

MONITORING PEACE AND SECURITY MANDATES FOR HUMAN RIGHTS

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Abstract

The jurisprudence under international human rights treaties, has had considerable impact across countries. Known for addressing complex agendas, the work of expert bodies under the treaties, has been credited and relied upon for filling the gaps in the realization of several objectives, including the peace and security agenda.

In 1982, the Human Rights Committee (ICCPR), in a General Comment observed that “states have the supreme duty to prevent wars, acts of genocide and other acts of mass violence ... Every effort ... to avert the danger of war, especially thermonuclear war, and to strengthen international peace and security would constitute the most important condition and guarantee for the safeguarding of the right to life.” Over the years, all treaty bodies have contributed in this direction, endorsing peace and security so as “to protect people against direct and structural violence ... as systemic problems and not merely as isolated incidents ...”. A closer look at the jurisprudence on peace and security, emanating from treaty monitoring mechanisms including state periodic reports, interpretive statements, the individual communications procedure, and others, reveals its distinctive nature.

Monitoring States

Treaty bodies, in furtherance of their mandate to monitor States, have sought appropriate response and action to the “recruitment of children in armed conflict” and “push-backs of refugees including children”, clashes between security forces and armed separatist groups, and inter-ethnic conflict”, “statelessness”, “disappearances involving armed groups”, “forced disappearances in the context of conflict”, “redressal to victims of war crimes including sexual violence”, etc.

The process of monitoring for peace and security has been an ever-expanding field of interaction contributing to the creation of system-specific, violence/harm-specific, and governance-specific knowledge. Greece, for instance, informed the Committee on the Rights of the Child that the area of child rights “was highly horizontal” and “a cross-cutting concern”. Under the International Convention

on the Protection of All Persons from Enforced Disappearance, the Minister of Justice of Niger, conveyed to the Committee on Enforced Disappearances that the countries of the Sahel, “were facing a serious security crisis” due to almost daily attacks by “numerous non-State armed groups”, which “led to human rights violations and worsened the humanitarian situation”.

Violence and System Specific Approaches

A violence/harm-specific approach adopted by the Committee against Torture, Committee on Persons with Disabilities, and Committee on Enforced Disappearances, makes their work an important source on harm-based interpretations of the peace and security agenda. *Mrs. A v. Bosnia and Herzegovina* (2019), decided by the Committee against Torture, is noteworthy in this regard. The

Committee held that rape and other acts of sexual violence constitute torture under the Convention against Torture, and states are under an obligation to develop a legal framework clearly defining criteria for the status of victims of war crimes, including sexual violence. The State was held responsible to pay fair and adequate compensation and provide free medical and psychological care to Mrs A.

Towards the objective of preventing conflict, treaty bodies have issued directions to member-states to strengthen state machinery. For instance, the CERD recommended that Kazakhstan train local authorities and law enforcement officials to identify and resolve ethnic tensions. It also called for strengthening the legal and political power of the Assembly of People of Kazakhstan to enhance effectiveness in promoting peaceful coexistence of ethnic groups and preventing ethnic tensions and conflicts. In the case of Columbia, the Committee on Enforced Disappearances sought clarification on the databases on persons allegedly subjected to forced disappearance in the country, within and outside the context of the conflict. The system-specific approach has enabled the pursuit of reforms reflective of and in sync with the level of development of countries.

Distinctive Jurisprudence

Treaty body jurisprudence has been seen to provide stronger protection than other international frameworks. The jurisprudence under the International Convention on Rights of Persons with Disabilities (CRPD), as against international humanitarian law, was found to be open to an understanding of the impact and interaction between an individual's inherent characteristics—sex, age, ethnicity, disability, etc.—and their access to and enjoyment of human rights in conflict settings. According to Priddy, taking into account inherent characteristics, the CRPD “responds to the

the lived experience of persons with disabilities” in conflict settings. Further, refugee advocates have increasingly turned to monitoring procedures under international conventions, particularly the Convention against Torture.

Treaty mechanisms are frequently relied upon to strongly enforce the peace and security mandates of states. In 2011, the World YWCA and the Women's International League for Peace and Freedom discussed recommendations for a stronger link between the CEDAW reporting process, human rights, and the peace and security agenda, with the CEDAW Committee. They emphasized sexual and reproductive health rights of women in conflict situations and monitoring the allocation of budgets to these issues. More recently, Human Rights Watch (2021), in its Submission to the Committee on the Rights of the Child, encouraged the Committee to ask the government of South Sudan, what specific measures it had taken for children adversely affected by armed conflict, and toward implementing the accountability mechanisms in its peace deals? Many such endeavours have shown that it is practical to pursue human rights jurisprudence as a dynamic, comprehensive, and influential field of study in the context of peace and security. However, many practical questions remain. Of these, the quasi-judicial nature of treaty bodies and the impact of their directives have received the greatest attention.

Future Research

The ‘peace and security’ jurisprudence of treaty bodies highlights various conceptual frames that require elaboration and refinement, namely:

- Peace and security as a universal mandate across institutional settings.
- The application of the peace and security mandate at all times.

- the importance of the human rights and state machinery/governance praxis, as the basis for monitoring legislative, judicial, and administrative mechanisms.
- treaty body mechanisms for the redressal of violations in conflict situations.
- human rights treaty jurisprudence as a reliable source of disaggregated data on the causes and impacts of armed conflicts.
- the pursuit of knowledge on violence/harm-specific mandates under all human rights treaties.
- the pursuit of knowledge for a comprehensive determination of country-specific responses on matters of peace and security.
- an assessment of the direct and indirect impact of treaty bodies guidance on domestic responses to peace and security.
- a study of the diversity of approaches to peace and security, including the search for harmony in the creation and application of mandates across treaty bodies, and other institutional forums.

Bibliography

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The core human rights treaties include the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on Rights of the Child (CRC), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of Persons with Disabilities (CRPD), International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), Convention on Elimination of Racial Discrimination (CERD), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW).

See UN Office of the High Commissioner, “The Core International Instruments and Their Monitoring Bodies”, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>.

See Kate Fox Principi, “Implementation of UN Treaty Body Decisions: A Brief Insight for Practitioners”, *Journal of Human Rights Practice* 1–8 (2020); Jasper Krommendijk, *The Domestic Effectiveness of International Human Rights Monitoring in Established Democracies: The Case of the Human Rights Treaty Bodies* (2015).

Treaty bodies are the expert bodies under human rights treaty frameworks. These include the Human Rights Committee (ICCPR), the Committee on Economic, Social and Cultural Rights (ICESCR), the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Elimination of Discrimination Against Women (CEDAW), the Committee Against Torture (CAT), the Committee on the Rights of the Child (CRC), Committee on Migrant Workers (CMW), the Committee on the Rights of Persons with Disabilities (CRPD), and the Committee on Enforced Disappearances (ICPPED). See “The Core International Instruments and Their Monitoring Bodies”, *op cit*.

ICCPR, General Comment No. 6 on Article 6 (Right to Life), <https://www.refworld.org/docid/45388400a.html>

Patrick Hayden, “Constraining War: Human Security and the Human Right to Peace”, *Human Rights Review*, (October–December 2004)

UNOCHR, “Experts of the Committee on the Rights of the Child Ask Greece About Roma Children and Push Back of Refugees at the Border” (May 2022),

UNOCHR, “In Dialogue with Niger, Experts of the Committee on Enforced Disappearances Ask About Cases Involving Armed Groups, and Cases Overseen by Military Courts” (March 2022), <https://www.ohchr.org/en/news/2022/03/dialogue-niger-experts-committee-enforced-disappearances-ask-about-cases-involving>.

CEDAW (2011), <https://www.peacewomen.org/UN/cedaw-session/CEDAW201.1>

<https://www.ohchr.org/en/press-releases/2022/05/experts-committee-rights-child-ask-greece-about-roma-children-and-push-backs>.

UNOCHR, “UN Committee on the Elimination of Racial Discrimination Issues Findings on Cameroon, Estonia, Kazakhstan and Luxembourg” (April 2022), <https://www.ohchr.org/en/press-releases/2022/04/un-committee-elimination-racial-discrimination-issues-findings-cameroon>;

Ibid.

ONOCHR, “In Dialogue with Colombia, Committee on Enforced Disappearances Asks about the Number of Victims and Missing Persons and About the Definition of Enforced Disappearance”, <https://www.ohchr.org/en/press-releases/2021/04/dialogue-colombia-committee-enforced-disappearances-asks-about-number>.

CAT, Concluding Observations on 6th Periodic Report of Bosnia and Herzegovina (2017), <https://www.refworld.org/docid/5a29192c4.html>.

“In Dialogue with Niger, Experts of the Committee on Enforced Disappearances Ask About Cases Involving Armed Groups, and Cases Overseen by Military Courts” (March 2022), <https://www.ohchr.org/en/news/2022/03/dialogue-niger-experts-committee-enforced-disappearances-ask-about-cases-involving>.

Mrs. A v. Bosnia and Herzegovina, <https://trialinternational.org/wp-content/uploads/2019/08/Decision-CAT-A-BIH-2August2019.pdf>.

OCHCHR, “Experts of the Committee on the Elimination of Racial Discrimination Commend School Enrolment in Kazakhstan, Ask About Inter-ethnic Tensions and Anti-discrimination Legislation” (April 2022), <https://www.ohchr.org/en/news/2022/04/experts-committee-elimination-racial-discrimination-commend-school-enrolment>.

Alice Priddy, *Disability and Armed Conflict*, The Geneva Academy of International Humanitarian Law and Human Rights (April 2019).

Ibid, 73.

Saul Takahashi, “Recourse to Human Rights Treaty Bodies for Monitoring of the Refugee Convention”, 20(1) *Netherlands Quarterly of Human Rights* 53–74 (2002).

Full report, <https://www.hrw.org/news/2020/11/30/submission-committee-rights-childs-review-south-sudan>

See Başak Çalı, Cathryn Costello, and Stewart Cunningham, “Hard Protection through Soft Courts? Non-Refoulement before the United Nations Treaty Bodies”, 21 *German Law Journal* 355–384 (2020).