

# An Interview with Marcia V. J. Kran About the UN Human Rights Committee

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Marcia V.J. Kran belongs to a group of accomplished Canadians who have worked tirelessly with UN entities to advance international law, strengthen governance institutions and better the lives of all individuals.  In 2016, she was nominated by Canada and elected by Member States as an expert member to the UN Human Rights Committee.  She is currently serving her second term on the Committee and kindly agreed to answer some questions for the PKI Global Justice Journal.

By way of background, Ms. Kran is an international lawyer with 40 years of professional experience working in human rights, criminal justice and democratic governance as a senior official at the UN Office of the High Commissioner for Human Rights (OHCHR) in Geneva, the UN Development Programme (UNDP) in Asia and the Pacific, the UNDP in Eastern Europe and the Commonwealth of

Independent States (CIS), and as National Criminal Justice Reform Director at the Open Society Institute in Budapest, Hungary. In Canada, she was Criminal Law Policy Counsel at the federal Department of Justice, taught international human rights law as an adjunct professor at the University of British Columbia, and served as a Crown Prosecutor for the Attorney General of Manitoba.

**1. Congratulations on having been re-elected to a second term as a member of the UN Human Rights Committee. Can you explain the role of this Committee and the functions it performs?**

Thank you. The Human Rights Committee is a body of 18 independent human rights experts that monitors implementation of the I*nternational Covenant on Civil and Political Rights (ICCPR)* by State Parties, of which there are currently 173. The rights in the Covenant are far-reaching in scope and range from the right to a fair trial; the right to be free from torture, ill treatment, slavery and arbitrary detention; freedom of movement, privacy, religion, assembly; equality before the law; and participation in political affairs. When these countries ratified and became State Parties to this international treaty, they undertook legal obligations to respect, protect and fulfill the rights set out in the treaty. The Committee scrutinizes their compliance.

The Committee carries out three main functions as mandated by the *ICCPR*: (1) periodically conducting country reviews through interactive dialogues; (2) deciding individual communications on civil and political rights violations regarding countries that have ratified the First Optional Protocol to the ICCPR – there are 116 of them; and (3) developing General Comments. Regarding country reviews, article 40 of the *ICCPR* obliges States Parties to submit periodic reports to the Committee on their compliance with the Covenant. National human rights institutions and civil society organizations also submit reports to the Committee. Based on the reports submitted and information gathered through the dialogues with State delegations in Geneva, the Committee provides recommendations, called Concluding Observations, for countries to follow to be in compliance with the *ICCPR*. Reliable information from civil society organizations that work on civil and political rights in the country concerned is crucial to get a detailed grasp of the situation and help ensure our recommendations are directly relevant. The dialogues are public and can be viewed live on UN WebTV and are archived for future reference. The reviews are ultimately intended to be a constructive endeavour as they provide tailored recommendations from 18 experts from various legal systems on ways for countries to implement their international obligations on civil and political rights.

We also decide individual communications or cases submitted to us by rightsholders who, generally speaking, claim they have not received justice at home. While the Committee is not a court or a tribunal, it does have a court-like or quasi-judicial function. In closed sessions, we decide on these individual petitions concerning civil and political rights violations and issue decisions, referred to as “Views” which include remedies for victims.

As well, the Committee develops General Comments. General Comments codify the status of international law and good practice on selected rights. Through consultation with States Parties and

civil society, the Committee selects a topic covered by the *ICCPR* that is timely in the sense that there is a need for specific guidance to states. Then we elaborate a document on how the particular right can be effectively implemented by states. Our 2018 General Comments on the Right to Life addressed the right to live and die in dignity. In 2020, we adopted a General Comment on the Right to Peaceful Assembly which set out steps state authorities, such as law makers and law enforcement, are to take to facilitate this important right.

**2. You were the Special Rapporteur on Follow-up to Recommendations made by the UN Human Rights Committee to States Parties. What does this role involve?**

Yes, from 2019 to 2021, I was the Committee's Special Rapporteur on Follow Up to Concluding Observations. I led the process during which the Committee evaluates States Parties' follow-up action after country reviews. When Concluding Observations are adopted, the Committee selects two to four of the recommendations that require immediate attention because of their gravity or urgency. The State Party is expected to report on its implementation of these recommendations within one to two years. I have noticed that this reporting is enhanced where countries have effective national follow-up procedures and processes in place. The Committee reviews the information submitted as well as any information that may have been submitted by civil society organizations or national human rights institutions. On the basis of the written submissions, we assess the progress made by States Parties in implementing the recommendations and adopt a rating according to our evaluation criteria, ranging from 'A' ('largely satisfactory') to 'E' ('measures taken are contrary to or reflect a rejection' of the recommendation). The Follow-up procedure gives countries an opportunity to showcase the progress they have made on civil and political rights, and is influential in ensuring the work of the Committee has its intended effect at the national level, after the recommendations are adopted, as it encourages States to demonstrate meaningful progress toward key human rights goals.

**3. Is the Follow-up to Concluding Observations reply from states a mini report between mandated periodic reports on select issues? Was it initiated to allow the Committee to delve deeper and more quickly into select issues?**

Not quite. The follow-up process does require a State Party to report on those Concluding Observations that the Committee selects. However, the primary purpose of this procedure is to assess State Parties' progress on implementing the Committee's recommendations, as opposed to addressing new issues. If a State Party does not respond to the Committee as part of the Follow-up process, they receive a D grade. Like the constructive dialogues, the Committee's assessment of follow up takes place in open session, on live UN webcast.

**4. As you mentioned, among its main roles, the Human Rights Committee can hear complaints or "Communications" from individuals if a State Party has ratified the First Optional Protocol to the ICCPR. What kinds of violations are alleged in these complaints to the**

**Committee? Are there particular decisions of the Committee that you would bring to the attention of readers of the Journal interested in international human rights?**

The violations that are alleged by rightsholders through individual communications relate to many of the rights guaranteed under the *ICCPR* such as violations of the right to life, the right to peaceful assembly, freedom of religion, and many other rights. The cases submitted vary as much as the situations in the State Parties. I can point to five cases where we adopted views that may help illustrate the wide variety of situations than can result in a case being considered by the Committee.

In *Mellet v. Ireland* in 2016 and *Whelan v. Ireland* in 2017, the Committee found that Ireland's ban on abortion violated the Covenant by discriminating against women. The women who brought the cases were forced to travel to another country to terminate non-viable pregnancies. The Committee found that Ireland had subjected the authors to intense physical and mental suffering and violated their rights to privacy, freedom from ill-treatment and non-discrimination as the ban was based on stereotypes about gender and the reproductive role of women primarily as mothers. In 2018, Ireland held a referendum and the majority of Irish citizens voted to overturn the abortion ban and reform the constitution. The result was signed into law by the President in September 2018 and abortion services commenced in Ireland in 2019.

In *Özçelik, et al. v. Turkey* in 2019, the Committee adopted views against Turkey, directing the release of two alleged Gulen followers after they had been secretly rendered from Malaysia to Turkey. The two men were detained without charge for long periods and without effective access to legal counsel. The Committee found that the State Party had not presented grounds for reasonable suspicion that the men had committed criminal offences that required pre-trial detention. We requested Turkey to release the authors, provide them with adequate compensation and report back with details of the measures the country had taken to remedy the situation. The State Party has not yet complied with these Views.

In *Teitiota v. New Zealand* in 2019, the Committee found for the first time that it is possible to be a "climate change refugee". A man from Kiribati, submitted an individual communication against New Zealand to the Committee. He had made an asylum claim in New Zealand based on the predicted danger from land disputes and difficulties accessing safe drinking water due to the climate crisis. The State Party denied his asylum claim. We did not find a violation of his rights based on the facts. The Committee did find that future claims might be successful where the evidence shows "the effects of climate change in receiving states may expose individuals to a violation of their rights".

In *Tholal and Mahmood v. Maldives* in 2021, the Committee ruled that the Supreme Court of the Maldives violated the freedom of expression of two former members of the national Human Rights Commission when it carried out reprisals against them for engaging with the UN. In 2015 the Commission was prosecuted in the Supreme Court after they made a submission on the human rights situation in the Maldives to the UN Human Rights Council for the country's Universal Periodic Review. The Committee found that this was a violation of freedom of expression, as independent national

human rights institutions, in order to fulfill their duty to promote and protect human rights, must have the freedom to responsibly comment in good faith on the compliance of the government and public bodies with human rights.  Reprisals such as these against human rights institutions for doing their work can have a chilling effect on other oversight institutions and undermine the rule of law.

**5. In a good number of countries today, space for civil society to operate is shrinking substantially. NGOs who cooperate with the UN Human Rights Committee may risk reprisals. What does the Committee do in situations like this?**

When those engaging with the UN treaty bodies face intimidation, threats, and imprisonment, the credibility of the UN as a whole is weakened, and it can discourage future cooperation and collaboration. In 2015, Guidelines against Intimidation or Reprisals, or the San Jose Guidelines, were developed by the chairpersons of all UN human rights treaty bodies, including the Committee, in response to instances of intimidation and reprisals. It was urgent to improve the coherence of responses across treaty bodies and strengthen protection.

Where reprisals occur, the Committee has several options for action under the Guidelines, depending on the specific case and the political situation in the State Party. These options include both confidential and public actions such as raising the matter during the interactive dialogues with countries or in our Concluding Observations; meeting with Permanent Missions or communicating in writing to the State concerned; raising the case with the UN High Commissioner for Human Rights, or UN Special Procedures mandate holders; reporting it to the Human Rights Council and the General Assembly, or issuing press releases. It is important to note that, before taking action, the Committee carefully considers the situation on a case by case basis, respecting the principles of “do no harm”, confidentiality, safety and security.

**5. How do you see the Committee’s various roles and processes affecting change in countries?**

As far as Committee’s views in response to individual communications are concerned, approximately a quarter of them were implemented, at least in part, between 1977 and 2016. This is according to a research study done by the former Secretary of the Committee (K.F. Principi, “United Nations Individual Complaints Procedures—How Do States comply? A Categorized Study Based on 268 Cases of ‘Satisfactory’ Implementation under the Follow-up Procedure” (2018), 37 HRLJ 1–30.) The same study underlined the value of the Committee’s views in interpreting the *ICCPR*.

In the context of country reviews, state reporting and interactive dialogue with the Committee, human rights monitoring does tend to contribute to human rights improvements in the country concerned in the long term (see here).The development of periodic reports by State parties, an integral part of the compliance process, generates a discussion and evaluation of the degree to which ICCPR obligations are being implemented. This awareness can prompt implementation even before the dialogue with the Committee. The in-person constructive dialogues shine a spotlight on the civil and political rights

situation in the countries that engage with the Committee. The power of persuasion exerted during the constructive dialogues between the State party officials and Committee experts reinforces positive efforts and offers exposure to comparative national practise in implementing ICCPR obligations. Publicity and action by civil society in the country concerned can bolster the likelihood that Committee recommendations will be followed up.

Regrettably not all State Parties report to the Committee. To increase the effectiveness of the process,
we recently decided to regularize the process and review State Parties compliance with the *ICCPR* every eight years under a predictable calendar.

**8. Much of your career has been dedicated to helping governments implement their international human rights standards – currently, as a member of the Human Rights Committee and before that, in positions held at the United Nations and earlier at the Open Society Institute. Can you describe the work you have done? How does your prior experience affect your approach to your responsibilities on the Committee?**

My approach is oriented to ensuring that countries tangibly implement their human rights obligations so that rightsholders are able to exercise their human rights in practise. I have provided advice to over forty countries on ways to implement international human rights, whether through legislation, policy, systems, capacity development, or programmes.

This began when I was National Criminal Justice Reform Director at the Open Society Institute in Budapest, Hungary, and collaborated with the national Open Society foundations in the countries of the former Soviet Union and Eastern Europe to develop criminal justice reform projects aimed at improving human rights protection. Then, at the UNDP Regional Centre for Europe and the Commonwealth of Independent States in Bratislava, I led a team of advisors specializing in governance including human rights, access to justice, and public administration. Members of my team and I carried out missions in response to requests from the 25 countries of the region to advise on ways to strengthening governance. I then served as Head of Policy and Programmes at the UNDP Regional Centre for Asia and the Pacific in Bangkok, Thailand, and managed the provision of expert advice and regional support programmes to over 25 countries on the various interconnected areas of sustainable development including democratic governance, human rights, access to justice, gender equality, anti-corruption, environmental protection and crisis prevention.

I later became Director of the Research and Right to Development Division at OHCHR in Geneva. My team advised the High Commissioner on policy positions on a wide range of human rights issues, conducted research studies for, and organized panels at, the Human Rights Council on priority human rights issues. Specialists in the Division also provided advice to interested states and civil society organizations on human rights.

In my work at OHCHR and UNDP, I advocated for the integration of human rights into all sustainable development efforts. The rule of law, governance and respect for human rights are critical to achieve and sustain progress made on development over time. Governance is not just about ensuring that a country's administration functions smoothly—it is also about how people can review what those in power do and how they can hold them accountable. Human rights and the accountability of those in power are at the core of rule of law and governance and, in my view, need to be prioritized in order to achieve sustainable development.

Since I was elected to the Committee four years ago, my focus has been on the tangible efforts made to apply rights guarantees in practice at the national level. When we engage in dialogues with officials in Geneva and adopt Concluding Observations, my concern is about how these will be translated into pragmatic action by the State party on the ground.

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**About the author**

*Marcia Kran* *In addition to Ms. Kran's extensive professional experience (described in the introduction to this interview), she was awarded the Walter S. Tarnopolsky Prize in 2005 by the International Commission of Jurists (Canada) in recognition of her outstanding contributions to international human rights. The following year, she received a Celebrated Alumnus Award from the Faculty of Arts, University of Manitoba. In 2020, she was appointed an officer to the Order of Canada.*

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