

Working with UN Human Rights Mechanisms: Lessons for the Joint Initiative

Presentation to the American Association for the
Advancement of Science
January 11, 2011

Hadar Harris
Executive Director
Center for Human Rights and Humanitarian Law
American University Washington College of Law

Communities tend to be guided less than individuals by conscience and a sense of responsibility. How much misery does this fact cause mankind! It is the source of wars and every kind of oppression, which fill the earth with pain, sighs and bitterness.

Albert Einstein, 1934

Human Rights are:
Rights that every person has by
virtue of being a
human being

What Systems Exist to Protect and Promote Human Rights?

- Universal System
- Regional Systems
- National Mechanisms
- Local/Domestic Mechanisms

Examples

- **Universal System**
 - United Nations
- **Regional Systems**
 - European Court of Human Rights
 - Inter-American Commission of Human Rights and Court on Human Rights
 - African Commission on Human and Peoples' Rights and Court on Human and People's Rights

- **National Mechanisms**
 - National Commissions
 - Executive Branch Organs
- **Local/Domestic Mechanisms**
 - Domestic Courts (Judicial Organs)

Universal System

- Two-Dimensions
 - Charter-Based
 - Treaty-Based

Charter-Based

- United Nations Charter
 - Signed in 1945
 - Based on post-war desire to create institution to promote security, fundamental human rights and peace
 - Provides operational structure and purposes for United Nations
 - Highlights commitment to human rights and fundamental freedoms in Preamble & Purposes

Preamble to UN Charter

“We the peoples of the United Nations determined to save succeeding generations from the scourge of war... and to **reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small**, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained... have resolved to combine our efforts to accomplish these aims.”

Charter-Based Mechanisms

- UN General Assembly
 - Made up of all members of UN
- Security Council
 - Consists of five permanent members (with veto power) and ten rotating members based on regional diversity
- EcoSoc (Economic and Social Council)
 - Human Rights Council

More Charter-Based Mechanisms

- UN Human Rights Council
 - Formerly the UN Commission on Human Rights
- Special Procedures
 - 31 thematic, 8 country mandates
 - Working Groups
 - Special Rapporteurs
 - Independent Experts
- 1503 Procedures

UN Human Rights Council: The Good, the Bad, the Ugly?

- Replaced the highly politicized Commission in 2006
- Regional distribution of seats: 13 African; 13 Asian; 6 Eastern European; 8 Latin American and Caribbean; 7 Western Europe and Other
- Escalation of status (directly under the GA)
- Election is direct by all members of the General Assembly
- New UPR procedure requires review of every member
- Still highly political body

Universal Periodic Review

- All Member States of UN subject to review every four years (48 reviewed per year)
- Led by “troika” of Council Members
- Assessed on basis of UN Charter, UDHR, treaties to which State is a party, voluntary pledges/commitments, relevant IHL
- Documents are submitted by State, OHCHR, ‘other relevant stakeholders’

Special Procedures

- 31 thematic mandates, 8 country mandates – mandate defines scope of work
- Independent!!!
 - Individuals: "Special Rapporteur", "Special Representative of the Secretary-General" or "Independent Expert"
 - Working Group: usually five members (one from each region) .
- Examine, monitor, advise and publicly report on human rights situations or on major phenomena of human rights violations worldwide
 - Respond to individual complaints
 - Conduct studies
 - Provide advice on technical cooperation at the country level
 - Engage in general promotional activities

Examples of Special Procedures

- Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental **health**
- Special Rapporteur on the right to **food**
- Independent Expert on the question of human rights and extreme **poverty**
- Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and **wastes** on the enjoyment of human rights
- Independent Expert on the issue of human rights obligations related to access to safe drinking **water** and sanitation
- Special Rapporteur on freedom of **religion** or belief
- Working Group on Enforced or Involuntary **Disappearances**
- **Country Mandates**: Somalia, Sudan, Cambodia, Palestine, Burundi, North Korea, Haiti, Myanmar

Treaty-Based Mechanisms

- Emerged from voluntary (horizontal) agreement of sovereign nations to draft, sign, ratify and implement treaties
- 9 core human rights treaties have emerged from the basic defining human rights document: the Universal Declaration of Human Rights (UDHR)

Universal Declaration of Human Rights (UDHR)

- International input and involvement in drafting
- Linking of rights and responsibilities
- Adopted by UN General Assembly in 1948
- Intention was to create one comprehensive human rights treaty
- Aspirational declaration – not binding
- Informs subsequent development of key treaties (which are binding)

Key Articles of UDHR

- Article 1: Right to Equality
- Article 2: Freedom from Discrimination
- Articles 3 – 21: Civil and Political Rights
- Articles 22 – 29: Economic, Social and Cultural Rights

Making it real...

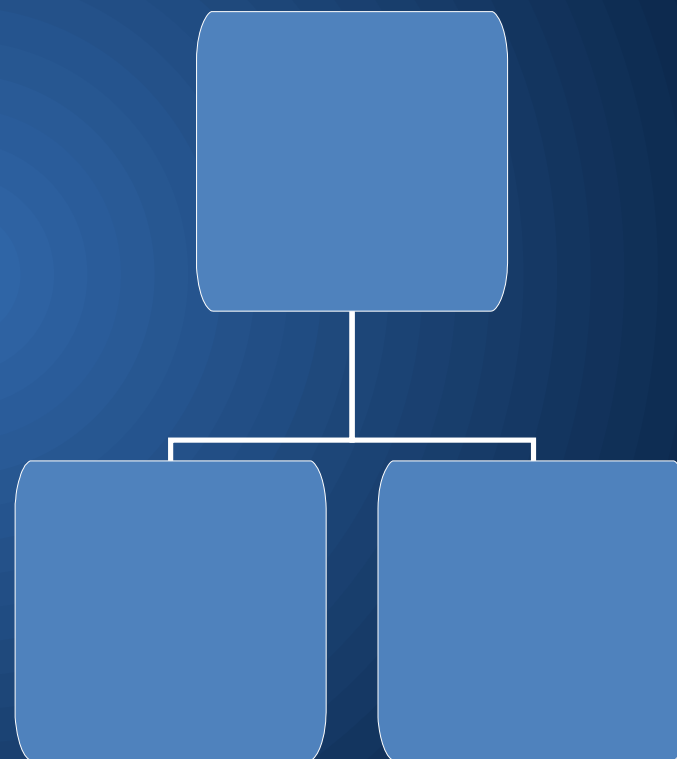
POLITICS,
POLITICS,
POLITICS!!!

What Makes up a “Core” Human Rights Treaty?

- States voluntarily become parties (“States Parties”)
- Overseen by elected Committees of Independent Experts
- Holds States Parties accountable for “progressive realization” of Treaty obligations
- Sometimes investigates individual petitions or systemic violations
- Covers broad topics or particular (but huge) constituencies

International Bill of Human Rights

- UDHR
- ICCPR
- ICESCR



Key UN Human Rights Treaties

- International Bill of Human Rights
 - International Covenant on Civil and Political Rights (ICCPR) 1966 (two OPS, 1966, 1989) – 164 States Parties
 - International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 (OP, 2008) – 160 States Parties

Key UN Human Rights Treaties

- International Convention on the Elimination of all forms of Racial Discrimination (CERD) 1965
- Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) 1979 (one OP, 2000)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984 (one OP, 2002)
- Convention on the Rights of the Child (CRC) 1989 (two OPs, 2002)
- Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (MWC) 2003
- Convention on the Rights of People with Disabilities (CRPD) 2008
- *Convention Against Enforced Disappearances (ICAED) ???*

Treaty Committees

- Human Rights Committee (ICCPR)
- Committee on Economic, Social and Cultural Rights (CESCR)
- Committee on the Elimination of Racial Discrimination (CERD)
- Committee Against Torture (CAT)
- Committee on the Rights of the Child (CRC)
- Committee on the Elimination of all forms of Discrimination Against Women (CEDAW)
- Committee on the Protection of the Rights of Migrant Workers and Members of their Families (MWC)
- Committee on the Rights of People with Disabilities (CRPD) – in formation

CESCR

- 18 independent experts
- Receives reports from States Parties every five years
- Can receive individual petitions through Optional Protocol (only 3 parties: Ecuador, Mongolia and Spain; 35 signatories)
- Individual petitions can be considered by other treaty monitoring bodies dealing with ESCR

US Ratification Status

UNITED STATES

- ICCPR: 8 September 1992
- CERD: 20 November 1994
- CAT: 20 November 1994
- Two optional protocols to CRC (even though CRC not ratified)
 - children in armed conflicts
 - sale of children/child prostitution/child pornography

Treaties to which US is a Signatory

- CESC: signed 5 October 1977 (not yet ratified)
- CEDAW: signed 17 July 1980 (not yet ratified)
- CRC: signed 16 February 1992 (not yet ratified)
- CRPD: signed 20 July 2009 (not yet ratified)

Comparing Treaty- and Charter-Based Mechanisms

Charter-Based Mechanisms

- Participation: Broad
 - All UN Member States
 - Even non-UN Member States
 - Includes non-State actors
- Effectiveness: Low
 - Political compromises
 - General political debates

Treaty-Based Mechanisms

- Participation: Limited
 - Only State-Parties
 - Limited interaction with other UN organs
 - Non-state actors excluded
- Effectiveness: Moderate
 - Less political interference
 - Technical details and debates

Regional Human Rights Bodies

- European
 - African
 - Inter-American
 - (ASEAN)
-
- All consist of a Commission and a Court
 - All require exhaustion of domestic remedies before appealing to regional bodies

Pros and Cons: Universal System

Pros

- Uniform Approach
- Consistency
- Effective
- Everyone's Doing It

Cons

- Weak
- Incoherent
- Scattered

Pros and Cons: Regional Systems

Pros

- Understands Context (history/tradition/culture)
- Proximity Breeds Familiarity
- Commonality of Interest
- More Legitimate/Credible
- Less likely to be Viewed as “Outside Interference”

Cons

- Fragments/Dilutes Uniform Approach
- Assumes Homogeneity of Culture
- Proximity Often Breeds Animosity

Objectives of Human Rights Advocacy

- Articulating Standards
- Exposing Violations
- Documenting Abuses
- Reforming Law/Policy
- Ensuring Adequate Implementation
- Evaluation
- Rehabilitating Survivors
- Obtaining Remedies

Points of Entry for Engagement

- Treaty Monitoring Committee (e.g., CESCR)
 - Thematic (or specific issue) Shadow Reports
 - Draft General Comments
 - Side Events and Briefings
- Human Rights Council
 - UPR Process
 - Human Rights Council Advisory Committee (“think tank”)
- Special Procedures
 - Official visits
 - Communications

Article 15, ICESCR

1. The States Parties to the present Covenant recognize the right of everyone:
 - (a) To take part in cultural life;
 - (b) To enjoy the benefits of scientific progress and its applications;
 - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.