Introduction

What a Difference do 20 Years Make? The Impact of the Core UN Human Rights Treaties on the Domestic Level in Selected States between 1999 and 2019

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1 Introduction

1.1 *Background to this Study*

This introductory chapter provides a background to a collection of chapters discussing the impact of the core United Nations (UN) human rights treaties at the domestic level during the 20 years between 1 July 1999 and 30 June 2019. This is a follow-up to the study by Christof Heyns and Frans Viljoen, conducted with the assistance of country-based researchers, and published as *The Impact of the United Nations Human Rights Treaties on the Domestic Level*.[1] In that study, Heyns and Viljoen aimed to track and understand the impact of the core UN human rights treaties during the 30 years between the entry into force in 1969 of the first of these treaties (the 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD)) and 30 June 1999.

Although the chapters in the present book can stand separately, in their own right, in many ways they serve as an updated complement to the initial study. For the follow-up study, Heyns and Viljoen were joined by Professor Rachel Murray, Director of the Human Rights Implementation Centre, University of Bristol, as co-study leader. The country studies were close to completion when co-editor, friend and colleague Christof Heyns so unexpectedly, untimely and sadly passed away on 28 March 2021.[2] Together with many who knew him and had the privilege of working with him, we miss Christof immensely. He pioneered the initial study and energised its follow-up. In fact, at the time of his passing, Christof was on a sabbatical, busy working on this study. The two remaining co-editors have subsequently brought the work to finality.

1 Kluwer Law International 2002 (*Impact* 2002). The editors gladly acknowledge the contributions of Professor William Gravett, who coordinated the logistics of the study for much of its duration.

2 On Christof's contributions, more generally, see F Viljoen and others (eds), *A Life Interrupted: Essays in Honour of the Lives and Legacies of Christof Heyns* (Pretoria University Law Press 2022); and Daniel Bradlow and Frans Viljoen 'Christof Heyns (1959–2021): Human Rights Lawyer, Legal Educator and Activist' (2021) 117(7–8) South African Journal of Science 1–2.

The initial study covered 20 selected countries, four from each of the five UN regions. With three exceptions, the follow-up study countries are the same as in the initial study.

The treaty system has played a pivotal role in developing the substantive norms of the global human rights project over the last five decades. On the one hand, the future of the treaty system depends on whether it will continue to lead the way in substantively advancing the scope and content of the body of human rights. On the other hand, to enhance its visibility and broaden its ownership by a global audience, treaty norms will have to increasingly find their way into domestic law and practices. This study aims to better understand and assist in bridging the gap between expanding standard-setting and challenging implementation.[3]

This introductory chapter deals with the main changes pertinent to the impact of the 'core UN human rights treaties' in the 20 years between 1999 and 2019, related to the UN treaty body system, the UN Charter-based system, regional human rights systems, and at the national level.

The study presents a portrait of a particular moment in time, namely, the end of the fifth decade in the relatively brief life of the UN human rights treaty system. Tracking and assessing impact will always be 'work-in-progress', in need of continuous updating. While a strict cut-off date (30 June 2019) applies to the treaty body directives (eg recommendations and views) that are covered in the study, the discussion of the domestic impact of these directives is based on an extended time frame, sometimes up to 2022. Because there is a time lag between the study's cut-off date and its publication, some chapters occasionally refer to pertinent subsequent developments.

Many changes that are relevant to the effectiveness of the 'core UN human rights treaties' have occurred during these 20 years. Against the background of and accounting for these changes, the introduction aims to track and better understand aspects of the impact of these treaties at the domestic level. These changes are embedded in the broader socio-political and geopolitical context, including factors such as the increasing securitisation after the events of 11 September 2011; the rise of populism and authoritarianism across the world; shrinking space for civil society engagement in many states; an increased wavering of belief in science-based rationality; and the effects of growing

3 See C Heyns and F Viljoen, 'What Difference Does the UN Human Rights Treaty System Make, and Why? A New, Global Academic Study to Answer this Question is Launched in Collaboration with the UN High Commissioner for Human Rights' <https://www.openglobalrights.org/what-difference-does-un-human-rights-treaty-system-make/> accessed 30 September 2021.

global inequalities.[4] The scope of our study does, however, not allow the spotlight to fall on any of these important contextual factors.

1.2 *Defining 'Impact'*

In the initial study, 'impact' was understood as referring to 'any influence that these treaties may have had in ensuring the realisation of the norms they espouse in individual countries' through constitutional or legislative adoption/incorporation/transformation, policy changes, judicial decisions, the implementation of Concluding Observations (COs), and through the work of civil society, the media, and the academia.[5] For the purpose of the follow-up study, the 'impact' of the UN human rights treaty system is more closely defined as the 'overall domestic effect, influence or repercussions' of the nine core UN human rights treaties, the three substantive Protocols thereto, and the findings and recommendations and normative guidance emanating from the nine UN human rights treaty bodies (UNTBs) established under the nine core treaties, as well as the Sub-Committee on the Prevention of Torture (SPT), established under an optional protocol to one of the treaties.[6] Direct impact we define as 'observable change in the conduct of those' a treaty '*directly targets*'.[7] Indirect impact affects a much broader range of stakeholders. For example, the indirect 'impact' of a remedial order or recommendation would be on persons who are not parties to the case or directly involved in the litigation.[8]

We distinguish between the material and symbolic impact of the UN treaty system.[9] Material impact entails tangible effects that in some way are attributable to the UN treaty system (treaties and treaty bodies), such as the adoption of laws and the use of treaty provisions to influence the outcome of judicial decisions. Symbolic impact is much more intangible and relates to an effect on ideas, understandings and narrative framing. The aim of our study in the first instance is to chart legal, policy and institutional (*de jure*) changes rather than

4 The Senegalese chapter, for example, emphasises that the eradication of poverty in the country is the primary purpose of government, and that human rights will be meaningless in a country where the majority of the population is extremely poor.

5 *Impact* 2002 (n 1) 1.

6 The Sub-Committee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment is established under the Optional Protocol to CAT (OP-CAT).

7 César Rodríguez-Garavito, 'Beyond Enforcement: Assessing and Enhancing Judicial Impact' in Malcolm Langford, César Rodríguez-Garavito and Julieta Rossi (eds), *Social Rights Judgments and the Politics of Compliance: Making it Stick* (Cambridge University Press 2017) 84 (emphasis added).

8 ibid.

9 ibid 75.

to provide data on improvements in the actual enjoyment or *de facto* realisation of rights.

From the perspective of a state party to a treaty, 'compliance' with a treaty is the condition of having fufilled its treaty obligations. 'Compliance' is a term best used in relation to the duty bearer under a treaty. To Von Staden, the concept refers to 'conformity of an actor's observed behaviour with the behaviourial requirements of a normative pre-or proscription applicable to that actor'.[10] Giving effect to treaty provisions by setting up a national mechanism, as required by the treaty, or by giving effect to a treaty body's remedial recommendation, are examples of direct material impact. Indirect and symbolic impact includes the raising of public awareness, the reframing of an issue in the press, a change in public perception, increasing the negotiating power of non-governmental organisations (NGOs), and opening up possibilities for public participation on policy making.[11] 'Impact' is therefore broader than but includes 'compliance'. Given its most expansive meaning, impact refers to the contributions to the actual fulfilment of the rights in question.[12]

Under 'implementation' we understand the process of taking measures at the domestic level in response to obligations arising from UN human rights treaties or directives of treaty bodies.[13] In this sense, implementation often is a feature of (or means to achieve) compliance and direct material impact. Often, indirect material impact, as well as symbolic impact, occurs outside the process of implementation. So, for example, greater awareness and public debate may result from exactly the opposite of implementation (that is, from a failure or refusal to implement).

1.3 *Scope of the Initial (1999) and Follow-Up (2019) Study*

We now examine the study's substantive scope ('core UN human right treaties') and its territorial reach ('20 selected countries').

10 Andreas von Staden, *Strategies of Compliance with the European Court of Human Rights: Rational Choice within Normative Constraints* (University of Pennsylvania Press 2018) 30.

11 Rodríguez-Garavito (n 7) 83–93.

12 ibid 78.

13 Rachel Murray and Debra Long, *The Implementation of the Findings of the African Commission on Human and Peoples' Rights* (Oxford 2015) 27; Kal Raustiala, 'Compliance and Effectiveness in International Regulatory Cooperation' (2000) 32 Case Western Reserve Journal of International Law 387, 392.

1.3.1 Core Human Rights Treaties

The 'core' UN human rights treaties are those UN human rights treaties that provide for self-standing, separate supervisory bodies composed of independent experts. The study can be understood as being premised on the notion that treaties *with treaty bodies* stand a better chance – all things being equal – to be better implemented and thus, be more effective than treaties without such treaty bodies. The premise is that the existence of a treaty body (in a generic sense, or UNTB, specifically), with the concomitant process of generating compliance with normative standards, does 'make a difference'. Six treaties were included in the scope of the initial study: CERD; the 1966 International Covenant on Civil and Political Rights (CCPR), which entered into force in 1976; the 1966 International Covenant on Economic, Social and Cultural Rights (CESCR), which also entered into force in 1976; the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which entered into force in 1981; the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT), which entered into force in 1987; and the 1989 Convention on the Rights of the Child (CRC), which entered into force in 1990.

Certainly, there are many more UN treaties of relevance to human rights, broadly understood. However, these treaties do not have independent expert treaty bodies.[14] An example of a 'human rights-related' treaty without a treaty body is the 1951 UN Convention Relating to the Status of Refugees (UN Refugee Convention), which for its implementation depends on the UN High Commissioner for Refugees, a more diplomatic, political and bureaucracy-driven mechanism. Although the impact of the UN Refugee Convention is undeniable,[15] it lacks a system of independent oversight and quasi-judicial accountability. What distinguishes treaty bodies from other forms of oversight in the UN is their rule-based and quasi-judicial role, which removes them and sets them apart from the realm of pragmatic politics.

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14 Other relevant treaties without treaty bodies include the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, and the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid. The interpretation, application and implementation of these treaties is adjudicated by the International Court of Justice (ICJ); see eg its 1996 judgment in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Bosnia and Herzegovina v Serbia and Montenegro*).

15 Nergis Canefe, 'The Fragmented Nature of the International Refugee Regime and its Consequences: A Comparative Analysis of the Applications of the 1951 Convention' in James C Simeon (ed), *Critical Issues in International Refugee Law* (CUP 2010) 206.

1.3.2 Twenty Selected Countries

Four countries from each of the five UN regions were covered in the initial study. These are, in the African region: Egypt, Senegal, South Africa and Zambia; in the Asia-Pacific region: India, Iran, Japan and the Philippines; in the Eastern European region: the Czech Republic, Estonia, Romania and the Russian Federation; in the Group of Latin America and Caribbean countries (GRULAC): Brazil, Colombia, Jamaica, and Mexico; and in the West European and Other (WEO) region: Australia, Canada, Finland and Spain. The selection of counties was aimed at identifying a 'fairly representative mix of countries in which the treaty system has had an opportunity to effect a change'.[16] Factors informing the specific choices were the level of the country's wealth, development and political stability; national-level diversity; and ensuring a mixture of states with long-standing engagement (having ratified the relevant treaties for some time) and states with a more recent engagement with the UN human rights treaty system.

The territorial scope of the follow-up study is 20 UN member states. Ideally, this list of countries would have been exactly the same as that of the previous research study. However, due to the unavailability of researchers or other institutional and logistical difficulties, two countries in the Asia-Pacific region included in the original study (Iran and the Philippines) have been replaced (by Turkey and Nepal), and one in the East Europe region, with Poland replacing Romania.

With a civil war largely resolved and in the context of the demise of the monarchy, the inclusion of Nepal instantiates a least-developed country poised for the first time in its history to come to terms with the impact of international human rights law. Turkey's position within the UN spatial geometry reflects its location on the cusp between East and West. While it participates fully in both the WEO and Asia-Pacific group, for electoral purposes it is considered a member of the WEO group only. However, for the purposes of this study we categorise Turkey as part of the Asia-Pacific group. Clearly, the lack of a perfect symmetry complicates comparisons between the two studies at a level beyond the individual country.

The choice means that some of the most politically and economically influential states in our world were not included. Of the five UN Security Council members, only the Russian Federation is included; and of the world's five largest economies (USA, China, Germany, Japan and India) only two (Japan and India) are included. In our view, the inclusion of all the regional hegemons

16 *Impact* (2002) (n 1) 2.

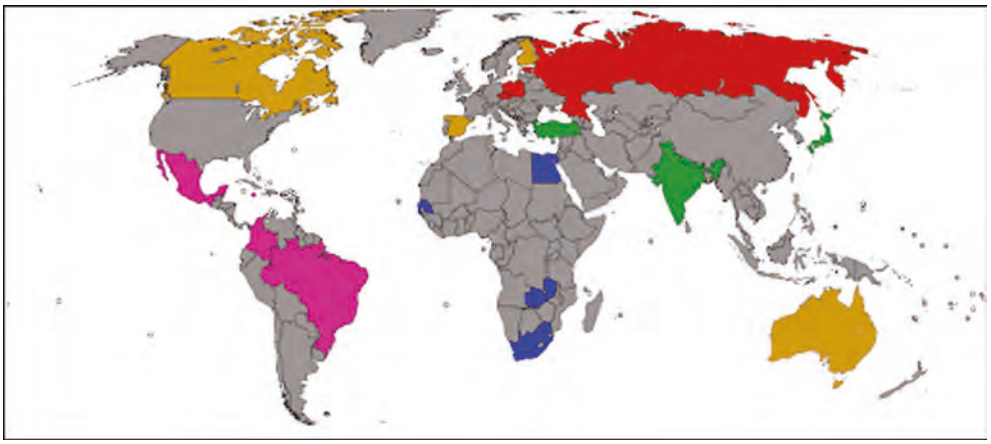

FIGURE 0.1 Territorial reach: '20 selected countries' (follow-up study shown)

would have risked skewing the study. However, the omission of these countries does not imply that they are not important in painting a holistic picture of the impact of UN treaties globally. In this regard, we note published contributions that deal with this topic in, for example, China,[17] the USA,[18] and the United Kingdom (UK),[19] which should be viewed as complementing our study.

With only 20 (out of 193) UN member states covered, the number of countries is rather limited. It provides a limited snapshot at a particular moment in those countries that may quickly be overtaken by events. It was not our aim to draw generalisable conclusions for all UN member states, based on an accurately-designed representative sample. Although the study countries shed light on the larger population of states, the sample size is too limited to allow conclusive claims relating to general patterns and trends.

17 See eg Sonya Sceats and Shaun Breslin, 'China and the International Human Rights System' October 2012 The Royal Institute of International Affairs, 2012 <http://dspace.jgu.edu.in:8080/jspui/bitstream/10739/173/1/NPHR8%20China%20%26%20Int%20HR.pdf>; Sanzhuan Guo, 'Implementation of Human Rights Treaties by Chinese Courts: Problems and Prospects' (2009) 8 Chinese Journal of International Law 161–179; Björn Ahl, 'Exploring Ways Of Implementing International Human Rights Treaties in China' (2010) 28 Netherlands Quarterly of Human Rights 361–403; Sophia Woodman, 'Human Rights as Foreign Affairs: China's Reporting under Human Rights Treaties' (2005) Hong Kong Law Journal 179; and Ann Kent, *China, the United Nations, and Human Rights: The Limits of Compliance* (University of Pennsylvania Press 2013).

18 See eg Kenneth Roth, 'The Charade of US Ratification of International Human Rights Treaties' (2000) 1 Chinese Journal of International Law 347.

19 See eg Brice Dickson, *International Human Rights Monitoring Mechanisms: A Study of Their Impact in the UK* (Edward Elgar 2022).

1.4 *Methodology*

The study combines in-depth single-country studies with cross-country perspectives. Twenty in-depth single country studies, by country-based researchers or research teams, based on desk reviews of available documents, sourced with the advantage of close proximity to the country, and interviews with key informants, allow for both careful and rigorous country studies and some cross-country trends and insights. The study also confirms that quantitative and qualitative research approaches are not necessarily polar opposites, but should be viewed as complementary and mutually reinforcing.[20] A number of researchers incorporate quantitative elements, in combination with analysing documents and drawing on the insights of interviewees.

Interviewees in the various countries include a wide range of respondents, such as high-ranking government officials who are directly responsible for or involved in the preparation of reports; activists advocating the implementation of UN human rights treaties; legal practitioners who have relied on treaty body decisions and recommendations in their cases in court; and members of treaty bodies from the country. A general University of Pretoria certification of 'ethical approval' was secured for the interviews conducted as part of the project as a whole.

Two expert meetings, at which the country researchers presented work-in-progress, were organised in Geneva, Switzerland. The first expert meeting was hosted by the Office of the High Commissioner for Human Rights, in Geneva, in March 2019. The second expert meeting was hosted by the Geneva Academy of International Humanitarian Law and Human Rights, in September 2019. The two expert meetings were attended by UN treaty body members, renowned experts on domestic influence of human rights treaties, practitioners and researchers of international human rights law worldwide. In 2020 a number of virtual meetings were also held, during which work-in-progress were presented, and researchers commented on one another's work.

As part of this study, primary documents from the domestic system (such as policy papers, laws and judgments) referenced in the chapter are collated in electronic form. Following wide consultation, a process of setting up an online database, where information on the impact of the system in all UN member

20 See eg B Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009); and Malcolm Langford, 'Interdisciplinarity and Multimethod Research' in BA Andreassen, HO Sano and S McInernet-Lankford, *Human Rights Research Methods* (Edward Elgar 2017), available as University of Oslo Faculty of Law Research Paper No 2016–30 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2854037> accessed 14 November 2022.

states will be posted, is underway. The 20 country studies mentioned above, as well as the supporting documentation, will for a start be posted on the website. In the meantime, clinical groups are being formed at universities around the world, where international students are gathering the relevant information on their home countries, to be posted on the website.[21]

To the extent possible, the study aims to identify *correlation* between a treaty provision or treaty body recommendation and a domestic measure. Impact does not necessarily show or depend on causality (showing, for example, that the treaty system is an *indispensable condition* for the observed change). *Correlation* is the relationship or connection between two or more things. The relationship can be one of influence or contribution. *Influence* is the capacity to have an effect on someone or something. *Contribution* is the role played by a person or thing in bringing about a result. The impact of UN treaties or treaty body recommendations at the domestic level can therefore be described as their *discernible influence on or contribution to* changes at the domestic level.

The most obvious form of discernible correlation is *exact similarity or conformity* (*for example, between a UNTB recommendation and a domestic measure taken*). When there is no clear-cut conformity, correlation can be *deduced from,* for example, the following:

- *explicit recognition in documentary form:* The influencing role on the treaty or treaty body recommendations is explicitly 'acknowledged' by relevant domestic actors, as reflected in textual evidence (for example, in the Preamble to a statute).
- *explicit recognition acknowledged and recorded during interviews:* The influencing role on the treaty or treaty body recommendations is explicitly 'acknowledged' by relevant domestic actors, during interviews.
- *chronological sequence:* The material effect (domestic measure) came about *consequent to* (in temporal sequence) to the treaty ratification, or the adoption by the treaty body of a recommendation.

The normative and institutional expansion of human rights have two major implications for the 2019 study:

> First, the expansion of the landscape to treaties and mechanisms that were not in place in 1999 limits the 'conversation' between the two studies, in that comparative data or discussions about the treaties and mechanisms that came into force subsequently do not exist. Therefore, it is not

21 See 'Impact database 2020+' <http://www.icla.up.ac.za/countries-researchers-database-2020> accessed 14 November 2022.

possible to make a complete or all-encompassing comparison between the two periods (the 30 years before and the 20 after 1999).

In the second place, it brings into stark relief the imperfect nature of a study that aims to dissect and view the impact of one part of the UN human rights architecture – the treaty body system – in isolation from the UN Charter-based and relevant regional human rights system. From a domestic perspective, the Universal Periodic Review (UPR) and the activities of a plethora of special procedures have a significant impact on human rights that may often be difficult to isolate or separate from the impact of the UN treaty system. There is increasing evidence that the UN treaty-based and Charter-based systems overlap and act in mutually-reinforcing ways, to produce a cumulative effect.[22] While this study focuses on the treaty system, study researchers point to the most salient instances of influence or impact of the UPR, UN special procedures, and regional human rights systems.

After deliberation, we decided to keep the focus on the core treaties and treaty bodies, mainly for the sake of continuity and potential comparison. Retaining the focus of this study on the treaty body system allowed for a contribution to ongoing debates and discussions on the UN treaty body system within the framework of the ongoing Human Rights Treaty Bodies Review 2020 process.[23] The study departs from the premise that the reality of the actual implementation of these treaties should be an important factor in the streamlining and strengthening of the UN treaty system.[24] Even if there are overlaps between the UN treaty bodies, special procedures and the UPR, as quasi-judicial bodies, treaty bodies play a particular role in norm-elaboration through their close and detailed analysis of treaty provisions.

22 Olivier de Frouville, 'Building a Universal System for the Protection of Human Rights: The Way Forward' in M Cherif Bassiouni and William A Schabas (eds), *New Challenges for the UN Human Rights Machinery. What Future for the UN Treaty Body System and the Human Rights Council Procedures?* (Intersentia 2011) 251; F Cowell, 'Reservations to Human Rights Treaties in Recommendations from the Universal Periodic Review: An Emerging Practice?' (2021) 25 International Journal of Human Rights 274.

23 Jasper Krommendijk, 'Less is More: Proposals for How UN Human Rights Treaty Bodies Can Be More Selective' (2020) 38 Netherlands Quarterly of Human Rights 5–11; Jeremy Sarkin, 'The 2020 United Nations Human Rights Treaty Body Review Process: Prioritising Resources, Independence and the Domestic State Reporting Process Over Rationalising and Streamlining Treaty Bodies' (2020) 25 International Journal of Human Rights 1.

24 On reform, see generally Sarkin (n 23).

1.5 *Format of Chapters*

The chapters follow the same structure, with each containing six parts. The first two parts are introductory, and provide an introduction to human rights in the country, and to the relationship of the country with the international human rights system in general. The third part is a schematic table of formal engagement of the country with the UN human rights treaty system. Part 4 provides an overview of the role and overall impact of the UN human rights treaties in the country. Here, the aim is to discern the big picture, not the detail. On the one hand, this part paints an overall picture of the role of the UN human rights treaties in the country, and deals with cross-cutting issues related to the treaties that a particular country has ratified. On the other hand, it provides a succinct summary of the main trends emerging from the detailed discussion in part 5. Part 5 provides a detailed impact of the different UN human rights treaties on the domestic level. The last part is a conclusion.

The length of the chapters varies, depending on factors such as the extent and duration of a particular state's engagement with the UN human rights system. An initial intention to have more succinct chapters was met with the reality of the abundance of state and other practice.

2 Changed Human Rights Landscape: UN Treaty Body System

2.1 *Core Treaties – from Six to Nine 'Core' Treaties in Force*

The effectiveness of the UN treaty system is premised on the acceptance by states of formal obligations under UN human rights treaties, which is a prerequisite for empowering 'individuals, groups, or parts of the state with different rights preferences that were not empowered to the same extent in the absence of the treaties'.[25] The very concept 'core UN human rights treaties' has seen a clear evolution. Over the last 20 years, three further treaties entered into force: the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW, adopted as far back as 1990) in 2003; the 2006 Convention on the Rights of Persons with Disabilities (CRPD) in 2008; and the 2006 Convention for the Protection of All Persons from Enforced Disappearance (CED) in 2010. These additions increased the number of 'core' treaties under the study's purview to nine, three up from the six at the time of the initial study.

25 Simmons (n 20) 25.

TABLE 0.1 Core UN human rights treaties and substantive protocols

TREATY, adoption	Entry into force
CERD, 1965	1969
CCPR, 1966	1976
CESCR, 1966	1976
CEDAW, 1979	1981
CAT, 1984	1987
CRC, 1989	1990
CMW, 1990	2003
CED, 2006	2010
CRPD, 2006	2008
OP2-CCPR, 1989	1991
OP-CRC-AC, 2000	2002
OP-CRC-SC, 2000	2002

To these should be added optional protocols elaborating on the *substance* of the core treaties.[26] Two substantive optional protocols entered into force in the last 20 years: the 2000 Optional Protocol to CRC on the Sale of Children, Child Prostitution and Child Pornography (OP-CRC-SC); and the 2000 Optional Protocol to CRC on the Involvement of Children in Armed Conflict (OP-CRC-AC) (which both entered into force in 2002). The Council of Europe (CoE) Lanzarote Convention is addressing the same issues as OP-CRC-SC, allowing for two divergent arguments by CoE member states, namely, either that ratification of both treaties therefore is not required; or that ratification of the other treaty does not create obstacles.

By 1999 only four study states had not accepted all six core treaties: Jamaica was not a state party to CAT; South Africa was not a party to CESCR; India not to CAT and Iran not to CAT and CEDAW. By 2020 South Africa and India had ratified CESCR and CAT, respectively. (Iran still is not a party to CAT and CEDAW.) The new study countries, Nepal, Poland and Turkey, are party to all six of these treaties. In other words, of the 2019 study countries, only one state covered in the follow-up study has not accepted all of the initial six treaties – Jamaica, which has not yet become a party to CAT.

26 One such protocol, the 1989 Second Optional Protocol to CCPR, aimed at the abolition of the death penalty (OP2-CCPR), having entered into force in 1991, was already in force.

In respect of the three treaties that entered into force after 2000, the position is as follows:

- CRPD – all 20 2019 study countries ratified or acceded to (in line with global trend, with a total of 184 state parties);
- CED – half (10, or 50 per cent) of the 2019 study countries ratified or acceded to (in line with but higher than the global trend, with a total of 64 state parties (or 33 per cent of UN membership) becoming party to CED);
- CMW – only 7 (or 35 per cent) of the new states ratified or acceded to (in line with global trend, with a total of 56 state parties (29 per cent of UN membership));
- OP-CRC-AC and OP-CRC-SC are ratified by all study countries except Zambia (but it is not clear why).

A variety of reasons explain ratification. The study confirms that political leadership and political context are important factors favouring ratification. Under the rule of Egyptian President Mubarak (1981 to 2011) who adopted a softer style of authoritarianism, CCPR, CESCR, CRC, CAT, CRPD, CMW, CRC-OP-AC and CRC-OP-SC were all ratified. Mexico, the only country among the 20 to have become party to all nine core treaties, as well as OP-CAT, OP2-CCPR, OP-CRC-AC and OP-CRC-SC, has under President Vicente Fox (2000 to 2006) seen a paradigmatic shift in Mexico's human rights foreign policy, with a permanent representative of the Office of the High Commissioner for Human Rights (OHCHR) being established in Mexico City. The surge in ratifications in the 2000s and the late ratification of the twin Covenants in 2003 correspond with Turkey's Europeanisation process, with increased commitment to UN treaties and legal reform driven by its access negotiations with the European Union (EU). Canadian officials cited the federal government's strategy to unify Canada as a catalyst for ratification.

Only two treaties, CMW and CED, enjoy a rate of ratification of 50 per cent or lower. The study countries provide some insight into the reasons for the formal acceptance of these treaties.

The most frequently invoked reasons for non-adherence to CED include that existing obligations under international law and under domestic criminal law make ratification unnecessary or redundant (Australia, Czech Republic); avoidance of responsibility for involvement in forced disappearance in Afghanistan (Canada); and pervasive problems of disappearances (Brazil). As the only treaty Egypt has not ratified, unresolved reported claims of disappearances by the National Council of Human Rights suggest an unwillingness on the part of the government to be held accountable for such practices (Egypt). In other countries, the resistance is less principled. In Estonia, ratification is under consideration; in Nepal, ongoing national processes may have

suspended ratification;[27] and in South Africa, bureaucratic hurdles rather than principled opposition have delayed ratification.

Most 'developed countries' that are destinations for international migratory flows are not state parties or even signatories to CMW (Australia, Canada, Japan, Russain Federation). Canada cites a policy of preference for highly-educated and skilled workers as the basis of non-adherence to CMW. It also indicated that migrant management was an area that should remain entirely within its domestic purview. Japan noted that CMW contravened domestic laws and its Constitution, thus invoking national law as a basis for not aligning national law with international standards. The Russian Federation's ratification is impeded by economic reasons (the lack of resources for ensuring the implementation of the Convention's requirements); legal reasons (difficulties in reforming national legislation); and institutional reasons (the absence of necessary institutes for a qualitative implementation of the Convention's norms). No EU member state has accepted CMW. This factor accounts for CMW not being formally accepted by the Czech Republic, Estonia, Finland, Poland and Spain. These states take the view that the EU position was not adequately considered when the UN General Assembly drafted and adopted the Convention; that the CMW is not in line with EU policies and regulations; that it does not distinguish between those migrants lawfully and unlawfully in the country;[28] and they argue that the shared competences on asylum and migration of the EU and its member states are an obstacle to ratify CMW.[29]

Seven states covered in our study have not formally adhered to OP2-CCPR. These states maintain the death penalty under domestic law, even if only *de jure*.

2.2 *Treaty Bodies – from Six to Ten Treaty Bodies, and the Addition of Oversight of Detention*

CMW, CRPD and CED each established a new treaty body. In addition, a mechanism for allowing visits to places of detention, the Sub-Committee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), was established under the Optional Protocol to the

27 At the domestic level in Nepal, the Commission of Enforced Disappeared Persons and Truth and Reconciliation Commission was established in 2015 in accordance with the Enforced Disappearances Inquiry, Truth and Reconciliation Commission Act, 2014.

28 A/HRC/WG.6/8/ESP/1, 19 February 2010 para 20; and A/HRC/29/8, 13 April 2015 para 131.

29 E MacDonald and R Cholewinski, *The Migrant Workers Convention in Europe. Obstacles to the Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families: EU/EEA Perspectives* (UNESCO 2007) 69.

Convention against Torture (OP-CAT), which was adopted in 2002 and entered into force in 2006. The great innovation that OP-CAT brings is that state parties allow on-site visits without the need for state authorisation. Of the 20 2019 study countries, only 11 have accepted OP-CAT. It has not been accepted by Canada, Colombia, Egypt, India, Jamaica, Japan, Nepal, Russian Federation and Zambia. Russian Federation contends that ratification of OP-CAT is not necessary because it already accepts the mandate of the European Committee for the Prevention of Torture, and that accepting the SPT can potentially lead to duplication and overlap.

2.3 *Increase in State Reporting*

While reporting was required under a possible six treaties, this has increased to a possible nine. For three states in the study cohort (Brazil, Mexico, Senegal) reporting now is required under nine treaties. For all states in the study cohort, reporting under at least one treaty (CRPD) has been added. In addition, the intervening years saw 20 years of reporting cycles continuing. Many more reports have been considered, and Concluding Observations received. However, the period of delay in submission has also increased. For example, Zambia is a total of 19 years overdue with four reports (under CERD, CAT, CESCR, CED) at an average of almost five years per report. With reference to the 17 countries for which we have comparative data: The number of states with an average delay of more than three years per due report has doubled, from four at the end of 1999 (Brazil, Estonia, Jamaica, Zambia), to eight by mid 2019 (Brazil, Egypt, India, Jamaica, Senegal, South Africa, Zambia). Only four study countries (Australia, Colombia, Czech Republic, Estonia) have managed to reduce the period of delay in submission.

The introduction of the 'simplified reporting procedure' is a feature that has become available in the context of increasing reporting obligations. Instead of waiting for states to submit reports, and on the basis of these reports submitting a list of questions/issues to states, the simplified procedure allows treaty bodies to send to state parties a 'list of issues prior to reporting'. The state's responses to the list or issues then effectively becomes the report, replacing the lengthy report. The CAT Cttee was the first treaty body in 2007 to offer states this option.[30] Subsequently, all the other treaty bodies with regular reporting procedures have adopted the simplified procedure (with some variations) as an option. Some of these have been introduced relatively recently, and fall outside the study period.[31]

30 A/62/44, paras 23–24.

31 CRC Cttee made this an option for state reports due after 1 September 2019, <https://www.ohchr.org/en/treaty-bodies/crc/reporting-guidelines> accessed 31 March 2023.

TABLE 0.2 UN treaty bodies

1969 – 6/1999	7/1999 – 6/2019
30 years	20 years
6 core treaties	**9 core treaties**
CERD CESCR CCPR CEDAW CAT CRC	CERD CESCR CCPR CEDAW CAT CRC CMW CED CRPD
1 substantive Protocol	**3 substantive Protocols**
OP2-CCPR	OP2-CCPR OP-CRC-AC OP-CRC-SC OP-CAT
3 complaints procedures	**9 complaints procedures**
76-OP1-CCPR 82-a14-CERD 87-a22-CAT	76-OP1-CCPR 82-art 14-CERD 87-art 22-CAT 00-OP-CEDAW 08-OP-CRPD 10-art 31-CED 13-OP-CESCR 14-OP-CRC-CP

Whether the regular or simplified reporting processes are followed, they culminate in Concluding Observations, to be implemented by states. The HRCttee initiated a process of follow-up to Concluding Observations in 2001. In 2003 the inter-committee meeting of the human rights treaty bodies recommended that all treaty bodies should examine the possibility of setting up a procedure of follow-up to Concluding Observations, and they obliged: the CESCR Cttee in 1999; the CAT Cttee in 2003; the CERD Cttee in 2004; the CEDAW Cttee in 2008; the CRPD Cttee in 2012; and the CED Cttee started in 2014. This follow-up procedure has become an important means of assessing the degree to which compliance with the recommendations of UN treaty bodies has had an impact.

The process broadly entails the following (with variations). The treaty body identifies issues (around one to four) from among the most recently-issued issued Concluding Observations to prioritise. It then requests additional information from state parties, with a view to assessing whether the recommendations have been implemented. The treaty body sets a period (of around one to two years) within which the state is required to provide the relevant information. The treaty body appoints one of its members as rapporteur or 'coordinator' to lead the process. Follow-up is considered on the basis of the state response and replies for NGOs and other actors. The treaty body then assesses

TABLE 0.3 State acceptance of optional complaints procedures and SPT mandate

	OP-CCPR	CERD art 14	CAT art 22	OP-CEDAW	OP-CRPD	CED art 31	OP-CESCR	OP-CRC-CP	CMW art 77	OP-CAT (SPT)	Total per state
Australia	✓	✓	✓	✓	✓	N/A	X	X	N/A	✓	6
Brazil	✓	✓	✓	✓	✓	X	X	✓	N/A	✓	7
Canada	✓	X	✓	✓	✓	N/A	X	X	N/A	X	4
Colombia	✓	X	X	✓	X	X	XX	X	X	X	2
Czech Republic	✓	✓	✓	✓	✓	✓	X	✓	N/A	✓	8
Egypt	X	X	X	X	X	N/A	X	X	X	X	0
Estonia	✓	✓	X	X	✓	N/A	X	X	N/A	✓	4
Finland	✓	✓	✓	✓	✓	X	✓	✓	N/A	✓	8
India	X	X	X	X	X	X	X	X	N/A	X	0
Jamaica	X	X	X	X	X	N/A	X	X	X	X	0
Japan	X	X	X	X	X	X	X	X	N/A	X	0
Mexico	✓	✓	✓	✓	✓	✓	X	X	✓	✓	8
Nepal	✓	X	X	✓	✓	N/A	X	X	N/A	X	3
Poland	✓	✓	✓	✓	X	N/A	X	X	N/A	✓	5
Russian Federation	✓	✓	✓	✓	X	N/A	X	X	N/A	X	4
Senegal	✓	✓	✓	✓	X	X	X	X	X	✓	5
South Africa	✓	✓	✓	✓	✓	N/A	X	X	N/A	✓	6
Spain	✓	✓	✓	✓	✓	✓	✓	✓	N/A	✓	9
Turkey	✓	X	✓	✓	✓	N/A	X	X	X	✓	5
Zambia	✓	X	X	X	X	X	X	X	N/A	X	1
Number	16	11	12	14	11	3	2	4	1	11	85/20= 4,25 average

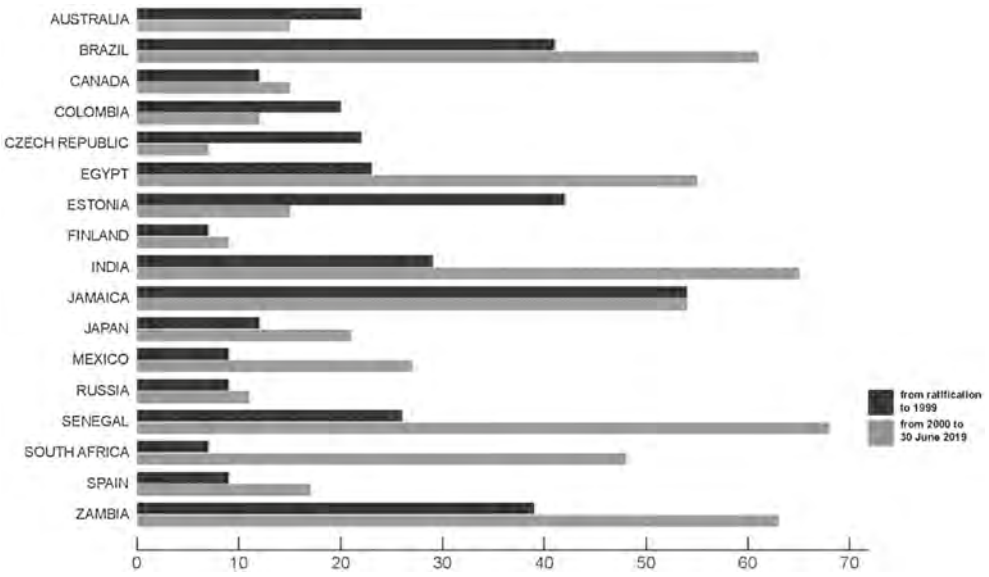

FIGURE 0.2 Average delay (in months) in submission of state reports (from ratification date to 1999; from 2000 to 30 June 2019)

the available information and may take a decision, for example by awarding a grade from A to E.[32]

2.4 *Individual Complaints – from Three to Eight (Optional) Individual Complaints Mechanisms in Force*

No less than five optional individual complaints mechanisms have come into force since 1999: the Optional Protocol to CEDAW (OP-CEDAW) that was adopted in 1999 and entered into force in 2000; the Optional Protocol to CRPD (OP-CRPD) that was adopted in 2006 and entered into force in 2008;

32 See eg Human Rights Committee, Note by the Human Rights Committee on the procedure for follow-up to concluding observations, CCPR/C/108/2 (21 October 2013): (A) Reply/action largely satisfactory: The state party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee; (B) Reply/action partially satisfactory: The state party has taken steps towards the implementation of the recommendation, but additional information or action remains necessary; (C) Reply/action not satisfactory: A response has been received, but action taken or information provided by the state party is not relevant or does not implement the recommendation; (D) No cooperation with the Committee: No follow-up report has been received after the reminder(s); (E) The information or measures taken are contrary to or reflect rejection of the recommendation.

the Optional Protocol to CESCR (OP-CESCR) that was adopted in 2008 and entered into force in 2013; the Optional Protocol to CRC on a Communications Procedure (OP-CRC-CP) that was adopted in 2011 and entered in force in 2014; and the required number of declarations pursuant to article 31 of CED to ensure that the competence of the CED Cttee to receive and consider individual complaints has been met, thereby securing its entry into force in 2010. A sixth complaints mechanism, provided for under article 77 CMW, was not yet in force by 30 June 2019, since the target of acceptance by 10 state parties required to allow it to enter into force had not been reached. Only one of the countries in the study (Mexico) was among five states globally that had made this declaration.

In the early 2000s Mexico experienced an important political transition from a one-party regime to a more competitive multi-party political system. The government of President Vicente Fox (2000 to 2006) brought about a paradigmatic shift in Mexico's human rights foreign policy. By 1999 it had accepted no optional complaints mechanism. Over the next 20 years, Mexico accepted seven of the nine complaints mechanisms (including under CMW, which is not yet in force).

Four states (Egypt, India, Jamaica, Japan) have not accepted any of the optional complaints mechanisms. This uniform reluctance to open up domestic judicial decisions to international scrutiny suggests principled opposition. This proposition is confirmed by Egypt's justification that the sufficiency of its domestic laws makes international recourse superfluous, and Japan's longstanding argument that accepting the submission of individual communications to UN treaty bodies would undermine judicial independence. Although these positions appear to be rather entrenched, at least in Japan some suggestions regarding the review of this position have been made. Although the experience of Jamaica has been coloured by its denunciation of OP1-CCPR, this withdrawal occurred in a very specific context framed by the death penalty. There seems to be some latitude for future acceptance of the complaints mechanisms under OP-CRPD and OP-CEDAW. Justifications from Indian officials include a fear of exposure of its human rights violations, a fear of overworking of its administrative machinery, a lack of resources to administer the remedies (compensation, and so forth), and unwavering faith in government institutions as the best avenue to secure human rights for individuals.

OP-CESCR is one of the least ratified complaints mechanisms. The main reasons for states' lack of enthusiasm are their misgivings about the justiciability of economic, social and cultural rights (Australia, Poland, Turkey); the resistance against perceived 'control' by (quasi)-judicial bodies over social policies or resource allocation (Australia, Poland); and the argument that accepting

OP-CESCR is unnecessary, since national legislation is sufficient to protect economic, social and cultural rights (Russian Federation).

OP-CRC-CP has a much lower level of acceptance than CRC. In Poland, reluctance to accept this complaint mechanism stems from a fear that it would lead to a questioning of restrictive domestic laws on, for example, abortion and contraception. South Africa advanced the sufficiency of its domestic legal system to justify not becoming a party.

Complaints under these procedures add an important dimension to the 2019 study. By 1999, not only were complaints mechanisms possible under only three treaties (CCPR, through OP1-CCPR, CERD and CAT) but the volume of complaints was also quite limited. Since then, individual complaints have become much more frequent. The number of complaints under the pre-existing three procedures also grew over the years. In many instances, the frequency of these complaints increased, signalling the evolving maturity of these complaints mechanisms. Complaints under the five new procedures also gradually started taking off.

In his 2020 'Status of the human rights treaty body system' report,[33] the UN Secretary-General provided the following pictures of an expanding communications procedure:

What matters most in a discussion on effectiveness are the complaints in which the state has been found in violation, and in which a remedial action is called for. The last 20 years have witnessed an increase in the number of communications in which treaty bodies found violations by state parties that have accepted optional complaints mechanisms. Tables 0.5 to 0.9 below show the increase in violations found, in respect of states from the five UN regions, and in total (Table 0.10) comparing the first and the present periods:

The relevant part of these findings is the remedial recommendation, usually dealing with redress to the author or complainant, and then with measures of a general or systemic nature, aimed at preventing a recurrence of the violation. It is not an easy task to ascertain the implementation status of these findings. There is no central database that shows whether states replied to the treaty body's request to provide information about measures taken, within a stipulated period, or what these measures are. As the number of violation findings grew, and the need for information and data increased, the treaty bodies devised a system of engaging with states in a follow-up process on individual communications.

33 Report of the Secretary-General, A/74/643, 10 January 2020 <https://undocs.org/A/74/643>; Annex VI: Individual communications registered as at 31 October 2019.

TABLE 0.4 Number of final decisions on communications adopted per treaty body, 2015 to (31 October) 2019

Treaty body	No. of final decisions on communications adopted in 2015	No. of final decisions on communications adopted in 2016	No. of final decisions on communications adopted in 2017	No. of final decisions on communications adopted in 2018	No. of final decisions on communications adopted as at 31 October 2019
CERD Cttee	3	2	1	2	4
HRCttee	101	109	131	101	134
CESCR Cttee	1	5	2	4	21
CEDAW Cttee	9	12	13	18	19
CAT Cttee	65	53	65	68	39
CRC Cttee	1	1	2	9	17
CRPD Cttee	3	3	8	6	9
CED Cttee	0	1	0	1	0
TOTAL DECISIONS	183	186	222	209	243

FIGURE 0.3 Total number of individual communications registered, 2012 to (Oct) 2019
SOURCE: A/77/279 ANNEX VIII

TABLE 0.5 Number of communications in which TBs found violations against WEO states

	CERD		CCPR		CAT	
	up to 06/1999	07/1999 – 06/2019	up to 06/1999	07/1999 – 06/2019	up to 06/1999	07/1999 – 06/2019
Australia	0	1	2	33	1	5
Canada	n/a	n/a	8	20	1	8
Finland	0	0	4	1	0	2
Spain	0	0	2	26	1	8
Total	0	1	16	80	3	23

TABLE 0.6 Number of communications in which TBs found violations against East European states

	CERD		CCPR		CAT	
	up to 06/1999	07/1999 – 06/2019	up to 06/1999	07/1999 – 06/2019	up to 06/1999	07/1999 – 06/2019
Czech Republic	n/a	0	2	29	0	0
Estonia	n/a	0	0	1	n/a	n/a
Poland	0	0	0	1	0	0
Russia	0	0	0	39	0	3
Total	0	0	2	70	0	3

TABLE 0.7 Number of communications in which TBs found violations against 'Asian' states

	CERD		CCPR		CAT	
	up to 06/1999	07/1999 – 06/2019	up to 06/1999	07/1999 – 06/2019	up to 06/1999	07/1999 – 06/2019
India	n/a	n/a	n/a	n/a	n/a	n/a
Japan	n/a	n/a	n/a	n/a	n/a	n/a
Nepal	n/a	n/a	0	23	n/a	n/a
Turkey	n/a	n/a	n/a	3	0	0
Total	0	0	0	26	0	0

Thus, another important development over the last two decades has been the inclusion of a follow-up procedure on views, by all treaty bodies (except the CED Cttee). While there are differences between treaty bodies, in the main the process is triggered by and dependent on states (and authors) providing information. A relatively small number of views are considered at any particular opportunity, leading to a small number of cases being closed, and a steady increase in the overall number of cases under the follow-up procedure.

TABLE 0.8 Number of communications in which TBs found violations against African states

	CERD		CCPR		CAT	
	up to 06/1999	07/1999 – 06/2019	up to 06/1999	07/1999 – 06/2019	up to 06/1999	07/1999 – 06/2019
Egypt	n/a	n/a	n/a	n/a	n/a	n/a
Senegal	0	0	1	0	0	1
South Africa	0	0	n/a	1	0	0
Zambia	n/a	0	3	7	n/a	0
Total	0	0	4	8	0	1

TABLE 0.9 Number of communications in which TBs found violations against GRULAC states

	CERD		CCPR		CAT	
	up to 06/1999	07/1999 – 06/2019	up to 06/1999	07/1999 – 06/2019	up to 06/1999	07/1999 – 06/2019
Brazil	n/a	0	n/a	0	n/a	0
Colombia	n/a	0	9	13	n/a	0
Jamaica	n/a	n/a	77	7	n/a	n/a
Mexico	n/a	1	n/a	1	n/a	0
Total	0	1	86	21	0	0

TABLE 0.10 Number of communications in which TBs found violations against all 20 states

	CERD		CCPR		CAT	
	up to 06/1999	07/1999 – 06/2019	up to 06/1999	07/1999 – 06/2019	up to 06/1999	07/1999 – 06/2019
Total	0	2	108	285	3	27

2.5 *Inquiry Procedures*

At the time of the initial study, only one inquiry procedure, that under article 20 of CAT, was in place. By the end of the second decade of the new century, five further inquiry procedures – those under OP-CEDAW, CED, OP-CRPD, OP-CESCR and OP-CRC-CP – have been put in place and are being used. These inquiry processes are all triggered by the receipt of 'reliable information' indicating that the state party is committing 'grave or systematic violations'. While the possibility of a treaty body initiating an inquiry flows automatically from state adherence to CAT, OP-CEDAW, CED, OP-CRPD and OP-CRC-CP, with an option available under all but CED to explicitly opt out,[34] under OP-CESR an explicit opt-in is required for states to accept this procedure.[35] This distinction makes a considerable difference. As states have shown a reluctance to explicitly opt out,[36] the fallback position is that most of them have acquiesced to the inquiry procedures under CAT, OP-CEDAW, OP-CRPD and OP-CRC-CP. States have equally been slow to make opt-in declarations, resulting in only five state parties to OP-CESR having made opt-in declarations accepting the inquiry procedure. OP-CRC-CP went one step further by establishing a formal 'follow-up to the inquiry procedure', allowing the CRC Cttee to 'invite' the relevant state supply information on the measures it has taken to implement the recommendations resulting from the inquiry.[37]

Because the inquiry procedure allows for the submission of information to UN treaty bodies without requiring the exhaustion of local remedies, it was expected that this avenue would become an important tool to better protect treaty guarantees. However, using OP-CEDAW as measure, by mid-2019 a disappointingly small number had been undertaken.[38] Of the four inquiries concluded under OP-CEDAW, two were to study countries (Canada and Mexico).

By 30 June 1999 only four article 20-inquiries had been undertaken, two of these to study countries (Brazil and Turkey). Article 20 inquiries have subsequently taken off, with eight inquiries undertaken, four of which in respect of study countries: in respect of Mexico (2003), Colombia (2006), Nepal (2006)

34 However, states may make an explicit declaration to opt out under CAT (art 28(1)); OP-CEDAW (art 10(1)); OP-CRPD (art 8); and OP-CRC-CP (art 13(7)).

35 Art 11 OP-CESCR.

36 Very few states have made use of the opt-out option. Under OP-CRPD, eg, only two states (Guinea Bissau and Syria) opted out, and in respect of OP-CEDAW, only six states opted out (including one study country, Colombia).

37 OP-CRC-CP, art 14.

38 Catherine O'Rourke, 'Bridging the Enforcement Gap – Evaluating the Inquiry Procedure of the CEDAW Optional Protocol' (2018) 27 American University Journal of Gender, Social Policy and the Law 1.

and Brazil (2008).[39] With the first visit by the SPT taking place in 2007, these visits are of more recent origin. It would appear that since then, the SPT visits are largely eclipsing article 20-visits. In the period between 2008 and 2019, the SPT conducted more than 70 visits. Seven of the study countries received a visit, with two visits to Mexico (2008, 2016), Brazil (2011, 2015) and Senegal (2012, 2019), and one each to Estonia (2009), Turkey (2015), Spain (2017) and Poland (2018).

3 Changed Human Rights Landscape: Beyond UN Treaty Body System

3.1 *UN Charter-Based System*

Within the broader UN human rights framework, a number of far-reaching changes had also taken place. The Human Rights Council (HRC) replaced the Commission on Human Rights, and met for the first time on 19 June 2006. One of the main achievements of the HRC is the UPR. Two UPR cycles have taken place during the 20-year period, a first from 2008 to 2011, and a second from 2012 to 2016. A third cycle, scheduled to run from 2017 to 2022, was underway for part of the study period. In the period between 1 July 1999 and 30 June 2019, each of the states in this study has undergone at least two rounds of review under the UPR, resulting in hundreds of recommendations addressed to each of them.

There has also been an enormous expansion in the special human rights procedures established under the HRC. Many of their thematic mandates to some extent overlap or reinforce aspects of the treaty bodies' work. Some of the newly-established rapporteurs are the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health (established in 2002); the Special Rapporteur in the Field of Cultural Rights (2009); the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association (2010); the Independent Expert on the Enjoyment of All Human Rights by Older Persons (2013); the Special Rapporteur on the Rights of Persons with Disabilities (2014); the Independent Expert on the Enjoyment of Human Rights by Persons with Albinism (2015); and the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity (2016). It should be noted that, at

39 <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx> accessed 5 November 2022.

the level of the OHCHR, attention has also increasingly been directed to the domestic impact of visits undertaken and appeals made by these procedures.[40]

3.2 *Burgeoning Growth in Regional Human Rights Systems*

Regional human rights systems also matured, and extended the scope of their work and influence. The 20 years since 1999 have witnessed significant growth in the outputs and domestic resonance of the three major regional human rights systems. In all three of the well-established regional human rights systems, the possibility of a binding judgment by an international court exists. This growth further problematizes efforts to discern the precise contribution of the UN treaty body system to reform at the domestic level.

In Europe, within the CoE, Protocol 11 to the European Convention of Human Rights entered into force in 1998. It made the European Court of Human Rights a full-time institution and abolished the European Commission of Human Rights, which used to decide on the admissibility of applications. The right to individual petition became automatic. The newly-overhauled Court attracted a large number of applications.

While the European Convention for the Prevention of Torture (ECPT) was adopted already in 1987 and entered into force in 1989, the European Committee for the Prevention of Torture (CPT) in the last two decades solidified its role of undertaking missions to state parties to conduct unannounced visits to places of detention. Building on the 1961 European Social Charter, its updated and adjusted reincarnation, the 1996 revised European Social Charter, and its 1995 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, entered into force in 1999 and 1998, respectively. The European Committee of Social Rights decided its first complaint on 9 September 1999,[41] finding a violation of the Social Charter. To this list can be added the 2007 CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), which entered into force on 1 July 2010;[42] and the 2011 CoE Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), which entered into force in 2014.[43] The Charter of Fundamental Rights of the European Union, which entered into force in 2009,

40 See 'How do Special Procedure Mandate-Holders Make a Difference?' <https://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx> accessed 5 November 2022.

41 No 01/1998 *International Commission of Jurists* (*ICJ*) *v Portugal.*

42 All CoE member states have ratified both OP-CRC-SC and the Lanzarote Conventions.

43 Turkey's withdrew from the Istanbul Convention, which withdrawal took effect on 1 July 2021.

also adds another dimension of rights protection for EU member states. The EU established its Fundamental Rights Agency in 2007, and the EU Charter of Fundamental Rights came fully into effect in 2009.

In the Inter-American human rights system, established under the Organization of American States, a number of treaties are similar in substantive scope to UN treaties. The American Convention is a parallel to CCPR; the 1988 Protocol additional thereto in the Area of Economic, Social, and Cultural Rights, which entered into force in 1999, has many similarities to CESCR. Other self-standing OAS human rights treaties include the 1994 Inter-American Convention on the Forced Disappearance of Persons; the 1994 Inter-American Convention to Prevent, Punish and Eradicate Violence against Women; the 1999 Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (entered into force 2001); the 2013 Inter-American Convention against Racism, Racial Discrimination, and Related Intolerance (in force since 2017); and the 2013 Inter-American Convention Against All Forms of Discrimination and Intolerance (entered into force in 2020 when Mexico became the second state to become party to this treaty). Many of these predate equivalent UN treaties.

At the turn of the millennium, the intergovernmental organisation within which the African regional system is located, transformed itself from the Organisation of African Unity (OAU) into the African Union (AU). Compared to its predecessor (the 1963 OAU Charter) the AU Constitutive Act places human rights much closer to its core. At a normative level, the 1981 African Charter on Human and Peoples' Rights (Africa Charter) is largely inspired by CCPR and CESCR. Importantly, it provides for an automatic right of individual access to the quasi-judicial supervisory body, the African Commission on Human and Peoples' Rights (African Commision). Two AU human rights treaties that are regional parallels to UN treaties entered into force around 2000: the 1990 African Charter on the Rights and Welfare of the Child (African Children's Charter) in 1999, and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) in 2005. With the advent of the African Court on Human and Peoples' Rights (African Court) in 2006, after the 1998 Court Protocol on the Establishment of an African Court entered into force in 2004, the possibility of a binding judgment also exists in the African system. It should be noted that the substantive jurisdiction of the African Court extends to UN human rights treaties ratified by respondent states.[44] In Africa, human rights protection at the sub-regional

44 African Court Protocol, art 3(1).

level, in particular within the Economic Community of West African States (ECOWAS), also rose in prominence over the last two decades.

3.3 *Human Rights at the National Level*

As much as significant growth and expansion occurred at the international level, the domestic level also experienced pertinent changes. The earlier study had made proposals for the establishment of inter-departmental fora to deal with reporting and implementation, along the lines of the 'National Mechanisms for Reporting and Follow-up' (NMRF). The OHCHR has put its full weight behind the NMRF process,[45] while further national implementing mechanisms evolved over this period.[46] The role of national human rights institutions has also since 1999 become more pronounced, as more national human rights institutions became established in various regions of the world.[47]

It should be noted that there has also been an evolution towards making the newly-established treaties better attuned to effective and meaningful implementation by requiring the creation of national implementing institutions. If the tendency since the early 1990s has been to increase the role of national human rights institutions in treaty monitoring and implementation, two UN human rights instruments drafted since the turn of the century take a significant step further. Both OP-CAT and CRPD formally require national institutions to play a role in monitoring or implementing states' treaty obligations. State parties to these two instruments are required to give the relevant national institutions the necessary powers to carry out various functions specified in the treaty itself. This is a radical new method of implementing treaties.

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45 See *National Mechanisms for Reporting and Follow-Up: A Practical Guide to Effective State Engagement with International Human Rights Mechanisms* (UN OHCHR 2016); on the critical elements that states need to consider when establishing or strengthening their national mechanism for reporting and follow-up, see <https://www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf> accessed 5 November 2022.

46 Rachel Murray and Christian de Vos, 'Behind the State: Domestic Mechanisms and Procedures for the Implementation of Human Rights Judgments and Decisions' (2020) 12 Journal of Human Rights Practice 22; Lingliang Zeng, 'Implementation Mechanism of the UN Core Human Rights Treaties: Current Situation, Issues and Enhancement' in Lingliang Zeng, *Contemporary International Law and China's Peaceful Development* (Springer 2021) 213.

47 See eg Richard Carver, 'A New Answer to an Old Question: National Human Rights Institutions and the Domestication of International Law' (2010) 10 Human Rights Law Review 1; and T Kayaoglu, 'National Human Rights Institutions: A Reason for Hope in the Middle East and North Africa?' Brookings Doha Centre Analysis Paper (2021) (noting the rise of NHRIs in the MENA region, and their role in more domestic implementation of UN treaties).

OP-CAT's aim is the prevention of torture, primarily by establishing mechanisms for visiting places of detention. The Sub-Committee on Prevention of Torture (SPT) occupies a position analogous to a national mechanism. In parallel with the SPT, OP-CAT also requires state parties to establish a national preventive mechanism within a year of ratification.[48] CRPD explicitly calls for the creation of national 'focal points' and the designation of national human rights institutions to promote, protect and monitor implementation of the Convention.[49] Article 33(2) simply requires state parties to 'designate or establish' independent mechanisms.

An emerging and ongoing challenge is the implementation of UN human rights treaty standards – and research – at the sub-national, encompassing both the federal ('state'/'provincial') level and the district/local authority level.[50] The Inter-American Court of Human Rights has already stated that a state cannot invoke its federal structure to justify its failure to comply with an international obligation.[51]

4 Contribution to Academic Debate

Interest in and scholarship on the 'impact', 'implementation' or 'compliance' by states with international human rights law, generally, and the UN treaty body system, specifically, have blossomed over the last 20 years. In fact, it was in the very year in which the initial study was published, 2002, that Hathaway's seminal article ('Do human rights treaties make a difference?') saw the light.[52] Its comprehensive scope, provocative title, its bleak conclusion, and its methodology are factors that explain the wide citation this article enjoys, and the range of the responses to it.[53]

'Implementation/impact' research on the UN human rights treaty system has since then evolved into many directions. In terms of focus, UN human

48 OP-CAT, art 17.

49 CRPD, art 33(1).

50 Barbara Oomen and Baumgärtel Moritz, 'Frontier Cities: The Rise of Local Authorities as an Opportunity for International Human Rights Law' (2018) 29 European Journal of International Law 607.

51 Corte IDH *Caso Escher y otros v Brasil*, sentença de 06.07.2009, Série C, n. 200, 65–66; Corte IDH, *Caso Garibaldi v Brasil*, sentença de 23.09.2009, Série C n. 203.

52 Oona A Hathaway, 'Do Human Rights Treaties Make a Difference?' (2002) 111 Yale Law Journal 1935.

53 See eg Ryan Goodman and Derek Jinks, 'Measuring the Effects of Human Rights Treaties' (2003) 14 European Journal of International Law 171.

rights treaty-impact research may be categorised as country-specific,[54] treaty-specific,[55] or procedure-specific (by, for example, focusing on state reporting),[56] or a combination of any of these.[57] In other contributions, attention is directed to the various pathways of domestic implementation and impact (for example, through the judiciary,[58] or through domestic bills of rights).[59] The reasons or motivation of ratifying states also interrogated,[60] while the effect of international human rights law in particular political contexts is also being

54 See eg Carole J Petersen, 'Sexual Orientation and Gender Identity in Hong Kong: A Case for the Strategic Use of Human Rights Treaties and the International Reporting Process' (2012) 14 Asian-Pacific Law and Policy Journal 28; Marc Gambaraza 'La Mise en Oeuvre de la Convention relative aux Droits de l'enfant en France: Les Enjeux relatifs à la Protection de l'enfance dans une Perspective Internationale' (2021) 19 Droits Fondamentaux; Benoît Eyraud, 'Adopter une approche du handicap par les droits humains? La domestication en spirale de la Convention internationale sur les droits des personnes handicapées en France' (2023) 113(1) Droit et *société* 55-71..

55 Linda Camp Keith, 'The United Nations International Covenant on Civil and Political Rights: Does it Make a Difference in Human Rights Behaviour?' (1999) 36 Journal of Peace Research 95; Neil A Englehart and Melissa K Miller, 'The CEDAW Effect: International Law's Impact on Women's Rights' (2014) 13 Journal of Human Rights 22; Susanne Zwingel, 'From Intergovernmental Negotiations to (Sub)-National Change: A Transnational Perspective on the Impact of CEDAW' (2005) 7 International Feminist Journal of Politics 400; Wayne Sandholtz, 'Domestic Law and Human Rights Treaty Commitments: The Convention against Torture' (2017) 16 Journal of Human Rights 25; Frances Raday, 'Gender and Democratic Citizenship: The Impact of CEDAW' (2012) 10 International Journal of Constitutional Law 512 <https://doi.org/10.1093/icon/mor068>; Christopher McCrudden, 'Why Do National Court Judges Refer to Human Rights Treaties? A Comparative International Law Analysis of CEDAW' (2015) 109 AJIL 534.

56 Cosette D Creamer and Daniel W Simmons, 'The Proof is in the Process: Self-Reporting Under International Human Rights Treaties' (2020) Faculty Scholarship at Penn Carey Law 2145 <https://scholarship.law.upenn.edu/faculty_scholarship/2145> accessed 5 November 2022.

57 Ursula Kilkelly, Laura Lundy and Bronagh Byrne (eds), *Incorporating the UN Convention on the Rights of the Child into National Law* (Intersentia 2021). At the same time treaty-specific (CRC) and country-specific, in the various chapters, covering mostly states in the WEO UN region (Australia, New Zealand, Iceland, Ireland, Norway, Scotland, Sweden, United States of America, Wales) as well as China, Mexico and South Africa. Three countries are included in this publication as well as in the 1999 and 2019 studies.

58 McCrudden (n 55) 534; Machiko Kanetake, 'UN Human Rights Treaty Monitoring Bodies Before Domestic Courts' (2018) 67 International and Comparative Law Quarterly 201.

59 James Raymond Vreeland, 'Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention Against Torture' (2008) International Organization 65.

60 Oona A Hathaway, 'Why Do Countries Commit to Human Rights Treaties?' (2007) 51 Journal of Conflict Resolution 588; Eric Neumayer, 'Do International Human Rights Treaties Improve Respect for Human Rights?' (2005) 49 Journal of Conflict Resolution 925.

investigated.[61] Various disciplinary perspectives – in particular, law, political science,[62] international relations and sociology – have been brought to bear on the topic, marking the field as particularly multidisciplinary in nature.

This study, 20 years on from the previous, builds upon this broad research providing an insight, through the lens of particular states, into the domestic reach of these international obligations and mechanisms.

61 Emilie Hafner-Burton and Kiyoteru Tsutsui, 'Justice Lost! The Failure of International Human Rights Law to Matter Where Needed Most' (2007) 44 Journal of Peace Research 407; Claudio Grossman, 'Implementing Human Rights in Closed Environments through the United Nations Convention against Torture' (2014) 31 Law Context: A Socio-Legal Journal 125.

62 Eg, Daniel W Hill, 'Estimating the Effects of Human Rights Treaties on State Behaviour' (2010) 72 Journal of Politics 1161.