

<b>Institution: University of Nottingham</b>
<b>Unit of Assessment: 20</b>
<b>Title of case study: Shaping Reform of the United Nations Human Rights Treaty Body System</b>
<p><b>1. Summary of the impact</b></p> <p>Sustained published research in the area of UN human rights treaty body reform has positioned O’Flaherty as the principal international specialist in the area. He led the ‘Dublin Process on the Strengthening of the United Nations Human Rights Treaty Body System’, a process that is acknowledged globally as the primary context/forum for the reform of the treaty body system. A number of specific proposals made by the Dublin Process on reforming the human rights treaty body system draw directly from his research.</p>
<p><b>2. Underpinning research</b></p> <p>The United Nations Human Rights Treaty Body System is the international oversight framework for implementation by States of the international human rights treaties. It is intended to monitor and support States for the effective implementation at the national level of their treaty-based human rights obligations.</p> <p>The System has been in a state of escalating crisis over the last 20 years. The many dimensions of the crisis may be categorised in terms of five challenges: <i>input</i>, <i>analysis</i>, <i>output</i>, <i>impact</i> and <i>environment</i>. Issues of <i>input</i> include the problem of under-reporting by States, that is failing to report when their reports are due, and limited engagement in the process on the part of civil society. <i>Analysis</i> is challenged by the very poor systems of secretariat support and research services afforded to the treaty bodies and the limited time available for consideration of country situations by the treaty body expert members. The ultimate <i>output</i> challenge is the fact that findings of treaty bodies are non-binding in nature. The <i>impact</i> dimension of the crisis relates to the findings being constrained by such factors as the lack of effective follow up procedures of the treaty bodies. <i>Environmental</i> challenges relate to the emergence of new, potentially “competing” oversight mechanisms, especially the UN Human Rights Council’s Universal Periodic Review procedure.</p> <p>There have been numerous attempts at a reform of the system stretching over many years, yet with only very limited success. Professor Michael O’Flaherty’s sustained research at the University of Nottingham, between 1 January 2004 and 31 January 2013, clarified key understandings of the system and made concrete reform proposals relating, e.g., to its multi-stakeholder dimensions; the need to acknowledge both legal and diplomatic dimensions; the nature of the principal treaty body outputs (“concluding observations”); reform of the periodic reporting procedures; and the delivery of human rights impact on the ground. For instance, O’Flaherty is the author of the leading academic work devoted to legal analysis of “concluding observations” [6], in which a new conceptual taxonomy is advanced. His published work also advocated the consolidation and integration of treaty body recommendations into the broader human rights work of the UN [5] and the greater involvement of non-governmental organizations and national human rights institutions in the reporting process [1]. More generally, O’Flaherty’s published research identified the need to recognize the treaty bodies as diplomatic actors [3], critically evaluated past reform efforts and proposed effective reform strategies. His principal publication on this theme, co-authored with O’Brien [4], remains one of the most cited articles ever published in the <i>Human Rights Law Review</i>. The authors argued for a reform process that preserves the various functions of the treaty body system, avoids marginalising particular categories of human rights and learns from lessons of past (largely unsuccessful) reform efforts. Much of this agenda came to be adopted by the Dublin Process and is clearly reflected in its official outputs and achievements (see below, Section 4).</p>

### 3. References to the research

1. M O'Flaherty and PL Tsai, 'Periodic Reporting: The Backbone of the UN Treaty Body Review Procedures', in M Cherif Bassiouni and WA Schabas (eds), *New Challenges for the UN Human Rights Machinery* (Intersentia, 2011) 37-56 [available upon request].
2. M O'Flaherty, 'Reform of the United Nations Human Rights Treaty Body System: Locating the Dublin Statement' (2010) 10 *Human Rights Law Review* 319-335 [doi: 10.1093/hrlr/ngq009].
3. M O'Flaherty, 'The United Nations Treaty Bodies as Diplomatic Actors', in M O'Flaherty (et al) (eds), *Human Rights Diplomacy: Contemporary Perspectives* (Brill, 2011) 155-172 [available upon request].
4. M O'Flaherty and C O'Brien, 'Reform of UN Human Rights Treaty Monitoring Bodies: A Critique of the Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body' (2007) 7 *Human Rights Law Review* 141-172 [doi: 10.1093/hrlr/ngl035].
5. M O'Flaherty, 'Towards Integration of United Nations Human Rights Treaty-Body Recommendations - The Rights-based Approach Model' (2006) 24 *Netherlands Quarterly of Human Rights* 589-606 [available upon request].
6. M O'Flaherty, 'The Concluding Observations of Human Rights Treaty Bodies' (2006) 6 *Human Rights Law Review* 27-52 [doi: 10.1093/hrlr/ngi037].

### 4. Details of the impact

The primary impact of O'Flaherty's research has been in shaping and influencing the content of a major round of reform debate at the United Nations (UN). Specifically, his research contributed to strengthening the UN's institutional architecture for human rights monitoring and protection. Its success in this regard can be measured in terms of its pivotal influence in initiating, informing and guiding the most ambitious set of reform initiatives ever seen in the life of the treaty body system. The beneficiaries of the institutional reforms promoted and facilitated by O'Flaherty's research are the human rights treaty bodies themselves, states that engage with the human rights bodies (e.g. through submission of state party reports), civil society, and the individuals whose human rights are better protected.

In 2009, the UN High Commissioner for Human Rights (the principal UN official with responsibility for support to the treaty body system) indicated the need for systematic reconsideration of measures to strengthen the treaty body system. In response to that appeal, in September 2009, O'Flaherty initiated a reflection process on reform of the treaty body system, with the participation of treaty body members acting in their personal capacity. As part of this reflection process, O'Flaherty drafted a programme for a reform process, drawing extensively on his academic work. In particular, the draft programme reflected the institutional history of reform processes as laid out in [4] and employed many of the concepts elucidated in [4], [5] and [6]. The programme was examined by a committee of experts at a meeting in Dublin in November 2009 attended by the UN High Commissioner for Human Rights. At that meeting, the Dublin Statement on the Strengthening of the UN Human Rights Treaty Body System was adopted, which was a refined version of O'Flaherty's own original draft.

The University of Nottingham has been explicitly credited for facilitating the Dublin process and producing the Dublin Statement. For example, the UN Secretary-General has noted that:

"A number of consultations organized by stakeholders as a direct response to the High Commissioner's call have taken place and resulted in the adoption of statements which include various proposals to strengthen and streamline the treaty body system. These meetings were organized in Dublin in November 2009, for treaty body members, at the initiative of the University of Nottingham, United Kingdom of Great Britain and Northern Ireland." [i]

The Dublin Statement was subsequently debated and built upon by all of the key global stakeholder groups (including states, civil society, national human rights institutions, and UN officials) at a series of meetings held in 2010 and 2011 in Switzerland, South Korea, South Africa, Morocco, Poland and elsewhere. O’Flaherty was a participant at the key meetings, which adopted statements on treaty body reform at their conclusion [ii]. These statements also follow O’Flaherty’s reform proposals. For example, O’Flaherty’s recommendation that state party reports must involve broad consultation with all relevant stakeholders and the need to encourage better participation of non-governmental organizations and national human rights institutions [1] was adopted by the Pretoria statement (2.10 and 3.3); the Sion statement (page 10); the Poznan statement (paras 13-15) and the Seoul statement (sections 3(a) and (b) and 4) [ii]. His advocacy for consolidation and integration of treaty body recommendations into the broader human rights work of the UN [5] is reflected in the Pretoria statement (10(2)(a)), which recommended that “[t]here should be better integration of the outputs of treaty bodies into the work of OHCHR, especially through its regional offices”, and the Poznan statement (para 4) [ii]. O’Flaherty’s suggestion that certain concluding observations be prioritised is reflected in the Pretoria statement, which recommended that “[t]reaty bodies should consider classifying Concluding Observations into short, medium and long-term categories to aid in their implementation” (9.3) [ii]. More generally, according to the UN High Commissioner for Human Rights, “[t]he Dublin Statement, adopted in November 2009, which was endorsed by many treaty body experts, paved the way for the current treaty body strengthening process” [iii].

Subsequent to this series of meetings, in 2011 O’Flaherty was requested by the UN High Commissioner for Human Rights to convene a culminating meeting, also held in Dublin, to draw together the findings of the reflection process. O’Flaherty drafted an outcome document for the Dublin meeting, once again drawing heavily on his own research and publications. Those adopted proposals contained in the original Dublin Statement were carried over into the final Outcome Document. Additional examples of the Dublin Process drawing directly on O’Flaherty’s distinctive contributions to the scholarly and practitioner literature include calls for further reflection on the relationship between the treaty bodies and the Human Rights Council [4], composition of treaty body membership [3] and better integration of follow up procedures and enforcement measures [5].

A group of experts, including the chairs of almost all of the UN human rights treaty bodies and senior UN officials, met in Dublin in November 2011, under O’Flaherty’s chairmanship, where they adopted the “Dublin Outcome Document” of what had by then become known as the “Dublin Process” [iv].

The Dublin Outcome Document – dubbed “Dublin II” – has been endorsed by UN human rights treaty bodies including the UN Committee on Enforced Disappearances [v] and the UN Human Rights Committee. The latter has stated publicly that “it is important to engage in this [reform] process and adopt a view on the main issues/proposals that have arisen to date, in particular as set out in the Dublin II Outcome document” [vi]. The UN High Commissioner for Human Rights published her report on treaty body reform in June 2012 and drew heavily from the Dublin II outcome document and explicitly credited the Dublin Process and the work of the University of Nottingham [vii].

## 5. Sources to corroborate the impact

- i. Report of the Secretary-General on measures taken to implement resolution 9/8 and obstacles to its implementation, including recommendations for further improving the effectiveness of, harmonizing and reforming the treaty body system, A/HRC/16/3, (5 January 2011) para. 12, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-32.pdf>

## Impact case study (REF3b)

- ii. Marrakech Statement on strengthening the relationship between NHRIs and the human rights treaty bodies system (10 June 2010), available at: [http://www2.ohchr.org/english/bodies/HRTD/docs/MarrakeshStatement\\_en.pdf](http://www2.ohchr.org/english/bodies/HRTD/docs/MarrakeshStatement_en.pdf); Poznan Statement on the Reforms of the UN Human Rights Treaty Body System (September 2010), available at: <http://www2.ohchr.org/english/bodies/HRTD/docs/PoznanStatement.pdf>; Seoul Statement on Strengthening the UN Human Rights Treaty Body System (28-29 April 2011), available at: <http://www2.ohchr.org/english/bodies/HRTD/docs/SeoulStatement.pdf>; Informal Technical Consultation for States parties on Treaty Body Strengthening, Sion, Switzerland (12 – 13 May 2011), available at: [http://www2.ohchr.org/english/bodies/HRTD/docs/Sion\\_report\\_final.pdf](http://www2.ohchr.org/english/bodies/HRTD/docs/Sion_report_final.pdf); Pretoria Statement on the Strengthening and Reform of the UN Human Rights Treaty Body System (20-21 June 2011), available at: <http://www.ohchr.org/EN/HRBodies/HRTD/Pages/Documents.aspx>
- iii. UN Human Rights Council, 16<sup>th</sup> Session, Statement of Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights (7 March 2011), available at: [http://www2.ohchr.org/english/bodies/HRTD/docs/HCStatementTBStrengthening\\_070311.pdf](http://www2.ohchr.org/english/bodies/HRTD/docs/HCStatementTBStrengthening_070311.pdf)
- iv. Strengthening the United Nations Human Rights Treaty Body System: Dublin II Meeting Dublin, 10 – 11 November 2011 Outcome Document [http://www2.ohchr.org/english/bodies/HRTD/docs/DublinII\\_Outcome\\_Document.pdf](http://www2.ohchr.org/english/bodies/HRTD/docs/DublinII_Outcome_Document.pdf)
- v. Report of the Committee on Enforced Disappearances on its Second Session (26 – 30 March, 2012), para. 11(f), available at: <http://www.ohchr.org/Documents/HRBodies/CED/Session2/Report2ndSessionCED.doc>
- vi. Position of the Human Rights Committee on the Treaty Body Strengthening Process (29 March 2012), para. 1, available at: <http://www2.ohchr.org/english/bodies/hrc/docs/PositionHRCTBSPProcess.doc>
- vii. Report of the UN High Commissioner for Human Rights on the Strengthening of the Treaty Body System, June 2012, available at: <http://www2.ohchr.org/english/bodies/HRTD/docs/HCReportTBStrengthening.pdf>