

Access to Justice in the United Nations Human Rights Committee

Individual access to international institutions is seen as one of the most important developments in international human rights law since World War II. Granting individuals the ability to access international institutions to file complaints against their countries was considered to be especially innovative since it took human rights from the domestic jurisdiction to the international level. Moreover, it recognized individual people, and not only countries, as the possessing certain rights under international law, thus breaking the classical model of international law as solely regulating relations between states.

Even though with time there seems to be an increase in the number of international institutions granting individuals rights to access them, there is a gap in the empirical literature regarding the actual usage of this right. For instance, much more empirical research is needed regarding the questions - who are the main beneficiaries of this right in practice, what are the main difficulties individuals face with accessing international justice, and what can be done in order to make international institutions more accessible to people from all over the world.

This paper uses the individual petitions system under the First Optional Protocol (“OP”) to the International Covenant on Civil and Political Rights (“ICCPR”) as a case study in order to shed some light on the actual practice of the right to access international justice. The United Nations Human Rights Committee (“HRC”), the treaty body responsible for overseeing the implementation of the ICCPR, is of special interest to researchers since it is a quasi-judicial tribunal that can receive individual communications against 115 states. Although over a billion people have been under the jurisdiction of the HRC since 1977, as of March 2014, only 2,371 individual communications had been brought by petitioners. This single piece of data can in itself pose a grave doubt on the success of the idea of access to international justice in the context of the HRC, or at least trigger further research into this question.

The current paper has two main purposes. The first purpose is to describe and evaluate empirically the right of individuals to access the HRC under the OP, in light of the special goals of this procedure as perceived by the different stakeholders. The second purpose is to make recommendations on ways to improve the access of individuals to the HRC, and to international justice in general. In order to address the first question, the paper uses an empirical mixed methods approach. For the quantitative part of the research, I have constructed an original dataset of the number of the communications brought against different countries in a given year. Additionally, I coded the various political and socio-economic characteristics of those countries. This gives us a picture of who most often uses the individual communications mechanism, and what might be the main obstacles with filing communications to the HRC. Second, I conducted interviews with 32 applicants, lawyers and NGOs that brought (or helped to bring) communications to the HRC. The interviewees were asked questions about their experiences with the process, their difficulties with it, and how they thought that the process could be made more accessible. The combination of the two methods can help us to evaluate the success of the process. In order to address the second purpose and make recommendations about the accessibility of the HRC, I rely both on the empirical findings, and on general literature about access to justice.

The paper finds that there is a significant global inequality in accessing the HRC, since communications are much more likely to be filed against democratic countries with high socio-economic characteristics. Also, there seems to be a problem with the awareness to the possibility of filing individual communications. Another problem with the accessibility of the system is state intimidation of applicants who filed communications to the HRC, and also many procedural problems that stem from the fact that the UN Secretariat (and the HRC itself) is very much under-funded. However, the system is widely perceived as fair, and most of the applicants would recommend others to file communications to the HRC.