

Use of UN Treaty Bodies Comments and Recommendations in Judicial Decision Making: A Critical Review of the Sri Lankan Experience

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This study critically examines the evolving judicial practice in Sri Lanka of incorporating United Nations (UN) Treaty Bodies' comments and recommendations into domestic legal interpretations, despite their non-binding nature under Sri Lankan law. Sri Lanka's dualist legal framework necessitates enabling legislation for direct treaty incorporation, posing challenges for integrating international human rights norms into domestic jurisprudence. Through a qualitative analysis of primary legal sources, including international treaties, national legislation, and judicial decisions, this study explored how the judiciary has navigated these challenges. It assessed the extent to which courts have creatively interpreted and applied treaty body outputs, such as general comments and recommendations, to enhance human rights protections domestically. The findings highlight a trend of judicial activism where Sri Lankan courts utilize treaty body pronouncements as persuasive authorities, influencing legal interpretations and shaping outcomes. However, this practice prompts debates on its legitimacy vis-à-vis democratic principles and separation of powers. By evaluating the merits and pitfalls of judicial engagement with international law, this study contributes to a nuanced understanding of how global human rights standards intersect with and potentially transform domestic legal frameworks in Sri Lanka.

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