Rights Treaty Monitoring Bodies before Domestic Courts*, INTERNATIONAL AND COMPARATIVE LAW QUARTERLY, 67(1), 201-232 (2018).

¹⁰⁹ Irina Crivet, [Treaty Bodies | Improving domestic compliance with UN treaty body decisions](#), INT’L SERV. FOR HUM. RTS. (Mar 16, 2020).

¹¹⁰ OHCHR, [Follow-Up to Concluding Observations](#).



pressure on states, and maintain continued dialogue with each state. For example, the HR Committee’s annual report to the UN General Assembly gives an account of the measures taken by the Special Rapporteur as an additional means of exerting pressure and indicates whether replies by states are “satisfactory, partially satisfactory, not satisfactory, or whether the country concerned did not provide any information at all.”¹¹¹ In a number of cases, this procedure has led to acceptance and implementation of the Committee’s decisions where the transmission of those Views was previously met with no response.¹¹²

¹¹¹ Walter Kälin & Jörg Künzli, *supra* note 35, at 218; HR Comm., *Note by the Human Rights Committee on the procedure for follow-up to concluding observations*, U.N. Doc. CCPR/C/108/2 (2013).

¹¹² HR Comm., *supra* note 68, para. 16.

IV. Digital Rights Issues

The treaty bodies are showing increasing interest in digital rights issues in the context of the five key areas discussed below. While the treaty bodies are just beginning to discuss digital rights issues in their individual complaint mechanisms¹¹³, the five issues explained below have come up again and again in the bodies' General Comments and Concluding Observations over the last decade. With the recognition that the digital era has brought about new challenges in protecting human rights, each Committee has issued interpretations of states' obligations in protecting people's rights in the digital space.

Concluding Observations often address specific digital rights concerns for each state party and recommendations to ensure protection of human rights in digital contexts. Looking at these Observations and various other publications by the treaty bodies such as their General Comments, we have identified a number of recurring issues that are of concern to multiple treaty bodies: (1) storage of personal information, (2) social media monitoring, (3) surveillance of journalists and human rights defenders, (4) website blocking and internet shutdowns, and (5) barriers to internet access.

1. STATE STORAGE OF PERSONAL INFORMATION

The issue of states' retention of personal data has been addressed by HR Committee and CRC in relation to the right to privacy. In July 2021, in one of the only cases addressing digital rights issues, *Madhewoo v. Mauritius*, HR Committee considered a claim based on Mauritius's retention of its citizens' biometric data.¹¹⁴ The Committee articulated states' responsibilities in the protection of citizens' digital information, stating "the gathering and holding of personal information on computers, in data banks and on other devices, whether by public authorities or private individuals or bodies, must be regulated by law."¹¹⁵ The Committee determined in this case that there was an interference with the author's right to privacy in the state's retention of biometric data, and that without sufficient guarantee against the risk of abuse and arbitrariness of the interference with the right to privacy following from potential access to such data, the state's practices were unlawful.¹¹⁶ It recommended Mauritius to "provide sufficient guarantees against the risk of arbitrariness and abuse of the

¹¹³ Of the Committees, only the HR Committee has issued decisions on digital rights issues, and even then only sparingly, in relation to the right to freedom of expression and the right to privacy. See HR Comm., Communication No. 2955/2017, *Zhukovsky v. Belarus*, U.N. Doc. CCPR/C/127/D/2955/2017; HR Comm., *supra* note 64.

¹¹⁴ HR Comm., Communication No. 3163/2018, *Madhewoo v Mauritius*, U.N. Doc. CCPR/C/131/D/3163/2018..

¹¹⁵ *Id.*, para. 7.3, citing CCPR's [General Comment No. 16: Article 17 \(The right to respect of privacy, family, home and correspondence, and protection of honour and reputation\)](#), para. 10, 32d Sess., adopted 1988.

¹¹⁶ HR Comm., *supra* note 64, para. 7.6.

author’s fingerprint data as may arise from the issuance of an identity card to him and to review the grounds for storing and retaining fingerprint data on identity cards.”¹¹⁷

In addition to its decision in *Madhewoo v Mauritius*, HR Committee has issued recommendations in Concluding Observations on proper storage of personal information. For instance, it raised the concern that Australia’s retention of telecommunications metadata was being stored and accessed without judicial authorization for counterterrorism purposes, despite the availability of administrative oversight mechanisms.¹¹⁸ HR Committee has stressed the need to regulate the storage of personal data in accordance with the right to privacy under ICCPR art. 17, as well as to prevent abuse by the state and unauthorized access to the database.¹¹⁹

CRC’s guidance on the storage of children’s information is similar to that of the HR Committee, except that it has recommended states to implement and maintain databases for child refugees and asylum-seekers to protect vulnerable children.¹²⁰ CRC urged that states follow HR Committee recommendations, so that gathering and holding of personal information digitally, by “public and private parties, is regulated by law and its aim is clearly defined,” and to prevent unauthorized access to the database.¹²¹ CRC also went one step further and suggests that “children and parents under its jurisdiction have the right to access their data and to request rectification or elimination of information, when it is incorrect or has been collected against their will or processed contrary to the provisions of the [l]aw.”¹²²

As HR Committee has issued a decision in *Madhewoo v Mauritius* with guidance on measures that should be taken by the state, treaty bodies are likely to refer to HR Committee’s guidance in its recommendations on this topic, just as CRC has done in its country reports.

2. SOCIAL MEDIA MONITORING

The observation and moderation of content shared across social media platforms is an issue that has been raised or discussed by four of the eight treaty bodies, specifically the HR Committee, CESCR, CEDAW, and CERD. The treaty bodies do not, however, all share the same concerns regarding this particular issue. Certain

¹¹⁷ *Id.*, para. 9.

¹¹⁸ HR Comm., *Concluding observations on the sixth periodic report of Australia*, 1 Dec. 2017, U.N. Doc. CCPR/C/AUS/CO/6, para. 45.

¹¹⁹ See, e.g., HR Committee, *Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland*, 17 Aug. 2015, U.N. Doc. CCPR/C/GBR/CO/7, para. 24(b); HR Comm., *Concluding observations on the sixth periodic report of Sweden*, 7 May 2009, U.N. Doc. CCPR/C/SWE/CO/6, para. 18.

¹²⁰ CRC, *Concluding observations on the third and fourth periodic report of Ukraine*, 21 Apr. 2011, U.N. Doc. CRC/C/UKR/CO/3-4, para. 73.

¹²¹ CRC, *Concluding observations on the fourth periodic report of France*, 22 June 2009, U.N. Doc. CRC/C/FRA/CO/4, para. 51.

¹²² *Id.*

bodies, specifically the HR Committee, have expressed concern with over-monitoring social media content, while others, like CESC, CEDAW, and CERD, have expressed concern with under-monitoring social media content.

The concern with over-monitoring social media stems in part from instances of governments using social media to “glean information about participation in peaceful assemblies,”¹²³ but multiple concluding observations have suggested a more generalized concern with increased monitoring of social media by governments. In August of 2019, the HR Committee issued a concluding observation directed at Nigeria. One of the principal areas of concern articulated in this document was “[s]urveillance and the right to privacy.”¹²⁴ More specifically, “the Committee [was] concerned about . . . an increased monitoring of online activities by the Government, particularly social media.”¹²⁵ To address the issue of increased monitoring of social media, the HR Committee recommended that Nigeria pass a “digital rights and freedom bill” and take all necessary measures to ensure surveillance activities keep with Article 17¹²⁶ of the HR Committee.¹²⁷

Other treaty bodies, however, have encouraged states to *increase* social media monitoring as a way to combat harmful racial and gender stereotypes often perpetuated by social media content. CEDAW issued a concluding observation recommending that Andorra “[c]ontinue monitoring the portrayal of women in the media and on the Internet and encourage the media to convey positive images of women.”¹²⁸ In a concluding observation directed at Mauritius, CESC took a similar stance by recommending that Mauritius “[t]ake comprehensive measures to eliminate strong gender role stereotypes, including through media campaigns and opinion leaders.”¹²⁹ Finally, CERD took a similar position in regards to racial stereotypes. CERD has encouraged states to “sanction and deter any manifestations of racism in the media, particularly through the Internet.”¹³⁰ The Committee has even gone as far as recommending that states enact laws to block websites with hate speech and to mandate social media to monitor online

¹²³ HR Comm., *General Comment No. 37 on the right of peaceful assembly (article 21)*, 17 Sept. 2020, U.N. Doc. CCPR/C/GC/37.

¹²⁴ HR Comm., *Concluding observations on Nigeria in the absence of its second periodic report*, 29 Aug. 2019, U.N. Doc. CCPR/C/NGA/CO/2.

¹²⁵ *Id.*

¹²⁶ Article 17 of the CCPR states, “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”

¹²⁷ HR Comm., *supra* note 96.

¹²⁸ CEDAW, *Concluding observations on the fourth periodic report of Andorra*, 13 Nov. 2019, U.N. Doc. CEDAW/C/AND/CO/4.

¹²⁹ CESC, *Concluding observations on the fifth periodic report of Mauritius*, 5 Apr. 2019, U.N. Doc. E/C.12/MUS/CO/5.

¹³⁰ CERD, *Concluding observations on the combined twentieth to twenty-second periodic reports of Bulgaria*, 31 May 2017, U.N. Doc. CERD/C/BGR/CO/20-22, para. 12(d), made pursuant to its general recommendation No. 35 (2013) on combating racist hate speech.

comments.¹³¹

The variety of concluding observations from multiple treaty bodies addressing social media monitoring suggests that this is a digital right issue the treaty bodies, particularly HR Committee, CESCR, CEDAW, and CERD, would be willing to adjudicate. The split between a concern with over- and under-monitoring also provides insight into which treaty body would serve as the most advantageous to the individual seeking to file a complaint. Human rights advocates who are unable to successfully assemble due to their states' incessant monitoring of any events they attempt to plan via social media would likely benefit from pursuing a claim before the HR Committee. Someone who is a victim of hate speech via social media, however, would likely benefit from pursuing a claim before CERD.

3. WEBSITE BLOCKING AND INTERNET SHUTDOWNS

Blocking access to the Internet as well as specific websites has also been raised as a concern by four treaty bodies. The HR Committee has expressed concerns that website blocking, in particular of opposition party websites around elections and of media platforms, interfere with ICCPR Article 19 rights to the freedom of expression, which includes the “freedom to seek, receive and impart information and ideas of all kinds” in any media.¹³² It has repeatedly urged states to follow content-specific restrictions to refrain from unnecessary interference, ensuring restrictions meet the strict requirements of Article 19(3).¹³³ In addition, it has raised concerns about states shutting down Internet access for short and prolonged periods of time, such as in the case of a state of emergency, urging states to comply with Article 19 on the freedom of expression and Article 4 on derogations during states of emergency.¹³⁴

Further, CESCR, concerned about the effects on cultural rights as in ICESCR Articles 1 and 6, recommended ensuring “free access to diverse sources of information and to cease the practice of censorship of electronic communication and blocking of Internet sites thereby making the Internet available to all that desire it.”¹³⁵

¹³¹ CERD, *Concluding observations on the combined second to fifth periodic reports of Serbia*, 3 Jan. 2018, U.N. Doc. CERD/C/SRB/CO/2-5; CERD, *Concluding observations on the fifth to seventh periodic reports of Kenya*, 8 June 2017, U.N. Doc. CERD/C/KEN/CO/5-7.

¹³² HR Comm., *Concluding observations on Equatorial Guinea in the absence of its initial report*, 22 Aug. 2019, U.N. Doc. CCPR/C/GNQ/CO/1, para. 52(d).

¹³³ HR Comm., *General Comment No. 34: Article 19 (Freedoms of opinion and expression)*, 102d Sess., adopted Sept. 12, 2011, U.N. Doc. CCPR/C/GC/34, para. 41; HR Comm., *Concluding observations on the fifth periodic report of Belarus*, 22 Nov. 2018, U.N. Doc. CCPR/C/BLR/CO/5, para. 50(c).

¹³⁴ HR Comm., *Concluding observations on the third periodic report of Tajikistan*, 22 Aug. 2019, U.N. Doc. CCPR/C/TJK/CO/3, para. 22; HR Comm., *Concluding observations on the fifth periodic report of Cameroon*, 30 Nov. 2017, U.N. Doc. CCPR/C/CMR/CO/5, para. 41.

¹³⁵ CESCR, *Consideration of reports submitted by states parties under articles 16 and 17 of the Covenant*, E/C.12/TKM/CO/1, at para. 29. Also see CESCR, *General Comment No. 21: Art. 15, para. 1 (a) (Right of everyone to take part in cultural life)*, 43d Sess., adopted Dec. 21, 2009, U.N. Doc. E/C.12/GC/21; CESCR, *General Comment No. 25 on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4))*, adopted Apr. 30, 2020, U.N. Doc. E/C.12/GC/25.

CRC and CERD have recommended blocking websites dedicated to hateful content, but even then, both have acknowledged the dangers of website blocking such as restrictions on freedom of expression and access to information.¹³⁶ CRC has recommended that policies and tools such as filters to block certain information on the Internet do not impede “the child’s right to seek, receive and impart information and ideas of all kinds through any media of the child’s choice.”¹³⁷

While some treaty bodies have acknowledged a need for content specific blocking where a website would do harm to vulnerable populations, treaty bodies have broadly stressed the need to ensure that states do not block access to the Internet or certain websites. Treaty body litigation on this matter would be helpful in providing guidance to states on how to ensure they do not violate international human rights standards through unlawful website blocking or internet shutdowns.

4. SURVEILLANCE OF JOURNALISTS AND HUMAN RIGHTS DEFENDERS

State surveillance of journalists and human rights defenders has been raised as a concern by five of the treaty bodies in Concluding Observations.¹³⁸ Specifically in regards to the digital space, treaty bodies have noted that states have broad capabilities to conduct digital surveillance and monitor social media and electronic communications, especially by police and other state actors.¹³⁹ HR Committee explicitly mentions concerns about Internet surveillance of journalists and human rights defenders and recommends that online surveillance for the purposes of state security are governed by appropriate legislation in accordance with ICCPR, in particular privacy rights under article 17.¹⁴⁰ Another tactic of concern is the interception of communications that are sent by and to these groups.¹⁴¹ Further, it issued a statement in General Comment No. 37 that surveillance of people involved in peaceful assemblies, such as through monitoring of social media and other data-gathering activities, may violate people’s privacy rights.¹⁴²

¹³⁶ CERD, *supra* note 98, para. 14; CRC, *Concluding observations on the combined second and third periodic report of Turkey*, U.N. Doc. CRC/C/TUR/CO/2-3, para. 41.

¹³⁷ CRC, *Concluding observations on the combined second and third periodic report of Turkey*, 20 July 2012, U.N. Doc. CRC/C/TUR/CO/2-3, para. 41.

¹³⁸ *See, e.g.* Comm. against Torture, *Concluding observations on the fifth periodic report of Uzbekistan*, 14 Jan. 2020, U.N. Doc. CAT/C/UZB/CO/5, para. 17 [hereinafter CAT]; HR Comm., *Concluding observations on Equatorial Guinea in the absence of its initial report*, 22 Aug. 2019, U.N. Doc. CCPR/C/GNQ/CO/1, para. 50; CEDAW, *Concluding observations on the sixth periodic report of Cambodia*, 12 Nov. 2019, U.N. Doc. CEDAW/C/KHM/CO/6, para. 19; Comm. on Enforced Disappearances, *Concluding observations on the report submitted by Honduras under article 29 (1) of the Convention*, 4 July 2018, U.N. Doc. CED/C/HND/CO/1, para. 26; CRC, *Concluding observations on the combined second to fourth periodic reports of Iraq*, 3 Mar. 2015, U.N. Doc. CRC/C/IRQ/CO/2-4, para. 15.

¹³⁹ HR Comm., *Concluding observations on the fifth periodic report of Belarus*, *supra* note 105, para. 43.

¹⁴⁰ HR Comm., *supra* note 110, para. 50.

¹⁴¹ HR Comm., *Concluding observations on the fifth periodic report of Belarus*, *supra* note 105, para. 43.

¹⁴² HR Comm., *supra* note 95, para. 93.

Other treaty bodies have expressed concerns about specific groups of human rights defenders, including female human rights defenders in the case of CEDAW,¹⁴³ and activists working against enforced disappearances in the case of CED.¹⁴⁴

Other types of surveillance are also of concern, particularly surveillance for counter-terrorism purposes and mass surveillance of ethnic, religious or racial minorities. HR Committee and CAT have expressed concern that surveillance for counter-terrorism purposes could lead to arbitrary infringements on people's privacy, especially in regards to granting wide-reaching powers to the police to electronically tag and surveil "potential attackers,"¹⁴⁵ and indiscriminate surveillance of communications and collection of metadata.¹⁴⁶ CERD has also issued cited concerns specifically for mass surveillance of ethnic, religious, and racial minorities as a form of racial discrimination and infringement on the right to private life and privacy.¹⁴⁷ Thus although not directly addressed by the treaty bodies in their individual complaint mechanisms, digital surveillance is an area that has received substantial attention by many treaty bodies.

5. BARRIERS TO INTERNET ACCESS

Barriers to internet access is an issue that has been widely discussed in the concluding observations and general comments of most of the treaty bodies. Namely, CESCR, CEDAW, CRC, and CERD have expressed concerns not only with the lack of physical access to the internet, but with barriers created by a lack of digital skills among certain groups. In today's increasingly digitized and globalized world, the inability to access to the internet may result in restricted access to information and limited access justice, among other fundamental human rights.

The concern regarding a lack of physical access to the internet places an emphasis on rural populations. CESCR has addressed this specific concern in concluding observations directed at a variety of nations. In a concluding observation directed at Angola, CESCR recommended "that [Angola] redouble its efforts to increase access to the Internet, especially by disadvantaged and marginalized groups and individuals and in rural areas."¹⁴⁸ Similarly, CESCR recommended that Cameroon "take all necessary steps to improve access to the

¹⁴³ CEDAW, *supra* note 110, para. 19.

¹⁴⁴ CED, *supra* note 110, para. 26.

¹⁴⁵ CAT, *Concluding observations on the sixth periodic report of Germany*, 11 July 2019, U.N. Doc. CAT/C/DEU/CO/6, para. 41.

¹⁴⁶ HR Comm., *Concluding observations on the seventh periodic report of Poland*, 23 Nov. 2016, U.N. Doc. CCPR/C/POL/CO/7, para. 39.

¹⁴⁷ See, e.g. CERD, *Concluding observations on the combined fourteenth to seventeenth periodic reports of China*, 19 Sept. 2018, U.N. Doc. CERD/C/CHN/CO/14-17, para. 40; CERD, *Concluding observations on the combined seventh to ninth periodic reports of the United States of America*, 25 Sept. 2014, U.N. Doc. CERD/C/USA/CO/7-9, para. 8.

¹⁴⁸ CESCR, *Concluding observations on the fourth and fifth periodic report of Angola*, 15 July 2016, U.N. Doc. E/C.12/AGO/CO/4-5, para. 58.

Internet, especially in rural areas.”¹⁴⁹ This recommendation was echoed again when the committee recommended that South Africa “adopt relevant measures to ensure the accessibility and affordability of the Internet, particularly in schools and rural areas for the most disadvantaged groups.”¹⁵⁰

CEDAW’s concerns with this issue seem to mirror those of CESCR, although the concerns are specific to women living in rural areas. In General Recommendation No. 34, which discusses the rights of rural women, CEDAW says that state parties should “create enabling environments that improve [rural women’s] access to technology, including [information and communications technology] in rural areas.”¹⁵¹

Finally, CRC makes these same recommendations with rural children in mind. Specifically, CRC “recommends that the state enact legislation and public policies to improve children’s access to the digital environment . . . including children with disabilities and those living in rural and coastal areas.” CRC has also recommended that the state “[c]ontinue to expand access to the Internet and to information for children in disadvantaged or vulnerable situations and ensure that children are protected from online risks.”¹⁵²

Tackling physical barriers to accessing the internet is just half the battle. Treaty bodies also appear concerned with groups that lack the necessary digital skills to access and make use of the internet. CEDAW’s General Recommendation No. 34 expresses this concern by telling state parties to “develop or expand initiatives to increase [rural women’s] [information and communications technology] skills, for example through the development of village-based or community-based knowledge centres.”¹⁵³ CEDAW goes on to say, “state parties should also explore public awareness-raising and training through mobile phone technology, which has the potential to reach rural women and girls.”¹⁵⁴

CESCR makes recommendations similar to those contained within CEDAW’s General Recommendation No. 34 that are directed at specific state parties via concluding observations. In 2014, CESCR recommended that Guatemala “redouble its efforts to set up educational and information centres focusing on the use of new technologies and the Internet, in particular for indigenous

¹⁴⁹ CESCR, *Concluding observations on the fourth periodic report of Cameroon*, 25 Mar. 2019, U.N. Doc. E/C.12/CMR/CO/4, para. 65.

¹⁵⁰ CESCR, *Concluding observations on the initial report of South Africa*, 29 Nov. 2018, U.N. Doc. E/C.12/ZAF/CO/1, para. 77.

¹⁵¹ CEDAW, *General Recommendation No. 34 (2016) on the rights of rural women*, adopted Mar. 7, 2016, U.N. Doc. CEDAW/C/GC/34, para. 74.

¹⁵² CRC, *Concluding observations on the combined fifth and sixth periodic reports of Costa Rica*, U.N. Doc. CRC/C/CRI/CO/5-6, para. 23, made with reference to its general comment No. 20 (2016) on the implementation of the rights of the child during adolescence.

¹⁵³ CEDAW, *supra* note 123, para. 76.

¹⁵⁴ *Id.*

peoples.”¹⁵⁵ More recently in 2019, CESCR recommended that Mauritius “take effective measures to support those who have neither access to the Internet nor the digital skills to benefit from advanced [information and communications technology] infrastructure”¹⁵⁶ and that Estonia ensures digital assistance is easily available to those who lack the digital skills to access “information and communications technology-based public services.”¹⁵⁷

It’s worth briefly noting that barriers to the internet, whether those are physical barriers or skill-based barriers, greatly contribute to another digital rights issue the treaty bodies have discussed: **the digital divide**. The “digital divide” often refers to the disparate levels of access to technology for various groups of people across the globe. CESCR has specifically used the term “digital divide” in multiple recent concluding observations, which reinforces the interest treaty bodies have in issues like barriers to the internet.¹⁵⁸ For example, in a concluding observation CESCR recommended that Ecuador “[t]ake appropriate measures to narrow the digital divide for the benefit of the rural population, indigenous peoples, people of African descent and Montubio people.”¹⁵⁹ CESCR was even more specific in its recommendation to Azerbaijan suggesting that “state party continue working to narrow the digital divide by expanding access to the Internet and digital technologies, in particular for disadvantaged and marginalized individuals and groups.”¹⁶⁰

Ultimately, inequitable access to the internet is an issue the treaty bodies are increasingly discussing in concluding observations. As a result, an individual who has faced hardships as a direct consequence of her state’s failure to implement effective measures to narrow the digital divide, she may be able to obtain redress through an individual complaint before CESCR, CEDAW, CRC, or CERD.

¹⁵⁵ CESCR, *Concluding observations on the third periodic report of Guatemala*, 9 Dec. 2014, U.N. Doc. E/C.12/GMT/CO/3, para. 27.

¹⁵⁶ CESCR, *supra* note 96, para. 62.

¹⁵⁷ CESCR, *Concluding observations on the third periodic report of Estonia*, 27 Mar. 2019, U.N. Doc. E/C.12/EST/CO/3, para. 53.

¹⁵⁸ See CESCR, *Concluding observations on the fourth periodic report of Ecuador*, 14 Nov. 2019, U.N. Doc. E/C.12/EQU/CO/4, para. 64(b); CESCR, *Concluding observations on the fourth periodic report of Azerbaijan*, 2 Nov. 2021, E/C.12/AZE/CO/4, para. 59.

¹⁵⁹ CESCR, *supra* note 125, para. 64(b).

¹⁶⁰ CESCR, *supra* note 125, para. 59.

V. Conclusion

As technology continues to evolve and integrate itself into our day-to-day lives, there is an increasing need to expand and reinforce digital rights and to have multiple avenues for obtaining redress for victims of human rights violations in digital spaces. The body of work (i.e. views, general comments, and concluding observations) produced by the UN Treaty Bodies over the last decade reveals that there are six treaty bodies that could be effective forums for those victims. Specifically, HR Committee, CESCR, CEDAW, CRC, CERD, and CRPD have all discussed digital rights issues. Although most of this discussion took place in concluding observations and general comments as opposed to the treaty bodies' individual communications, the recurring concern regarding the five issues explored above is a strong indicator that these treaty bodies would be willing to address an individual complaint that raises one of those issues. We urge advocates to explore the ways in which the treaty bodies may serve victims of digital rights violations and to contact the International Justice Clinic at UC Irvine, School of law for a consultation on how to do so.