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# A Proposed Enhancement to UN Treaty Enforcement: Regular Recommendations to Civil Society

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# A Proposed Enhancement to UN Treaty Enforcement: Regular Recommendations to Civil Society

**Cover Page Footnote**

Volume 2 Issue 1

## I. Introduction

The inherent dignity of humans requires the observance and protection of certain rights, a goal whose facilitation is attempted by the codification and enforcement of international human rights law. Human rights treaties mandate treaty bodies to enforce the provisions of the treaties in each state party, which the treaty body attempts to do by reviewing state reports, issuing interpretations of the law through general recommendations and concluding observations, and, where a state has ratified the optional protocol that provides it, by the adjudication of individual complaints or through initiating investigations within the state.

Although treaty bodies are created to enforce their respective treaties, such enforcement is hindered by a list of issues: states disagree about which rights should have priority in the states' own efforts to protect them; politics prevents states—even those states with the highest commitment to the protection of human rights—from denouncing others for violations of human rights law; reservations to the treaty may prevent adequate enforcement, even when the reservations on their face may not defeat the objects and purpose of the treaty; and treaty bodies are underfunded and lack persuasive methods of enforcement. These limitations do not only apply to attempts of treaty bodies to enforce the law—they apply to all bodies, groups, or governments as they attempt to enforce international human rights law. How these barriers to effective enforcement can be overcome is a topic of wide academic discussion.

In 1994, the United Nations General Assembly adopted a resolution containing a charge to the Office of the High Commissioner for Human Rights to improve the efficiency of the United Nations Treaty System.<sup>1</sup> In response to this, in 2009, the High Commissioner, Navanethem Pillay, called upon stakeholders to suggest improvements and enhancements to the

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<sup>1</sup> General Assembly resolution 48/141, High Commissioner for the promotion and protection of all human rights, A/RES/48/141 (7 January 1994), available from <http://www.un.org/documents/ga/res/48/a48r141.htm>.

treaty body system,<sup>2</sup> publishing them in a report in 2012.<sup>3</sup> Some of these improvements included the comprehensive reporting calendar,<sup>4</sup> a simplified reporting procedure,<sup>5</sup> improvements to individual communications, inquiries, and country visits,<sup>6</sup> the strengthening of the independence and expertise of treaty body members,<sup>7</sup> the strengthening of the capacity to implement the treaties,<sup>8</sup> and enhancing the visibility and accessibility of the treaty bodies.<sup>9</sup> She concluded with recommendations for “the way forward,” stating, “[I]t is clear now more than ever that strengthening depends on States parties, treaty bodies and [UNHCR] making the decisions within their respective authorities and in coordination with each other.”<sup>10</sup> The report did not highlight the importance of treaty body coordination with civil society organizations, a disservice to the idea of treaty reform.

This paper will establish that the internalization of international human rights standards is hindered by the lack of a regular publication of recommendations to civil society and that adopting a model including the regular publication of these recommendations will significantly bolster the effectiveness of the treaty bodies' attempts to enforce international human rights law. There are a variety of methods by which international human rights law is enforced, each one having its own advantages and disadvantages. This paper proposes a method of enforcement with a low requirement for resources and effort which will facilitate the internalization of

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<sup>2</sup> Navanethem Pillay, United Nations Office of the High Commissioner for Human Rights, *Strengthening the United Nations Human Rights Treaty Body System: A Report by the United Nations High Commissioner for Human Rights*, 9 (2012).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 37.

<sup>5</sup> *Id.* at 47.

<sup>6</sup> *Id.* at 68.

<sup>7</sup> *Id.* at 74.

<sup>8</sup> *Id.* at 80.

<sup>9</sup> *Id.* at 88.

<sup>10</sup> *Id.* at 94.

international human rights standards at a level beyond that possible through current enforcement mechanisms.

In order to establish the necessity of a new publication addressed to civil society, Section II orients the reader to enforcement and internalization, and Section III proposes a new, regular publication that makes specific, formal recommendations to members of civil society, by which treaty bodies will be able to more effectively ensure the internalization of international human rights norms.

## II. Enforcing International Human Rights Law through Internalization

All of the methods to enforce human rights currently used by states and treaty bodies work in various ways to interpret the law in order to achieve its internalization and obedience. Whether by martial law a regime seeks to subject the populace to fear or by a government that perfectly represents its people, a law is best enforced when it is properly internalized into the identity of the people. Internalization is the name for a step on the path from non-compliance to obedience, through which states incorporate international human rights norms into their own domestic legal system and the state's identity.<sup>11</sup> As the name suggests, internalization reduces the need for external enforcement mechanisms to encourage compliance such as economic sanctions or military intervention, and shifts the status of the primary enforcer of the law to the state itself, motivated as it is by the international human rights norms it has adopted as its own.<sup>12</sup>

Harold Koh, a leading scholar in international human rights law enforcement explains internalization as understood in two ways: the *horizontal story* and the *vertical story*.<sup>13</sup> The horizontal story focuses on states and international organizations, such as the UN or Treaty

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<sup>11</sup> Harold H. Koh, *How is International Human Rights Law Enforced*, 74 Ind. L.J. 1397, 1406 (1999).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 1408.

Bodies as the primary actors of enforcement and internalization.<sup>14</sup> This story, says Koh, is incomplete and does not accurately reflect the larger picture.<sup>15</sup> Instead there is a vertical story, which, in addition to the actors of the horizontal, includes members of civil society as key actors in the internalization process.<sup>16</sup>

Koh, posits that the process of enforcement relying on internalization takes four steps: interaction, interpretation, internalization, and obedience.<sup>17</sup> First, one of the actors involved in enforcement—states, treaty bodies, human rights organizations, et cetera—recognize a practice of a state which is distasteful and violates international human rights norms or laws: *interaction*.<sup>18</sup> Second, the actor and its fellows *interpret* the violated law, pointing out the way in which the law has been violated and what compliance looks like.<sup>19</sup> Third, the state will take steps to comply with the law as interpreted in the particular instance in question: *internalization*.<sup>20</sup> The fourth step occurs when, over time, such compliance patterns and norm appreciation work their way into the structures of domestic law creation until the state itself becomes committed to *obeying* those norms without external enforcement.<sup>21</sup>

Unfortunately, this process is not inevitable: one step does not necessarily lead eventually to the next. Koh's explanation of how international law is enforced does truly show what happens when the law is obeyed. But a discussion of enforcement mechanisms almost necessarily requires one to look at when the law is *disobeyed*—when an obstacle lies in the gap between interaction and obedience. There is a slight gap between the first and second stages:

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<sup>14</sup> Koh, *supra* note 11, at 1408.

<sup>15</sup> *Id.* at 1409.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 1411.

<sup>18</sup> *Id.* at 1409.

<sup>19</sup> *Id.* at 1410.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 1410-11.

coming together to *interact* in the first stage, actors come to an agreement of an *interpretation* of the law the state in question is violating should be judged against in the second stage. A slight gap also exists between the third and the fourth stage: once a state has *internalized* a norm in the third stage, it is a matter of time—barring extenuating circumstances—before that state *obeys* the international law in question.

The major obstacle to effective enforcement lies between the second stage, the interpretation of the law and the third stage, the *internalization* of this *interpretation* by a state. To move from *interpretation* to *internalization* requires the political will within a state to internalize it, the resources to do so, and a sufficient clarity and specificity of the interpretation to allow the state to internalize norms consistent with the international human rights law regime. Unfortunately, sufficient clarity and specificity of an interpretation of the law is not common, and so looms as a substantial obstacle over effective enforcement. I posit that this obstacle can be overcome by a new publication, an official document giving recommendations to civil society.

### III. Recommendations to Civil Society

#### a. Role of Recommendations to Civil Society

Presently, the international community attempts to bridge the gap between interpretation and effective internalization by sending concluding observations to states. Concluding observations are published by treaty bodies after periodic reviews, informing the government of the recipient state of violations occurring in its borders. Concluding observations contain broad recommendations to the state on a selection of a few violations.

The biggest failure of concluding observations is their inability to internalize human rights norms in a state in which the government is unwilling to do so. In such a case, treaty

bodies lose a significant portion of their influence in a state, and must rely on other states or the state's civil society to enforce the law. However, although they rely on NGOs and concerned members of civil society, treaty bodies do not empower them directly. Concluding observations may still be used by a civil society to understand areas of concern, but concluding observations, by their nature, address states and recommend actions that only states can take.

With all this in mind, I propose a new regular publication by which treaty bodies will be able to strengthen and empower civil society to implement international human rights law effectively of non-binding recommendations to civil society ("RCS"). Treaty bodies will publish these concurrently with concluding observations, but will address them to members of civil society and NGOs within that country. This will ensure that civil society members have a very specific understanding of how they can work to promote internalization in their own role. Just as concluding observations include interpretation of the law in such a way that attempts to help states apply it, RCS will try to inform civil society of the ways in which it can work to internalize the law, without having to wait on the state's participation in the internalization process.

The role of RCS is to fill the gap between interpretation and internalization in the enforcement process. In the case of non-compliant states, for instance, which either do not wish to comply or are unable to comply for other reasons, RCS will inform civil society organizations of ways to apply the law to effect internalization at a grassroots level. In the case of states that do take steps to internalize the law and norms, RCS will help to saturate civil society with the values and norms reflected in the law.

#### b. Benefits of Recommendations to Civil Society

By issuing RCS, treaty bodies will be able to facilitate internalization by clarifying to civil society the interpretation of the law which civil society can apply to work for internalization



within the state. They will not, of course, eliminate violations of human rights law or lead to a utopian society of benevolent, magnanimous people, but they will help to advance the international human rights law regime by their many benefits, expressed here.

i. *specificity*

The primary advantages that RCS has over existing enforcement mechanisms, especially e.g. concluding observations, comes from the nature of their recipients. RCS are sent to civil society organizations and do not have to be watered down so as to avoid alienating states with candor, or have to avoid language that would create obligations on states that states will resist as never having agreed to. This allows RCS to be very specific and to guide their recipients progressively and with a higher level of detail. Indeed, I propose that RCS be *very* specific—as specific as possible with the amount of time and energy a treaty body has to give to one state. The treaty body will read state reports and shadow reports and dialogue with the country’s NGOs to reach a decision on the best method by which to tackle the most pertinent issues, and such discussion will be with the understanding that such solutions be specific and concrete.

Highlighting now an example in which RCS could have been applied to great effect, in the 38<sup>th</sup> session of the Committee on the Elimination of Discrimination against Women (“CEDAW Committee”), the CEDAW Committee was reviewing issues of women’s rights in Peru. In one of the shadow reports, much care was given to orient the CEDAW committee to the specific problem of trafficking of women for labor and sex in a major mining and logging region in Peru. The report gave specific recommendations for the elimination of trafficking in Peru, including the increased allocation of police into areas affected by trafficking, incentive programs

to ensure federal knowledge and regulation of mines, and the implementation of educational programs within the police force to limit trafficking.<sup>22 23</sup>

In the section on trafficking in its concluding observations, however, the CEDAW Committee made no such recommendations to Peru, falling instead into patterns of vagueness, recommending that Peru “address the root causes of trafficking by stepping up efforts to improve educational and economic opportunities for girls, women and their families,” leaving out any recommendations on which efforts could be stepped up to achieve the desired effect.<sup>24</sup>

In a RCS, however, the CEDAW committee would have been expected to use the specific information in the reports from NGOs to determine the best course of action for NGOs to take to—in this case—mitigate the effects of mining and logging on women. The CEDAW committee would, for instance, instead of telling the state to “fully enforce its legislation on trafficking and to increase the amount of resources allocated to the implementation of the national action plan and other measures to combat trafficking”<sup>25</sup> could ask that NGOs could work within their capacity to document mining and logging locations, submitting them to the government for more effective enforcement of trafficking laws and the national plan.

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<sup>22</sup> International Human Rights Law Institute, *Women’s Rights in Peru: A Shadow Report Trafficking of Women in the Madre de Dios Region of Peru*, at 15 (2014).

<sup>23</sup> The text of the relevant recommendations follows: The Committee reiterates its previous recommendation . . . and calls upon the State party:

(a) To fully enforce its legislation on trafficking and to increase the amount of resources allocated to the implementation of the national action plan and other measures to combat trafficking; (b) To build the capacity of the judiciary, law enforcement and border officials and social workers on gender-sensitive ways to deal with victims of trafficking; (c) To address the root causes of trafficking by stepping up efforts to improve educational and economic opportunities for girls, women and their families, thereby reducing their vulnerability to exploitation by traffickers; (d) To take measures for the rehabilitation and social integration of women and girls who are victims of trafficking and to ensure that their protection includes the establishment of special shelters for victims; (e) To provide in its next periodic report comprehensive information and data on trafficking in girls and women and on prosecutions and convictions of traffickers.

<sup>24</sup> Committee for the Elimination of Discrimination Against Women, Concluding observations on the combined seventh and eighth periodic reports of Peru U.N. Doc. CEDAW/C/PER/CO/7-8 (2014).

<sup>25</sup> *Id.*

ii. *coordination with civil society*

This leads us to a further benefit of RCS: they foster significant coordination with and among civil society. Through the specificity of RCS, they will allow NGOs—even those that did not participate in the reporting process—to have interpretive guidelines for the internalization of international human rights norms. RCS will allow NGOs to not only see the pertinent issues to focus on, as they would through a reading of the concluding observations, but to see how treaty bodies see the issues best dealt with. RCS will unite NGOs with a consistent and universal understanding of the solution set forth by the treaty bodies, allowing them to focus their efforts on such solutions. If nothing else, they will be able to turn their attention to the RCS for consideration and debate.

NGOs or other members of civil society are far from united in their own vision and purpose. In one country, you may find NGOs trying to advance the international human rights law regime and NGOs opposing the international human rights law regime.<sup>26</sup> Even amongst NGOs that seek to advance human rights, interpretations and priorities abound, such that they may resist a particular interpretation of international human rights law, advancing an interpretation which is not in line with how the treaty body would interpret it<sup>27</sup>. RCS will, in this case, provide a standard interpretation of the law in order to help NGOs unite in their own understanding of the law for a more effective implementation by civil society.

RCS will empower members of civil society to accept for now the obstacles to internalization in a state, while finding solutions that may not be ideal but that are realistic. By dialoguing with components of civil society—those that try to implement the recommendations

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<sup>26</sup> *Eric Posner: Twilight of Human Rights Law*, World Affairs Council of Northern California (Nov. 6, 2014) (available on iTunes).

<sup>27</sup> *Id.*

and further human rights norms—the treaty body will have much more faith in the accuracy of the assessments regarding the difficulties and obstacles the NGOs present surrounding the implementation of RCS. Then, because the dialogue continues beyond merely seeing the issues or obstacles to treaty compliance, treaty bodies will be able to focus on the possible ways in which internalization can be achieved, notwithstanding those obstacles.

*iii. fosters dialogue between civil society and treaty bodies*

Publishing RCS requires an amount of conversation necessary to reach a creative understanding and appreciation of the difficulties in the state.<sup>28</sup> Such conversation will not solve the problems, but it will help for treaty bodies and NGOs to come to an understanding of how to internalize norms despite those problems. In the shadow report on trafficking mentioned above, the publishing NGO claimed that the biggest category of obstacles to compliance was ineffective policing and regulation, either due to corruption or poor training.<sup>29</sup> The concluding observation, however, was completely silent on the inability of the police force to regulate trafficking.<sup>30</sup> Not only will RCS give NGOs the coordination necessary to succeed, but they will allow treaty bodies to constructively dialogue further with civil society, taking their concerns into explicit account.

*iv. work within the context of a non-compliant state*

Instead of blaming the recipient for the conditions rendering treaty compliance impossible or difficult, RCS will reflect a recognition of the issues, but will not address them if they are not within the power of civil society to change. Because concluding observations are

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<sup>28</sup> This is not simply a naïve idealistic idea. I am not claiming that RCS will simply cause more discussion which will lead to solutions through some conversational magic. The obstacles and difficulties facing NGOs and states in implementing treaty norms will not be removed or solved through dialogue, but, the dialogue continues until treaty bodies and civil society understand what NGOs can do in light of the obstacles facing them. The end result is that the obstacles remain, but what can be done is being done.

<sup>29</sup> International Human Rights Law Institute, *supra* note 23, at 4.

<sup>30</sup> Committee for the Elimination of Discrimination Against Women, *supra* note 25.

given to states,<sup>31</sup> and state governments are the only actors who by definition can violate international human rights law,<sup>32</sup> the acknowledgement of a problem is sometimes interpreted as blaming or accusing a state party for whom strict compliance may be below its means. RCS will not reflect an understanding of such issues as obstacles or prerequisites to treaty compliance and internalization, which would imply that they need to be overcome and dealt with before compliance can be reached.<sup>33</sup> In issuing RCS, treaty bodies see such issues preventing compliance as unfortunate facts of life making government compliance and NGO participation more challenging, allowing for more creative and dynamic solutions. The CEDAW committee in its concluding observations to Peru recommended that Peru implement programs to train police officers to combat corruption. In an RCS to Peru, the CEDAW committee could acknowledge the prerequisite failure of the state in certain terms. For example, an RCS could say, “Given that the police force is unable to regulate the mines due to the number of unregistered mines, we recommend that equipped members of civil society create a working document for submission to Peru on location and number of mines.”

The cooperative attitude reflected in RCS is a crucial aspect thereof, because they validate a country as it is, acknowledging cultural differences and the spectrum of value of international human rights norms in the state. International human rights law is often seen as unduly optimistic and idealistic, but this approach to norm internalization for grass roots enforcement does not qualify for this same criticism. Rather than stating “this is the way things should be”, RCS say, “this is the way things are, and here is how we can work within that

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<sup>31</sup> U.N. High Commissioner for Human Rights, *The United Nations Human Rights Treaty Body System: An Introduction to the Core Human Rights Treaties and the Treaty Bodies*, Fact Sheet No. 30, Revision 1, at 19 (2012).

<sup>32</sup> U.N. Office of the High Commissioner for Human Rights, *What are Human Rights?* <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx> (last visited May 12, 2015).

<sup>33</sup> This is applicable even in instances where the obstacles are themselves a violation of treaty law, such as may be the case in institutionalized racism or misogyny: oftentimes the symptoms have to be alleviated concurrently with the root infection.

context to improve the well-being of its members in the spirit of the recognition of their human rights.”

*v. cultural sensitivity*

The foundational precepts of RCS resemble a synthesis of the ideas behind cultural relativism and moral absolutism. They adopt the modern claim that human rights do exist, especially insofar as their recognition affirms the dignity of humans, but they also reflect the more postmodern recognition of the way culture and society works. RCS affirm cultural obstacles to treaty compliance not as something that should trump the universality of human rights, but as something that must develop over time into a recognition of those rights through internalization in order to create a long-lasting cultural identity distinct from the violative practices.

*vi. positive perception of treaty bodies*

The non-binding legal nature of RCS means that criticism directed at United Nations treaty bodies as being oppressive, centralized agencies will not only be misguided, but also be recognized as such at once, at least when such criticism is in response to an RCS. RCS do not purport to be legally binding, nor can they be argued as such, because they are directed to members of civil society which have no treaty based obligations. The RCS characterize treaty bodies as a sort of consultative agency to the NGOs rather than an authoritarian one as concluding observations sometimes appear to states.

*vii. synergizes with concluding observations*

Finally, RCS can empower and be empowered by concluding observations. If the government of Sri Lanka, for example, is actively discouraging the implementation of the recommendations within the RCS to the civil society of Sri Lanka, concluding observations of

the next session can address such acts and suggest that the government cease doing them. This model already exists within the treaty bodies' use of concluding observations: they regularly encourage states to withdraw reservations, ratify optional protocols, or even to ratify additional treaties. This model can be adopted here, and RCS can themselves contain recommendations which would facilitate the ratification of treaties by the government through upward pressure.<sup>34</sup>

RCS as I propose them lets treaty bodies leverage the womanpower and manpower already being applied to advance human rights. Many of these are found in the recommendation's specificity. It gives treaty bodies the chance to be candid and realistic and give NGOs guidance to effectively advance human rights.

### c. Addressing Criticisms

Above I have proposed a publication which I hope will—if implemented—give a powerful voice to the way things are in a state, especially regarding the obstacles to treaty compliance. They will have an impact on the way that civil society goes about the work in line with the international human rights law regime. Nonetheless, I do not claim they will not have limitations. Here, however, I address those criticisms which may seem plausible, but which by the nature of RCS do not have the purported stopping power sufficient to cut off development and implementation of RCS.

One criticism that some may try to apply to RCS is their apparent lack of legal foundation for publication by treaty bodies. In no treaty does the text mandate—explicitly or otherwise—the publication of RCS, or any other publication to civil society.<sup>35</sup> Treaty bodies are specific

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<sup>34</sup> It is important that treaty bodies avoid using RCS as merely a *means* to encourage treaty signature, ratification or compliance with concluding observations. The two publications supplement each other, but their goals are very different: Cos mean to get state parties to comply with a treaty; RCS are intended to internalize international human rights norms on a lower level. If the two get conflated, it will weaken the unique strengths of RCS.

<sup>35</sup> See the text of various human rights treaties, available at <http://ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>. Click on the respective treaty body and follow the link under “basic documents” to “Convention”.

bodies of members created by each individual treaty, and so each body has limited powers, although some have argued that treaty bodies already overstep this power significantly.<sup>36</sup>

While the author does not think that treaty bodies need be strictly limited to the specifics of their duties as laid out in the treaties if they act in accordance with their role as enforcers of international human rights law, it is still useful to couch RCS within a legal framework with uncontested authority. One source criticizing concluding observations uses the Vienna Convention for the Law of Treaties (“VCLT”) as a way to suggest that treaty bodies have generally overstepped their legal authority by doing that which the treaty does not explicitly give it the authority to do.<sup>37</sup> However, the VCLT as applied to treaty bodies does not limit them in their function when they act in ways not placing a new obligation on the state.<sup>38</sup> It states that with respect to non-codified treaty law (as in customary international law), states shall not be bound to anything to which they have not agreed to be bound.<sup>39</sup> As RCS do not create new obligations on state parties, they do not fall within the purview of the VCLT limitations.

One appropriate criticism is that authoritarian regimes may severely limit the participation of civil society in the internalization process. If RCS are given to NGOs in a highly authoritarian regime, they may have very little room to work towards their implementation. But this alone will not suppress the effectiveness of RCS. RCS can still serve to normalize international human rights norms among people who have no power to change laws, as it gives value and dignity to the people, if only subjectively in their own view of themselves. Additionally, simply because a regime is authoritarian does not mean that the regime has the

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<sup>36</sup> Joanne Pedone & Andrew R. Kloster, *New Proposals for Human Rights Treaty Body Reform*, 22 *J. Transnat'l Pol'y* 34, 35 (2013).

<sup>37</sup> *Id.*

<sup>38</sup> *See id.*

<sup>39</sup> Vienna Convention on the Law of Treaties art. 34, May 23, 1969, No. 18232, 1155 U.N.T.S. 340.



ability to do whatever it wants. The government still must consider the will of the people to some degree, simply because they may fear revolt and the overthrow of their regimes.<sup>40</sup>

A more practical consideration is the time and energy that it will take for an already overloaded body to publish a whole new document. This is a valid concern. However, the additional workload on the treaty body will actually be quite minimal, as far as treaty reform is concerned. All of the information necessary to publish RCS will be already available following the session. The largest burden that RCS place on treaty bodies is the additional time necessary to dialogue with the NGOs. Treaty bodies will need to modify the minute by minute session schedule in order to take the time to speak with the NGOs regarding next steps and obstacles to them, but such is the nature of reform. Adding RCS will add work to the treaty bodies, but not a significant amount, especially not when evaluated relative to the positive effects they will have.

Finally, RCS may be construed to be an endorsement of the violative cultural practices, legal framework, or political agenda in a state: in contrast with concluding observations, RCS are less critical of the state of society, government, or culture. This non-judgmental characteristic—while beneficial for the reasons stated above—may lead some to think that RCS endorse the state of affairs within states violating international human rights law. While it is possible that some may construe RCS' attempt to work within the framework of violations as tolerance for violative cultural norms, the affiliation of RCS with treaty bodies and their publication concurrent with concluding observations mitigate the effects of this possibility. Furthermore, RCS will be sent to members of civil society who are engaged in trying to advance

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<sup>40</sup> This does not negate the fact that in general, authoritarian regimes are less apt to recognize human rights without military intervention or sanctions, and this limitation specifically extends to the carrying out of RCS as well, such that they may be less effective in states with authoritarian governments.

human rights, so it is unlikely that they will employ this argument from silence in order to cease their own work for the advancement of human rights in their state.

These are not the only criticisms that will come up to challenge implementation of RCS, but they are the most apparently plausible. When more arise, it is important to address them relative to the benefits that RCS will provide.

#### IV. Conclusion

Enforcement occurs over four stages: interaction, interpretation, internalization, and obedience. There is a very wide gap between interpretation and internalization, however, in cases in which government agents are unable or unwilling to internalize international human rights norms. Within this gap lies a majority of state violations, and the width of the gap explains many violations of international human rights law by states. Because this gap is created by government's own unwillingness or inability, it is unreasonable to rely on government action to bridge it. Unfortunately, the methods utilized by treaty bodies are those which do, in fact, rely on the government's response. In addition to existing methods, treaty bodies need to empower civil society to bridge the gap through efforts to coordinate civil society organizations with interpretations of the law applied to what civil society organizations can do.

"The way forward" may be, clearly to some, as it is to Navanethem Pillay, the strengthening of treaty bodies and state parties to treaties.<sup>41</sup> But it is clearer still to me that the way forward involves far more focus on coordination with, and the empowerment of, civil society. Such coordination will have the most effect in the gap between interpretation and internalization in states in which the government is unwilling or unable to internalize the law, and it is here which treaty bodies should place their focus for the greatest effect, allowing treaty

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<sup>41</sup> Pillay, *supra* note 2, at 94.

bodies to explicitly extend their influence to the realm of civil society, encouraging internalization even in cases in which state governments are unable or unwilling to do so.