WHAT IS THE ROLE OF PROFESSIONAL AND CIVIL SOCIETY ORGANISATIONS BEYOND INTERNATIONAL LEGAL MECHANISMS OF IMPLEMENTING HUMAN RIGHTS TREATIES?

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1. THE CHALLENGES OF IMPLEMENTING HUMAN RIGHTS TREATIES

International law authors approach the historical development of international human rights law from various perspectives but consensus seems to converge around the atrocities of the Second World War as providing the immediate backdrop for the contemporary treaty regime on the subject. “[N]azi expansion and extermination practices under Hitler, coinciding with Stalin’s reign of terror in the Soviet Union. These developments laid the groundwork for a broad consensus that a new humanistic legal order would be established.” This broad consensus found its first detailed expression in the adoption of the Universal Declaration of Human Rights (UDHR) on the 10 December 1948. Since the UDHR, the international community has embarked on a vigorous process of human rights standard setting. This has resulted in the adoption of many treaties including the six United Nations treaties, which are the focus of this paper. The said six treaties are, the International Convention on the Elimination of all Forms of Racial Discrimination (CERD) (1965); the International Covenant on Economic, Social and Cultural Rights (CESCR) (1966); the International Covenant on Civil and Political Rights (ICCPR) (1966) and its first Optional Protocol (OP1); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984); and the Convention on the Rights of the Child (CRC) (1989). Each of these treaties has set up a specific body to monitor and enforce compliance with the

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2 Ibid. p. xxvii.
treaty provisions.\textsuperscript{3} The system of monitoring and implementation generally employed by the treaty bodies – the international legal mechanisms – include: reporting; inter-state and individual complaints; and studies and investigations.

1.1. The Challenge

Today, standard setting for the protection of human rights has largely matured. “The challenge now is to ensure that the promises contained in the treaties and affirmed through ratification are realised in the lives of ordinary people around the world. A paradigm shift to the true ‘customers’ of the system is necessary.”\textsuperscript{4} The enormity of the challenges of implementation become all too clear when the treaty regimes are put in proper perspective with the emphasis that the treaties were designed to be implemented at two levels: municipal and international, the municipal being the envisaged primary level of implementation. Using the ICCPR as an example,

“Though the ICCPR imposes duties upon states in the international plane of law, it is envisaged that the implementation of the rights therein is primarily a domestic matter . . . International enforcement measures such as the supervisory mechanisms of the HRC, are designed to be a secondary source of ICCPR rights protection.”\textsuperscript{5}

This is probably a correct interpretation of Article 2 of the ICCPR.\textsuperscript{6} In my view, despite the inherent inefficiencies of the international mechanisms (backlogs, overlaps, vagueness in findings and the routine disregard of findings by states when domestic convenience so dictates),\textsuperscript{7} the major challenges of implementation of the treaties are to be found in domestic mechanisms. It can even be argued that part of the inefficiencies in the international mechanisms is a direct result of low-level implementation at the domestic sphere in some states. “A low level of domestic implementation of human rights norms in a particular country makes international supervision more important . . . in order for international human rights treaties to have an impact; an enabling domestic environment is required.”\textsuperscript{8} As such, it is

\textsuperscript{3} Committee on Elimination of all Forms of Racial Discrimination; Committee on Economic Social and Cultural Rights; Human Rights Committee; Committee on Elimination of Discrimination Against Women; Committee Against Torture and Committee on the Rights of the Child.
\textsuperscript{6} See also Article 2 CESCR, Article 2 CERD, Article 2 CEDAW, Articles 2 and 4 CAT, Article 2 CRC
\textsuperscript{7} See Heyns, supra footnote 4, p. 488
\textsuperscript{8} Ibid, p. 518