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COMMITTEE ON INTERNATIONAL HUMAN RIGHTS LAW AND PRACTICE

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INTERIM REPORT ON THE IMPACT OF THE WORK OF THE UNITED NATIONS HUMAN RIGHTS TREATY BODIES ON NATIONAL COURTS AND TRIBUNALS¹

BACKGROUND TO THE INTERIM STUDY

1. At the London Conference of the Association in 2000 the Executive Council approved the proposal of the Committee that the next stage of its work would be a study of the impact of the United Nations human rights treaty bodies established under the principal United Nations human rights treaties. The Committee had proposed that the initial stage of its project would be to focus primarily on the impact that the output of these bodies (in particular their “findings”) has had on the work of national courts and tribunals, with a view to examining subsequently the impact of the work of the treaty bodies in other contexts at the domestic level.
2. The principal purposes of the study are to document the extent to which the work of the treaty bodies had begun to have an impact on the work of national courts and tribunals, to identify the factors that contribute to the use by courts and tribunals of this material, and to encourage further utilisation of the international sources by courts, tribunals and advocates by disseminating information about how they were already being used.

¹ This report is based on a draft prepared by one of the Co-Rapporteurs of the Committee, Andrew Byrnes, as well as on information and material provided by members of the Committee and others. The Committee would like to thank the following, who have assisted in the preparation of this report by providing research or other assistance: Agnès Hurwitz, Autumn Field, Heli Niemi, Natacha Wexels-Riser, Christian Courtis, Ady Schonmann, Sara Hossain and Moni Shrestha.

documents such as Annual Reports, and a handful of scholarly articles and books. Only occasionally do views figure in a discursive way in judicial opinions of state courts."¹¹

"Courts of states that are parties to the ICCPR sometimes refer to views of the Committee without expressing any sense of their particular status or relevance in resolving an issue, perhaps an issue that arises under domestic constitutional law."¹²

22. Writing in 1998, Makau wa Mutua expresses a similar view, arguing that, while a number of the decisions of the committee have been "encouraging, they are too few and far between for the two decades of the Committee's existence. Beyond such cases, the impact of views on national courts, other international fora, and the development of human rights jurisprudence in general is doubtful."¹³

23. The Committee against Torture has also begun to develop a solid body of jurisprudence under the article 22 individual complaints procedure, particular in relation to the obligation of non-refoulement contained in article 3 of the Torture Convention. This case law on article 3 (now encapsulated in the Committee's first *General comment*¹⁴) have increasingly been cited before national courts and tribunals in the immigration field. The CERD Committee has still heard relatively few cases under the individual complaint procedure established by article 14 of the Convention.

24. In relation to general comments and recommendations adopted by the treaty bodies, the Human Rights Committee has led the way, pioneering the use of its power to transmit to states "such general comments as it may consider appropriate" to develop a substantial jurisprudence of the ICCPR.¹⁵ The format, quality and utility of the general comments has varied, though the trend has been towards an increasing quality and sophistication in the Committee's comments. Other committees have followed this lead, with both the CESCR¹⁶ and the CEDAW Committee¹⁷ producing substantial bodies of jurisprudence in this form, with the CERD Committee also beginning to use its power to adopt general recommendation more expansively in this manner as well,¹⁸ as have the Committee against Torture and the Committee on the Rights of the Child in the one general comment each of the latter has adopted to date.¹⁹

25. In an assessment published in 1991, Dominic McGoldrick wrote of the early *General comments* of the Human Rights Committee:

"Some of these general comments have been of high quality and represent valuable indications of the content of the respective rights and the steps that States parties could or should undertake to ensure the implementation of those rights. Other general comments have been much less helpful."²⁰

¹¹ Henry J Steiner, "Individual claims in a world of massive violations: What role for the Human Rights Committee?" in Philip Alston and James Crawford (eds), *The Future of the UN Human Rights Treaty System* (Cambridge: Cambridge University Press, 2000) 15, at 38.

¹² *Id* at n 42

¹³ Makau wa Mutua, "Looking Past the Human Rights Committee: An Argument for De-Marginalizing Enforcement" (1998) 4 *Buffalo Human Rights Law Review* 211, at 236.

¹⁴ *General comment 1* (1996), UN Doc HRI/GEN/1/Rev 5, at 252

¹⁵ See generally Dominic McGoldrick, *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights* (Oxford: Clarendon Press, 1991), at 89-96; Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Kehl am Rhein: N P Engel, 1993), at 573-576.

¹⁶ See generally Matthew Craven, *The International Covenant on Economic, Social and Cultural Rights* (Oxford: Clarendon Press, 1995), at 87-92.

¹⁷ See Mara Bustelo, "'The Committee on the Elimination of Discrimination against Women at the Crossroads'" in Crawford and Alston, *supra* note 4, 79, at 96-98.

¹⁸ See generally Michael Banton, "Decision-taking in the Committee on the Elimination of Racial Discrimination" in Crawford and Alston, *supra* note 4, 55.

¹⁹ Reproduced in UN Doc HRI/GEN/1/Rev 5, at 252 and 255 respectively.

²⁰ McGoldrick, *supra* note 15, at 94.