

**Template for Study on the Impact of the United Nations Human Rights Treaties on the
Domestic Level by Heyns and Viljoen**

26 May 2019

Thank you again for having agreed to serve as a country correspondent for the above-mentioned study. You are expected to write a chapter on your country, preferably between 10 000 and 12 000 words, footnotes included. (This word count may be adjusted slightly, depending on the extent and duration of a particular state's engagement with the UN human rights system.) In doing so, please carefully follow the structure outlined in the template below.

*You are not expected to do any original research covering the period before 30 June 1999 – in respect of that period you can simply consult and use the information covered in the book **Heyns and Viljoen The impact of the United Nations human rights treaty system on the domestic level (2001)**. (A copy of the relevant chapter has been made available to you; when using this source, reference should in a general way be made to it.) You are expected to do original research covering the following 20 years, up to 30 June 2019. The emphasis should be on the more recent practice. The research should be qualitative in nature, with concrete and specific examples of impact discussed in some depth, rather than quantitative, with a focus on numbers. **The main aim is to answer the question whether the UN human rights system has made a difference at the country level.** This background document gives details on how that research should be done, and how the information should be structured.*

We highly recommend that, if you wish to get a bird's eye view of the UN human treaty system, you should start by reading one of the introductory sources listed on the website of the Institute for International and Comparative Law in Africa, University of Pretoria:

<http://www.icla.up.ac.za/research/impact-of-the-un-human-rights-treaties-on-domestic-level>

The approach of each chapter should be largely narrative – someone must be able to sit down and read what you present “like a story.” The reason why we are asking people to follow the template closely is to allow ourselves and others to compare the different chapters with ease.

*In light of the feedback received from you, we pushed back the deadlines so that a draft chapter must be ready on **31 August 2019**, and the final chapter on **30 November 2019**.*

This document sets out, first in summarized and then in detailed format, what is expected. Please do not hesitate to contact us if you are unsure or have questions about anything.

SUMMARISED CONTENTS OF COUNTRY CHAPTERS

The chapter must have the structure and headings set out in the 'box' below

- 1. Introduction to human rights in the country (around 5% of your chapter)**
- 2. Relationship of the country with the international human rights system in general (around 5% of your chapter)**
- 3. Table of formal engagement of the country with the UN human rights system (we will give you a draft)**
- 4. Role and overall impact of the UN human rights treaties in the country (around 20% of your chapter)**
- 5. Detailed impact of the different UN human rights treaties on the domestic level (around 60-70% of your chapter)**
- 6. Conclusion (around 5% of your chapter)**

DETAILED CONTENTS OF COUNTRY CHAPTERS

In the first four chapters, we want to give readers background information on the human rights treaty system as a whole. The focus is on the big picture, not the detail. Footnotes should provide the reader with references to specific information / data / decisions; and additional sources for further reading should be included. The emphasis is on the current practice – if it has changed over time, please describe briefly how it was earlier.

1 Introduction to human rights in the country

Here you should write a short narrative overview to provide the reader with a primer on the human rights landscape in the country, e.g., When was the country formed; Was it a colony (and if so comment on the impact of colonialism on human rights in the country); When were human rights introduced into the Constitution; What rights are protected; What are the main domestic institutions responsible for the promotion and protection of human rights; What are the milestones in human rights, e.g., courts holding government accountable; What are the main human rights issues?

2 Relationship of the country with the international human rights system in general

Provide a short overview, in a few paragraphs and in narrative form, of the extent to which the country is part of the international human rights system – on the UN and regional levels, and the ICC. Highlight noticeable features (e.g., “the ICC has opened investigations in respect of events in the State.”) Highlight the relative weight of the regional human rights system in regions with such systems (e.g., “The main international component of human rights in the country is provided by the European Convention on Human Rights.”)

If there have been **important comments by officials** on this relationship (e.g., the prime minister has said the government is tired of being lectured by the UN; Amnesty International has said the country systematically ignores human rights, etc.); or if there have been threats to leave parts of the international human rights system they should be included here.

Also explain the following: What is the status of international human rights law (treaties; customary international law) under domestic law?

If sources for further reading are available, they should be referenced in footnotes.

3 Table of formal engagement of the country with the UN human rights system

We will provide you with the first draft of this table, and ask you to confirm whether it is accurate. There is no need to work on it now. The aim with the table is to give the reader a visual overview on one page of the extent to which the country has engaged, over time, with key elements of the UN treaty system (ratification, presentation of reports, etc.)

4 Role and overall impact of human rights system in the country

Part 4 serves two main purposes. First, it 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. Second, it provides a succinct summary of the main trends emerging from the detailed discussion in part 5. In other words, part 4 prepares the reader for the detailed, separate discussion of each treaty in part 5. In order to provide the succinct summary, and identify trends, you should write part 5 first, and then part 4).

In part 5 (the part following this one) you will be expected to give detailed information in respect of the **IMPACT** of a number of features of each treaty viewed on its own, separate from the other treaties. We are however worried that, if the readers read only that, they will not get a good understanding of how the system works as a whole. For example, they may not be able to see that most of the treaties were ratified around the same time, when a significant political development took place. Thus, here – in part 4 – we want you to make those links, and to provide the reader with a comprehensive, bird’s eye view in respect of the issues that you will deal with in part 5. We want the reader to get a sense of the role and impact of the treaty system in your country.

The purpose of part 4 is to cover cross-cutting issues relevant to the all ratified treaties, and to prepare the reader for the detailed, separate discussion of each treaty in part 5. In order to be able to do this, you should write part 5 first, and then part 4.

Use terms such as “**all / most / none** of the treaties have been incorporated into domestic law”; “**as a general trend** . . . there is not a high level of awareness of the treaties, except in respect of ... ”; “**NGOs focus mostly on CRC**”; or “**with the exception of** . . . , all the other state reports were submitted late.” Light cross references may be made in this discussion to points dealt with in more detail below, where each of the separate treaties is discussed.

First part: Background/ role: The following cross-cutting issues (**not covered in part 5**):

Formal acceptance (approx. one page)

- Which of the 9 treaties did the state ratify? When were the treaty adhered to? Why were particular treaties adhered to at a particular time (or never adhered to)? So: Why did it join (part of) the system (and why not the other treaties)? Was there a significant time period during which the country joined *most of the treaties*? (If so,

why then, and not earlier / later? e.g., one answer can be that it did so after the country became a democracy).

- Were reservations entered: if any, context / reasons; if withdrawal of reservations, context / reasons?
- Does the state *generally* adopt/ accept optional procedures: Were optional mechanisms (individual complaints; inquiries) accepted? Why was this optional mechanism adhered to at that time (or never adhered to)? Did the state opt out of the inquiry procedure by making a declaration that they do not recognize the competence of the Committee in question to undertake inquiries (in terms of art 28 CAT; art 10 of CEDAW-OP; art 8 of CRPD-OP; art 13(7) of OP-IC to CRC; art 11(8) of ICESCR-OP)? If so, when, and why?

General attitude of state towards UN treaty system (a paragraph or two)

Explicit rejection/ questioning of aspects of treaty body system eg questioning bindingness of treaty body recommendations.

Level of awareness (cross-cutting and holistic analysis across 9 treaties below; approx. one page)

- Level of awareness (government officials, various levels). What is the level of awareness of the treaties and the findings of the treaty bodies among government, members of parliament, NGOs, the media, the judiciary and legal practitioners, academics, and the public? Please explain the reasons for your assessment.
- What is the perception of treaty monitoring bodies (among government officials and others); and views on their legitimacy, authority?
- Has any of the treaty or any information on the system been translated into local languages?
- To what extent has the media covered the treaties, including ratification, reports, findings of treaty bodies (evidence in media reports – structured search of main newspapers; other media)
- General training, teaching: school / tertiary curricula, especially law schools,

also other: Does the international human rights system form part of the university (or school) curricula, and, if so, give a brief description.

- Do local researchers and NGOs generally cite the treaties in their work?
- Overall: What is the level of awareness of the treaties and the treaty system – among government, members of parliament, NGOs, the media, the judiciary and legal practitioners, academics (publications, university curricula), the public? Does some treaties stand out as being better or lesser known? Reasons for that?

State reporting (approx. one page)

- Holistically, across the ratified treaties: Has the state generally **met its reporting obligations** (please indicate the total number of reports submitted, and how many months on average the state has been late in submitting reports)? How, if in any way, has this changed over time (e.g., has the situation improved recently)?
- How are reports **prepared**? (Who are involved and consulted; Are there coordinating or inter-ministerial committees; Are NGOs involved/ consulted? Are members of parliament involved? Are NHRIs involved? Has a National Mechanism for Reporting and Follow-up (NMRF) been established and, if so, how has the NMRF affected the preparation of reports?) How thorough and accurate is the state's reporting? Is it self-critical and frank? What is the level (e.g., ministerial, directorate, a combination) of delegations sent to Geneva to present reports?
- Are **concluding observations published** (e.g., how are they published; are they posted on any website; is there a media strategy; are they translated into local languages?) publication / dissemination (Have COBs been published? If so, how are they published? Have COBs been made easily accessible on public websites? Is there a media strategy? Are they translated into local languages?)
- How many dialogues have the State had with treaty bodies in the context of presenting its State reports? (*Break down the information for each individual treaty, and then provide the total*)
- Did NHRI submit own report under any of the treaties? How often?

- Alternative / complementary reports by civil society / NGOs (process; quality; number; comprehensive or thematic)
- Have there been reports of cases of reprisals against human rights defenders engaging in the reporting process?
- Has the State agreed to make reports by the Sub-Committee Against Torture (SPT) public (if relevant)?

Domestic implementation mechanism/ process (approx. one paragraph)

- Is there a specific domestic process / institutional arrangement to implement COBs and treaty body recommendations? Which government institutions are involved; what process is followed?

Treaty body membership (approx. one paragraph, if applicable):

- Is there a national process for nomination of treaty body members that is transparent and open to stakeholders, including civil society? Has the country had members on any of the treaty body? Has that had a noticeable impact on the role of the treaty on the domestic level in the country?

Second part: Overview of impact: Succinct summary of major impact, elaborated upon in part 5 (Structure this section of part 4 broadly using the sequence in which each of the issues is discussed in part 5 below).

Incorporation and reliance by legislature and executive (approx. one page)

Be guided by the following questions: Indicate, in general, to what extent human rights treaties have been incorporated into domestic law (constitution / legislation) and have been used throughout the legal system? (e.g., “While all nine main treaties have been ratified, almost none of them have ever been used by the legislature or the courts. The main exceptions are ...”). Also, are human rights action plans or similar policy documents (if any) grounded in human rights treaties and / or do they make reference to treaty bodies?

Reliance by judiciary (approx. two paragraphs)

What are the general trends in respect of reliance on treaties and treaty jurisprudence by the domestic judiciary, distinguishing reliance as source of interpretation, and as source of a remedy.

Impact on and through non-state actors (approx. two paragraphs)

Most pertinent trends and examples related to impact of treaties and treaty bodies on NHRIs, lawyers, NGOs, academics, and others.

Impact of State reporting (cross-cutting and holistic analysis across relevant treaties below; approx. two to three paragraphs)

To what extent has the state implemented the COBs? Is there a difference across treaties, and if so, why? What has been the overall impact of COBs, refer to most pertinent examples. Has State reporting impacted in other ways?

Impact of individual communications (if any) (cross-cutting and holistic analysis across relevant treaties below; approx. two to three paragraphs)

How many communications in total have been decided by the committee? (give the information for each individual treaty, and then provide the total);

How does the state generally respond to views? Are they as a rule implemented?

Which institution is in charge of implementation? What is the general level of engagement with the outcome of the follow-up procedures and inquiries, where applicable? If there are outstanding examples of the impact of the treaty system (e.g., the views of a treaty body on a specific individual communication has led to significant reform), this should be highlighted here. Again, the detail with regard to each individual treaty will be dealt with below. Also, are there any other follow-up activities related to concluding observations and views that are organized with / by UN field presences, NHRIs, NGOs, etc.?

Impact of other measures (early warning measures and urgent procedures, inquiries, visits by SPT) (if any) (approx. two paragraphs)

Other forms of impact (approx. one to two paragraphs, if relevant)

Trends and most salient examples of impact of treaties and treaty bodies not captured under the headings above.

Additional (approx. one or two paragraphs):

Provide any information available on the extent to which the human rights provisions of the UN Charter and the Universal Declaration of Human Rights have had an impact in the legal system of the country (e.g., citation in the constitution, in legislation, or by courts).

5 The impact of the different UN human rights treaties on the domestic level

Part 5 consists of up to nine separate sections (in essay form), each of which deals with the impact of one of the nine human rights treaties in your country. Identify and discuss the most pertinent examples of impact, be as concrete as possible, with reference to specific sources. All of these sections together should make out approximately 60 to 70% of the chapter (depending on the number of treaties ratified, the number of state reports etc). Please use the name of the relevant treaty as the main heading, and in each case use sub-headings (a) to (h), as set out below.)

Please cover the following nine main human rights treaties and their protocols one by one. Cover the first treaty completely, then move on to the second, then the third, etc. If a particular treaty is not adhered to by the State in question, state the reason(s), and indicate whether the treaty has nevertheless had an impact.

5.1 International Convention on the Elimination of All Forms of Racial Discrimination, ICERD, 1965, monitored by CERD Cttee

[Reminder: Individual communications are allowed if a declaration pursuant to art 14 has been made.]

5.2 International Covenant on Civil and Political Rights, ICCPR, 1966, monitored by HRCttee

[Reminder: Individual communications are allowed if OP1 has been adhered to. OP2 provides for the abolition of the death penalty. Where relevant, draw specific attention to domestic impact of OP2]

5.3 International Covenant on Economic, Social and Cultural Rights ICESCR 1966, monitored by CESCR Cttee

[Reminder: Individual communications are allowed if ICESCR-OP has been adhered to. Inquiries may be undertaken, unless the country opted out under art 11 of ICESCR-OP.]

5.4 Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW, 1979, monitored by CEDAW Cttee

[Reminder: Individual communications are allowed if CEDAW-OP has been adhered to. Inquiries may be undertaken, unless the country opted out under art 8 of CEDAW-OP.]

5.5 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT, 1984, monitored by CAT Cttee

[Reminder: Individual communications are allowed if a declaration pursuant to art 22 has been made. Inquiries may be undertaken, unless the country opted out under art 20.]

OPCAT created the Sub-Committee Against Torture (SPT), which is a treaty body in its own right.

The SPT may visit any place under the jurisdiction of a State Party where persons may be being deprived of their liberty (e.g., police stations, prisons, detention centers and mental health and social care institutions.)

[<http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/Brief.aspx>]

5.6 Convention on the Rights of the Child, CRC 1989, monitored by CRC Cttee

[Reminder: Individual communications are allowed if OP-IC has been adhered to.

Inquiries may be undertaken, unless the country opted out under art 13 of CRC-OP-IC.

Be reminded that states may also have adhered to two substantive Protocols to CRC, the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (OP-SC); and the Optional Protocol to the Convention on the involvement of children in armed conflict (OP-AC). Where relevant, draw specific attention to the domestic impact of these 2 Protocols.]

5.7 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, ICMW, 1990, monitored by CMW Cttee

[Reminder: Individual communications will be allowed if a declaration pursuant to art 77 has been made; however, the individual complaints procedure under ICMW is not yet in force.]

5.8 International Convention for the Protection of All Persons from Enforced Disappearance, CPED, 2006, monitored by CED Cttee

[Reminder: Individual communications are allowed if a declaration pursuant to art 31 has been made.

Reminder: Inquiries may be undertaken under art 33 of CED (no opt-out possibility).]

5.9 Convention on the Rights of Persons with Disabilities CRPD 2006, monitored by CRPD Cttee

[Reminder: Individual communications are allowed if CRPD-OP has been adhered to.

Reminder: Inquiries may be undertaken, unless the country opted out under art 6 CRPD-OP.]

Questions to be addressed on each of the treaties listed above that has been ratified by the state:

Please write an essay on each of the above-mentioned treaties covering the list of issues below. Please use the following headings (“a” to “h” below) as the sub-headings under the name of each treaty. The same structure is to be followed for each individual essay covering each of the different treaties.

a Incorporation and reliance by legislature and executive [approx. one page]:

- Has the treaty (or treaty provisions) been incorporated into domestic law (constitution / legislation)? If so, please give details. Was the treaty cited directly or was the reliance indirect? Where applicable, please provide references (e.g., in Parliamentary debates, legislation itself)? Has a compatibility study / programme of domestic legal reform been embarked upon to give effect to the treaty?
- Policies based on / related to treaty (explicit reference / indirect reliance)? Are human rights action plans or similar policy documents (if any) grounded in human rights treaties and / or do they make reference to treaty bodies?
- Institutional reform related to treaty provisions / requirements, e.g. new national mechanism established?
- Resource allocation: additional allocation / budgetary re-allocation / adjustment in light of treaty requirements?

b Reliance by judiciary [approx. one page]:

- Has the treaty (and treaty body interpretations in e.g. General Comments and jurisprudence) been relied upon by domestic courts? Distinguish between reliance as guide to interpretation, and reliance as a source of a remedy (self-execution) (also indicate whether domestic court disagreed / distinguished / followed treaty body; if relevant, compare with reliance on other international law – e.g., regional treaties, jurisprudence)

c Impact on and through non-state actors [approx. one page]:

- Use of treaty/ treaty body jurisprudence by **national human rights institutions** (NHRIs)

- Use of treaty by **legal profession** – attitude towards; included in professional training; extent of reliance on treaty provision; use of treaties. Treaty body jurisprudence in arguments before courts
- Use of treaty by **NGOs** – role in campaigns (comparison of use of / reliance on domestic, regional, UN)
- Use of treaty by **researchers / academics** (law, non-law) – outputs, impact
- Use by **other non-state actors, eg business**

d. Impact of State reporting [*approx. one page*]:

[It is important to consult the formal follow-up procedures (see note entitled “Follow-up Procedures” at the end of this document) conducted by each individual treaty body on this issue – If the state gives reasons for decision to implement or not to implement, cite where appropriate.]

- Concluding Observations (COBs) (which were the most pertinent issues that the COBs were directed at?) Have key recommendations (or recommendations selected for follow-up) in COBs been implemented? (**Provide concrete examples of the most pertinent impact of COBs**).
- Extent of domestic implementation / legal reform as result of COBs (factors inhibiting / preventing a particular course of action) (e.g., parliamentary questions; draft legislation as result of COBs). Which main COBs have not been implemented, and why?
- What has the level of engagement been of the State with the outcome of the follow-up procedures (where applicable)? What has been the impact of these procedures?

e Impact of individual communications (if any) [*length will vary depending on number of communications; but aim for not more than approx. two pages*]:

[It is important to consult the follow-up procedures (see note entitled “Follow-up Procedures” in the Background document) of each individual treaty body on this issue – if the state gives reasons for decision to implement or not to implement, cite where appropriate]

- How many individual communications and inquiries, respectively, have been lodged under this treaty (where applicable)? (extent of communications submitted: if so, number and nature of decisions; decisions: outcome; if violation found, what was / is required at domestic level? The most pertinent aspect here is: what was required of the state/ what ‘remedial’ recommendations were made?)
- How did the state respond to the recommendations? Are they implemented? Provide as far as possible an overview of status of implementation. Was individual redress provided? Have broader legal reform resulted from the recommendations/ findings? **(Provide concrete examples of the most pertinent impact of recommendations/ findings).**
- Did the state cooperate during the procedure? If interim measures were adopted, did the state implement them?
- Have there been reports of cases of reprisals against victims or their representatives involved in the submission of an individual communication or in the implementation of views?
- If decision(s) have been given: What has been the extent of publicity / dissemination of decision(s)? (medium, language, simplified version)
- Are there any domestic issues ripe for submission to treaty body that have not been submitted (if possible to do so); if so, why?
- What has been the level of engagement of the State with the outcome of the follow-up procedures (where applicable)?

f **Impact of other measures (if any)** [*approx. half a page, if applicable*]:

- Early warning measures and urgent procedures (ICERD): Ever used in respect of the country? If so, its impact; media coverage; legal or other measures adopted in response?
- Inquiries undertaken (ICESCR, CAT, CEDAW, CRC, CRPD, CPED): Ever used in respect of the country? If so, its impact; media coverage; legal or other measures resulting from inquiry?
- Visits by SPT (CAT-OP): Ever used in respect of the country? If so, its impact; media coverage; legal or other measures resulting from visit?

g Other forms of impact of the treaty and treaty bodies [*approx. a paragraph or two, if applicable*] (eg indirect material impact; symbolic impact)

h Brief conclusion in respect of impact of particular treaty [*approx. one page*]:

- Summary of impact: What are the most pertinent examples of the impact of this treaty? How did the State generally respond to views and concluding observations?
- What are the main factors enhancing or limiting the impact of this particular treaty?
- Consider variance over time: Are there observable trends – is impact getting better or worse? Why?
- Patterns – compared to other treaties?

6 (Overall) Conclusion

This part, which covers the research on the country as a whole, should comprise approximately 5% of the chapter.

- On the basis of the specific treaty analyses, a general, more overarching, concluding part, summarizing and bringing together, identifying general trends, and general conclusions; follow basically the headings above. It is, one may say, a conclusion of conclusions – building on the mini-conclusions of the specific treaty body reports / parts.
- **What are the most salient examples of the impact of the treaties and treaty bodies? What are main reasons for these instances of impact; or lack of impact?** What lessons can to be learned from the above about the impact of the treaty system as a whole in the country in question?
- Do they point to reforms that may be needed on the domestic or the UN level?
- In this ultimate concluding part, the following additional information should feature: influence of UN Charter and Universal Declaration on the legal system. How do you believe it would affect the impact of the human rights treaties if the treaty bodies met on occasion outside of Geneva, for example, in your country or region?