

# An overview of Positions Towards the 2020 Treaty Body Review by States, NGOs, Treaty Body Members, Academia, OHCHR

## Introduction

In its latest resolution 73/162 on the “Human rights treaty body system” adopted on 17 December 2018, the General Assembly;

*10. Reiterates its request, in paragraph 40 of its resolution 68/268, that the Secretary-General submit to it a comprehensive report on the status of the human rights treaty body system, and, in view of the decision, in paragraph 41 of that resolution, to consider the state of the human rights treaty body system no later than 2020, requests the Secretary-General to submit that report in January 2020, in advance of the review of the human rights treaty body system.*

In preparation for the above-mentioned report, the Office of the High Commissioner for Human Rights (OHCHR) issued its third biennial questionnaire in relation to GA Res. 68/268.<sup>1</sup>

## This document contains

1) an overview of the main suggestions contained in the States’ submissions to the third biennial questionnaire on the implementation of General Assembly resolution 68/268 on “Strengthening and enhancing the effective functioning of the human rights treaty body system”<sup>2</sup>, inclusive of references made to proposals contained in the Academic Platform Report on the 2020 Review: “Optimizing the Treaty Body System”.<sup>3</sup>

It further provides

2) an overview of the main suggestions by Non-governmental Organizations and

3) an overview of current positions by Treaty Body members;

4) an overview of recommendations from the academic process coordinated by the Geneva Academy. Those proposals are complemented by

5) an OHCHR position reflection on the 2020 Review.

<sup>1</sup> Available at <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/3rdBiennialReportbySG.aspx>.

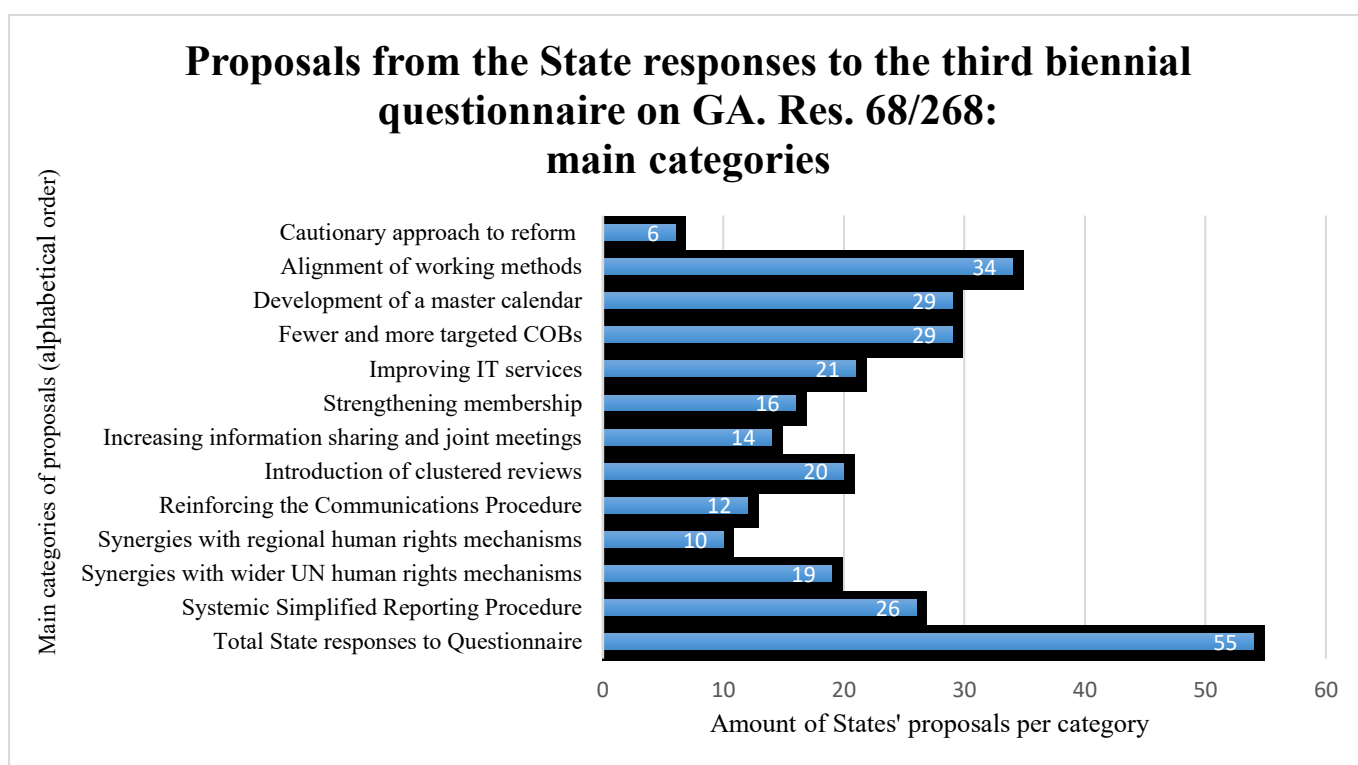
<sup>2</sup> General Assembly resolution 68/268, *Strengthening and enhancing the effective functioning of the human rights treaty body system*, A/RES/68/268 (9 April 2014), available at [undocs.org/A/RES/68/268](https://undocs.org/A/RES/68/268).

<sup>3</sup> <https://www.geneva-academy.ch/joomlatools-files/docman-files/Optimizing%20UN%20Treaty%20Bodies.pdf>.

## 1. States' submissions

Overall, as of 16 July 2019, **55 States**<sup>4</sup> submitted their response to the OHCHR questionnaire. Each submission presents its own peculiar considerations regarding a variety of proposals towards “any further action to strengthen and enhance the effective functioning of the human rights treaty body system”.<sup>5</sup> Notwithstanding State-specific nuances, what follows is an overview, divided into general categories, of proposals stemming from the totality of State replies received by the OHCHR. In order to highlight the more consensus – prone suggestions among the totality of State responses, this overview includes only those proposals supported by more than 5 State parties each. As a last methodological clarification, the analysis counts the submission by the Group of Small States as 12 entries as it evidently supports the opinion of 12 State parties.<sup>6</sup>

### OVERVIEW TABLE



<sup>4</sup> Armenia, Australia, Bahamas, Barbados, Belarus, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, China, Costa Rica, Cuba, Dominican Republic, Estonia, Egypt, Fiji, Finland, France, Gambia, Germany, Haiti, Holy See, Honduras, Iraq, Ireland, Israel, Italy, Japan, Liechtenstein, Malawi, Maldives, Marshall Islands, Mauritius, Mexico, Monaco, Netherlands, Norway, Pakistan, Palestine, Philippines, Poland, Portugal, Republic of Korea, Russian Federation, Senegal, Slovenia, Solomon Islands, Spain, Sweden, Switzerland, Thailand, Turkey, Ukraine, Vanuatu.

<sup>5</sup> See Questionnaire.

<sup>6</sup> The Group of Small States' response was submitted on behalf of the Bahamas, Barbados, Dominican Republic, Fiji, The Gambia, Haiti, Malawi, Maldives, Marshall Islands, Mauritius, Solomon Islands and Vanuatu.

## DEVELOPING SYNERGIES

More than half of State responses highlight the need for the harmonisation of working methods across all Committees. Overall, **34 States**<sup>7</sup> encourage all treaty bodies to continue their efforts towards a more coordinated set of working methods as a means to further strengthen the treaty body system and facilitate the cooperation between the States parties and the treaty bodies as well as with other stakeholders. Efforts toward an alignment of working methods have already yielded good results, such as the introduction of harmonised guidelines on reporting. However, important fields still lack a systemic harmonization of practices, such as with regards to the individual communications procedure, dialogue with the States parties under review, consultation with civil society organisations and NHRIs, the format of concluding observations and follow-up to the implementation of the recommendations. In relation to the above, **14 States**<sup>8</sup> specifically propose to increase information sharing processes among treaty bodies, which includes the establishment of joint meetings between two or more treaty bodies with a view to share best practices and promote dialogue between the Committees.

Also in line with harmonization efforts, **26 States**<sup>9</sup> invite all treaty bodies to offer as voluntary practice the use of the simplified reporting procedure, as a way to improve the reporting process and at the same time saving resources domestically. A number of States underlined the need for the simplified reporting procedure to remain an optional method of reporting.<sup>10</sup>

Another key point for the effective functioning of the human rights treaty body system is synergy with the wider UN human rights system, both in terms of coordination of the processes and consideration of national reports. **19 States**<sup>11</sup> specifically mention this as a necessary step towards a stronger human rights treaty system. Also in line with synergies among different mechanisms, **10 States**<sup>12</sup> propose a more sustained interaction with regional human rights systems.

## IMPROVING ACCESSIBILITY TO THE SYSTEM

A matter of concern for a substantial amount of States is the current accessibility of the treaty body system. Throughout the compilation of state responses, notable attention has been dedicated the improvement of the treaty body system's accessibility through more accurate provision of information and an increased predictability of the system.

**29 States**<sup>13</sup> support the development by the OHCHR of a master calendar coordinated across all Committees, as a means to provide valuable assistance to States parties in engaging effectively with the treaty body system. Such calendar could include, for example, due dates

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<sup>7</sup> Australia, Bahamas, Barbados, Bolivia, Brasil, Bulgaria, Canada, Costa Rica, Dominican Republic, Estonia, Fiji, Finland, France, Gambia, Germany, Haiti, Holy See, Israel, Japan, Lichtenstein, Malawi, Maldives, Marshall Islands, Mauritius, Monaco, Netherlands, Norway, Korea, Portugal, Solomon Islands, Spain, Sweden, Switzerland, Vanuatu.

<sup>8</sup> Costa Rica, Estonia, Finland, France, Germany, Honduras, Israel, Japan, Monaco, Portugal, Spain, Sweden, Switzerland, Thailand.

<sup>9</sup> Armenia, Australia, Belarus, Bulgaria, Canada, Costa Rica, Estonia, Finland, Germany, Holy See, Israel, Japan, Lichtenstein, Monaco, Netherlands, Norway, Palestine, Philippines, Portugal, Korea, Senegal, Spain, Slovenia, Switzerland, Thailand, Turkey.

<sup>10</sup> Bolivia, Egypt, Russian Federation.

<sup>11</sup> Bahamas, Barbados, Brasil, Dominican Republic, Fiji, Gambia, Haiti, Israel, Japan, Malawi, Maldives, Marshall Islands, Mauritius, Palestine, Solomon Islands, Spain, Sweden, Switzerland, Vanuatu.

<sup>12</sup> Australia, Costa Rica, Estonia, Finland, France, Germany, Honduras, Spain, Sweden, Switzerland.

<sup>13</sup> Australia, Bahamas, Barbados, Bulgaria, Brazil, Canada, Dominican Republic, Egypt, Fiji, France, Finland, Gambia, Germany, Haiti, Israel, Malawi, Maldives, Marshall Islands, Mauritius, Netherlands, Norway, Pakistan, Portugal, Solomon Islands, Sweden, Switzerland, Thailand, Turkey, Vanuatu.

for States parties reports and appearances in Geneva, provided with reasonable notice (2-3 years).

Also in relation to the system's overall accessibility, **21 States**<sup>14</sup> recommend improving the use of information technology throughout the treaty body system. Further facilitating the use of video-teleconferencing, improving the OHCHR website's navigation and search functions, as well as allowing for the broadest possible broadcasting of treaty body meetings (also through social media) are examples of cost-effective means of improving accessibility to the system.

## CONSOLIDATING COUNTRY REVIEWS

There is an interest on behalf of a substantial amount of States to the idea of "clustering" multiple TB reviews into a single period, allowing States to limit their time in Geneva. Out of the total amount of responses, **20 States**<sup>15</sup> consider worthwhile to further explore the possibility for clustered reviews as a means to enhance the effectiveness of State Party reporting, due to numerous issues being relevant to multiple treaties. Underlying this interest is the understanding that success of such a method depends very strongly on its exact design. States do not currently converge on a single clustering strategy and there is room for further thought on this.

## FOCUSED AND TARGETED CONCLUDING OBSERVATIONS

**29 States**<sup>16</sup> responses suggest the development of more focused and targeted concluding observations that would allow for more effective follow-up on implementation. Proposed changes to the methodology for formulating recommendations would allow states to recognize when these are aimed at implementing measures in the legal framework, in the institutional framework or in public policies. States parties invite the treaty bodies to issue fewer and more systematized recommendations, better suited to the cycles of public policy formulation, and oriented to the construction of appropriate normative and institutional frameworks, instead of being framed in a narrative of political advice or public policy.

## STRENGTHENING MEMBERSHIP

The nomination/election processes as well as the quality of treaty body members have been subject to a number of recommendations in the responses to the questionnaire. Overall, **16 States**<sup>17</sup> consider issues related to treaty body membership in their responses. As the quality and independence of members of the treaty bodies is key to ensuring an effective and efficient review, a number of measures are proposed such as a standardized criteria for selection and the institutionalized hearings of candidates<sup>18</sup> and a maximum two-term period for all treaty

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<sup>14</sup> Australia, Bahamas, Barbados, Bolivia, Dominican Republic, Estonia, Fiji, Gambia, Haiti, Malawi, Maldives, Marshall Islands, Mauritius, Netherlands, Solomon Islands, Spain, Sweden, Switzerland, Thailand, Turkey, Vanuatu.

<sup>15</sup> Bahamas, Barbados, Dominican Republic, Estonia, Fiji, France, Gambia, Germany, Haiti, Honduras, Israel, Malawi, Maldives, Marshall Islands, Mauritius, Norway, Korea, Solomon Islands, Sweden, Vanuatu.

<sup>16</sup> Australia, Armenia, Bahamas, Barbados, Brasil, Costa Rica, Dominican Republic, Egypt, Estonia, Finland, Fiji, Gambia, Haiti, Israel, Japan, Malawi, Maldives, Marshall Islands, Mauritius, Monaco, Netherlands, Norway, Palestine, Russia, Solomon Islands, Slovenia, Sweden, Vanuatu.

<sup>17</sup> Australia, Brazil, Canada, China, Cuba, Egypt, Japan, Lichtenstein, Netherlands, Pakistan, Portugal, Senegal, Slovenia, Spain, Switzerland, Thailand.

<sup>18</sup> Australia, Canada, China, Egypt, Japan, Lichtenstein, Netherlands, Senegal, Slovenia, Spain, Switzerland

body members.<sup>19</sup> A number of States also propose the introduction of a common code of conduct<sup>20</sup> to enhance the accountability of treaty body membership.

## CAUTIONARY APPROACH TO REFORM

A total of **6 States**<sup>21</sup> highlight the view that strengthening and harmonization initiatives should remain strictly within the scope of the relevant treaty provisions, so as not to create new obligations for States parties. According to these States, caution is an important principle to be followed in strengthening and enhancing the effective functioning of the human rights treaty body system. Specific mention is made to current practices under the follow-up procedure and the issuance of General Comments. According to this view, such practices cannot impose on States any obligation in addition to those they undertook when ratifying or acceding to the relevant international treaties unless voluntarily claimed.

## INDIVIDUAL COMMUNICATIONS PROCEDURE

Among the totality of responses, **12 States**<sup>22</sup> offer proposals with regards to increasing the effectiveness of the individual communications procedure. Particular attention is devoted to the need to hold regular meetings among treaty bodies, focusing on sharing experiences and opinions on strengthening the procedure's effectiveness and coherence. It follows that stronger cooperation among treaty bodies is welcomed in this field. Regarding adjustments to relevant working methods, a number of States support the introduction of 'split decisions' on admissibility, which entail separate and preliminary determinations on admissibility (before requiring a State party's observations on the merits). This would avoid States parties to comment on the merits of claims that may then result in a finding of inadmissibility. States also converge on the usefulness of comparative jurisprudence from regional human rights mechanisms. According to these responses, a closer exchange between the universal system and regional systems enhances the work of both and creates complementarities in terms of jurisprudence and in procedural best practices. States also provide a common position on the need to further enhance and adequately fund the currently over-burdened OHCHR Petitions Unit.

## THE "NON PAPER" ON THE 2020 REVIEW

In addition to the already highlighted individual submissions, Costa Rica and 43 other States<sup>23</sup> have recently submitted a *Non - Paper on the 2020 Review of the UN Human Rights Treaty Body System*. Such joint effort is the culmination of a series of informal discussions among these States' representatives in Geneva, that committed themselves to engage constructively with the process by developing common priority issues and proposals. With a strong focus on solutions of a practical nature and that would not require modifications of existing treaties, the Non-Paper offers a list of 20 concise recommendations to the Chairpersons of the human rights treaty bodies. Potential elements for consideration include:

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<sup>19</sup> Australia, Netherlands, Thailand

<sup>20</sup> Cuba, Brasil, Pakistan.

<sup>21</sup> China, Cuba, Egypt, Holy See, Pakistan, Russia.

<sup>22</sup> Australia, Canada, Costa Rica, Estonia, Finland, France, Germany, Norway, Honduras, Spain, Sweden, Switzerland.

<sup>23</sup> Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Chile, Croatia, Czech Republic, Cyprus, Denmark, Estonia, France, Finland, Germany, Georgia, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Mexico, Montenegro, the Netherlands, New Zealand, Norway, Paraguay, Peru, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom,

- The need to provide more predictability by putting in place a **coordinated and fixed calendar** among the treaty bodies that takes into account the review of the States under the Universal Periodic Review and under other treaty bodies.
- The **harmonization and alignment of the treaty bodies' working methods**, inclusive of a harmonized guideline for the dialogues and a coordinated lists of issues prior to reporting
- **A more precise formulation of recommendations**, which should be more measurable, achievable and strategically focused on a limited set of issues.
- **The strengthening of the Treaty Bodies Chairpersons meeting**, to provide a common space for deliberating and for decision making.
- **The enhancement of coordination initiatives between the committees and the UN specialized agencies**, including effective use of information that States have submit to various UN mechanisms.
- **A reinforced cooperation between the treaty bodies and the regional mechanisms for human rights**, as a way to exchange relevant information and to provide easy access to specific jurisprudence.
- **The strengthening of the Petitions Unit**, with appropriate case management tools, expertise and staff to deal with the current backlog and the likely increased number of cases in the future.
- **The increase of both the availability and predictability of overall resources**, the lack of which is having a direct impact on the capacity of the treaty body system to discharge their mandates.

## 2. NGO suggestions

In reply to the above mentioned questionnaire, and in calls and statements published on the occasions of Chairpersons meetings, NGOs have put forward the following suggestions.

**14 stakeholders**<sup>24</sup> submitted their responses to the 2019 OHCHR questionnaire (including the joint submission of 10 NGOs). There is a natural amount of diversity among the positions of civil society groups, notably between on the one hand NGOs focusing on rights or groups related primarily to one treaty body (e.g. CRC, CRPD) and, on the other hand, those whose interests lie in more than one treaty body. Nonetheless, there are some convergences around principles for the review, red lines, and fundamental aspects of the treaty bodies work that NGOs wish to maintain, preserve and strengthen. There is unanimous agreement amongst NGOs that the paramount objective of the strengthening process should be enhanced protection of human rights and compliance with the treaties.

Following the 2019 Chairperson meeting (reflected in part 3. below), TB-Net jointly with ISHR and Amnesty International held a civil society consultation to discuss options among NGOs towards the 2020 Review. The main points of the background paper<sup>25</sup> developed for this conference are included below.

### DEVELOPING SYNERGIES

There is an overall consensus<sup>26</sup> on the fact that the differences in working methods (where not required due to the specificity of the treaty) such as in relation to the structure of the interactive dialogue, consultations with NGOs and NHRIs, follow-up procedures and consultation processes for general comments/recommendations make the treaty bodies difficult for NGOs and rights holders to navigate. To ensure and enhance the engagement of rights holders with the treaty bodies, those differences should be closely examined.

It is the treaty bodies' legal prerogative to establish their own rules of procedure and working methods and NGOs consider that the treaty bodies themselves are best placed to tackle some of the challenges in this regard. Without precluding their individual specificity and independence, the treaty bodies should urgently undertake a reform of the management of working methods based on best practice rather than least common denominators. The reform

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<sup>24</sup> The Geneva Academy of International Humanitarian Law and Human Rights, GQUAL, the International Service for Human Rights, the Jacob Blaustein Institute for the Advancement of Human Rights, Joint NGO submission (Amnesty International, the Centre for Civil and Political Rights, Child Rights Connect, the International Commission of Jurists, the International Disabilities Alliance, the International Movement Against All Forms of Discrimination and Racism, the International Rehabilitation Council for Torture Victims, the International Service for Human Rights, the Global Initiative for Economic, Social and Cultural Rights, and the World Organisation Against Torture), and the Norwegian Centre for Human Rights

<sup>25</sup> TB-Net background paper for the consultation on 1-2 July 2019, organized by TB-Net members CCPR Centre, Child Rights Connect, The Global Initiative for ESCR, International Disability Alliance, IMADR, IWRAW Asia Pacific, OMCT, with ISHR and Amnesty International, supported by Open Society Justice Initiative and Belgium. Paper on file with the Academy.

<sup>26</sup> Amnesty International, the Centre for Civil and Political Rights, Child Rights Connect, the International Commission of Jurists, the International Disabilities Alliance, the International Movement Against All Forms of Discrimination and Racism, the International Rehabilitation Council for Torture Victims, the International Service for Human Rights, the Global Initiative for Economic, Social and Cultural Rights, and the World Organisation Against Torture

could consist of the establishment of a joint TB working group on working methods, mandated to adopt procedures across the system as a whole. The body could be mandated and empowered to meet regularly (ideally on a monthly basis, through videoconference), and its decisions could be implementable by treaty bodies unless specifically objected or inapplicable or irrelevant to a specific treaty body.

Yet, in terms of substantive harmonization and coordination between treaty bodies, some caution that limiting the number of issues on which States parties are asked to report on could have a negative impact on their ability to protect certain rights-holders. If treaty bodies were to eliminate “overlap,” one practical impact could be that the treaty bodies monitoring the treaties that apply to all (the Human Rights Committee, CESCR, CAT, and CED) could be barred from considering issues having a particular impact on rights-holders who are addressed by the specialized treaties (namely, children (CRC), women (CEDAW), racial and ethnic minorities (CERD), people with disabilities (CRPD), and migrant workers (CMW)). This would be a counterproductive, absurd, and harmful consequence of reform.<sup>27</sup> To this end, coordination on practical and substantive level should be undertaken with a view to avoid any forms of contradiction and ensure complementarity in standards.<sup>28</sup>

## IMPROVING ACCESSIBILITY TO THE SYSTEM

Another point of consensus is the criticism on the lack of predictability, transparency, visibility and accessibility of the system, in particular for national NGOs.<sup>29</sup> While the decision<sup>30</sup> to provide webcasting on a permanent basis is welcomed as a key tool in ensuring greater visibility, better outreach and improved accessibility of the treaty body system as a whole is needed. The TB system as it stands today does not allow for an effective domestic stakeholder engagement. In particular, ISHR has identified four urgent inter-related **challenges** that need to be addressed as part of the 2020 review to ensure the sustainability of the treaty bodies:

1. The lack of predictability in state reviews, including adoption of list of issues and follow up.
2. The limited transparency, visibility, and accessibility of the system, which considerably limits engagement by national level civil society and national human rights institutions.
3. The multiplication and fragmentation of working methods across the treaty bodies, which also considerably complicates and hampers civil society engagement with the treaty bodies, particularly for organisations which engage with several treaty bodies.
4. The chronic lack of adequate financial and human resources, which notably results in unacceptable delays in the consideration of individual communications and requests for urgent action and inquiries.

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<sup>27</sup> See e.g. submission by Jacob Blaunstein Institute for the Advancement of Human Rights

<sup>28</sup> TB-Net.

<sup>29</sup> Amnesty International, the Centre for Civil and Political Rights, Child Rights Connect, the International Commission of Jurists, the International Disabilities Alliance, the International Movement Against All Forms of Discrimination and Racism, the International Rehabilitation Council for Torture Victims, the International Service for Human Rights, the Global Initiative for Economic, Social and Cultural Rights, and the World Organisation Against Torture, the Norwegian Centre for Human Rights.

<sup>30</sup> A/RES/73/162, effective as of January 2020.



Suggestions for the 2020 Review include:

1. The inclusion of a civil society segment to the intergovernmental process of the 2020 review, in line with precedents set in the recent past (as best practice, see the Global Compact for Migration and its mechanism of registration for CSO participation in the review).
2. The establishment of a **fixed and coordinated calendar of State reviews**, and related predictable review cycles..
3. The need for a more sustained integration and synergy between the TB system and other UN human rights mechanisms.

## A FIXED CALENDAR AND THE 8-YEAR REVIEW CYCLE

The TB-Net+ consultation background paper articulates a proposal that focuses on the fixed and synchronised/coordinated calendar, the review cycle, and the role of CSOs.

In order to ensure more predictability of State reporting requirements and visibility of the reporting procedure, it suggests adopting a fixed and synchronized calendar, including the following elements:

1. UNTBs will review each State Party on a regular basis according to a calendar established in advance.
2. This calendar will be synchronized among the TBs to ensure that reviews before each TB take place in a coordinated manner and that no more than two reviews per year are scheduled for each State.
3. In order to allow the review of each State within the existing TBs meeting time, a two-level cycle of review with a comprehensive review followed by a focused review could be established, taking place alternately every four years.

### **Comprehensive Review**

The comprehensive review will be carried out under the same modus operandi of the current TB's reviews, i.e. treaty body by treaty body and

- take place every eight years in Geneva;
- address all the provisions of the respective treaties based on (but not limited to) the issues included in the LoIPR (SRP);
- last for at least 5 hours;
- be coordinated with the UPR cycles.

### **Focused Review**

The focused review will be carried out as follows:

- every eight years (staggered alternatively with the comprehensive review);
- focused on three-four key issues (in line with the current follow-up procedure);
- focused review can be expanded to a full-fledged review, if there is a serious deterioration in human rights protection in a particular state, in accordance with criteria set out by the UNTBs;

- allow an assessment of the progress made by the States on the selected issues (in line with the assessment criteria of the UNTBs).

The focused reviews could take place in the concerned State where 2-3 Members of the Committee will meet with relevant stakeholders. This option enables greater visibility at the national level and engagement with national stakeholders such as parliaments on the issues of implementation. Adoption of the review will take place in Geneva to endorse the assessment of the focused review.

If the State refuses the principle of the country visit, the focused review will take place in Geneva with State representatives for 2-3 hours, possibly via videoconference.

Focused reviews from the same region could also take place at the regional UN HQs.

CSOs should play a critical role in the focused review (which replaces the current follow-up procedure). In case of country visits, UNTBs should have specific allocated meeting time with CSOs. CSOs should also be able to contribute to the assessment made by the UNTBs on the progress made on key issues (current follow-up procedure) at the focused review if this takes place in Geneva

## STRENGTHENING MEMBERSHIP / ROLE OF CHAIRPERSONS

The nomination/election processes as well as the quality of treaty body members and the internal governance structure have been subject to a number of recommendations in the responses to the questionnaire.<sup>31</sup>

Some suggestions include:

1. The setup of a platform through which TB nominees would submit their candidature, and which would provide civil society the possibility to review and comment upon candidates prior to political negotiations in New York.
2. Introducing an ethical charter for TB member nomination, which States agree to abide by when involved in supporting each other's candidates. Such Charter would list required standards for TB membership, specific to each nominee's profile in terms of both capacity and independence.
3. The introduction of a training programme for newly elected TB members. Such a programme would imply a comparative analysis of the different TBs' working methods and rules of procedure, which might be less complex and varied after the 2020 Review.
4. The introduction of a vetting process for nominees<sup>32</sup>

Achieving gender parity in international bodies, such as the Treaty Bodies, has been highlighted as an essential requirement. Specific proposals include:

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<sup>31</sup> Amnesty International (<https://www.amnesty.org/en/documents/ior40/9608/2018/en/>), the Centre for Civil and Political Rights, Child Rights Connect, the International Commission of Jurists, the International Disabilities Alliance, the International Movement Against All Forms of Discrimination and Racism, the International Rehabilitation Council for Torture Victims, the International Service for Human Rights, the Global Initiative for Economic, Social and Cultural Rights, and the World Organisation Against Torture, the Norwegian Centre for Human Rights, GQUAL

<sup>32</sup> ISHR submission

1. Actively encourage States to develop open and transparent national nomination procedures that include gender parity as a specific criteria and goal.
2. States should keep track of data in relation to gender balance in the nomination process of Treaty Body members and make this information public.
3. Establishing a baseline and a path to move forward.
4. Incorporating gender parity into voting practices: In its report, the UN Secretary-General could encourage States to develop policies and guidelines for their voting practices that take gender parity into account and mention it as clear objective.
5. Addressing parity in treaty bodies: The UN and Member States could develop guidelines to ensure that gender balance is achieved.

Enhancing governance and coordination on working methods requires a stronger role of the Chairpersons meeting. Unless and until fundamental changes can be brought to the chairs meeting mandate, or a new architecture adopted, fragmentation of working methods among the treaty bodies will persist. The lack of cross-committee coordination presents a challenge to the system's procedural and substantive coherence. The desire to identify more effective ways of working should not be guided by a desire only to remove duplications, but also to discuss mutual reinforcement of States' human rights obligations, building on the interdependence and indivisibility of rights.

## FUNDING

A last point of overall consensus is represented by the need for adequate funding.<sup>33</sup> The lack of suitable financial and human resources has been a constant and serious challenge to the effective functioning of treaty bodies ever since they have been in existence. The growth of the treaty body system and the increase in ratifications is often raised as a major challenge for the system.

General Assembly resolution 68/268 is unique in providing a formula to assess resource allocation for the treaty bodies but it contains gaps in resource allocation that the General Assembly should seek to fill. The 2020 review needs to ensure that the formula adequately addresses all functions of the treaty bodies, such as visits by the Subcommittee on the Prevention of Torture, individual and inter-State communications, urgent actions, inquiries, general comments/recommendations, simplified reporting procedure, follow-up procedures, efforts to prevent and combat intimidation and reprisals and discussions on working methods.

It is suggested that:

- The High Commissioner should allocate a suitable amount of extra budgetary resources to the functioning of the treaty bodies.
- The General Assembly fully funds all functions of the treaty bodies.

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<sup>33</sup> Amnesty International, the Centre for Civil and Political Rights, Child Rights Connect, the International Commission of Jurists, the International Disabilities Alliance, the International Movement Against All Forms of Discrimination and Racism, the International Rehabilitation Council for Torture Victims, the International Service for Human Rights, the Global Initiative for Economic, Social and Cultural Rights, and the World Organisation Against Torture

### 3. Treaty Body Members' positions

Treaty Body Members in a large majority agree that the system needs to be strengthened to face the growing burdens of work and to enhance effectivity. Yet, as of now, a unified position by the TB Membership towards the 2020 Review is only developing slowly.

Unlike in previous rounds of "TB Strengthening", the response by TB Membership had not been much coordinated until lately, when the TBs had designated focal points on the 2020 review and had started to develop positions by Treaty Body. NGO initiatives, complemented by a meeting at Wilton Park in February 2018 had been initiating this process.

In June 2018, the UN treaty body chairs circulated a questionnaire to treaty bodies requesting input on specific issues relating to reform. Each treaty body was then invited to send their focal points for the review process or other representatives to participate in a meeting in February 2019 in Copenhagen, Denmark to discuss in further detail the responses to the questionnaire, and to determine the areas of consensus amongst treaty bodies regarding these.<sup>34</sup> This was the first time that all the treaty bodies have come together in a meeting for such a purpose (in the current strengthening process). The agenda was based on the questionnaire circulated to treaty bodies by the treaty body chairs. The outcome of that meeting fed into the 2019 Chairperson meeting, which then produced the "Treaty body Chairpersons Position Paper on the future of the treaty body system"<sup>35</sup>, currently the best expression of common ground among TB membership.

#### TREATY BODY CHAIRPERSONS POSITION PAPER ON THE FUTURE OF THE TREATY BODY SYSTEM

The latest document from TB membership – the TB Chairperson statement of July 2019 includes very noteworthy "agreed position among the 10 treaty body chairpersons".

##### *a) Alignment of working methods*

- All treaty bodies agree to offer the simplified reporting procedure (SRP) to all States parties for periodic reports.
- All treaty bodies will coordinate their list of issues prior to reporting (LOIPRs) to ensure coherence and comprehensive dialogues with State parties. LOIRPOS will be limited to 25-30 questions.
- The deadlines for alternative reports by stakeholders and the scheduling of private meeting with them will be aligned
- The Covenant Committees (CESCR and CCPR) will review countries on an 8-year cycle and will synchronize the timing of their reviews; they may accept a single consolidated report. Convention Committees will retain the 4-year periodicity.
- Treaty bodies will review States in absence of a report in order to maintain regularity of the reporting cycle

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<sup>34</sup> The only treaty body not represented for the entirety of the meeting was CEDAW. The treaty bodies that did not have a position on the questionnaire were: CESCR, CERD.

<sup>35</sup> [https://www.ohchr.org/Documents/HRBodies/TB/AnnualMeeting/31Meeting/ChairpersonsPositionPaper\\_July2019.docx](https://www.ohchr.org/Documents/HRBodies/TB/AnnualMeeting/31Meeting/ChairpersonsPositionPaper_July2019.docx).

*b) Review of capacity of the treaty bodies*

- Increasing the capacity of treaty bodies necessitates a change in working methods, as members cannot be expected to spend more than three months a year in session.
- State party reports and individual communications will be reviewed in chambers, working groups or country teams, which would allow reviewing 50 reports per year for convention Committees and 25 reports per year for Covenant Committees.

*c) Reviews in the region*

- Dialogues with State parties concerning their reports should be offered on a pilot basis at a regional level. Such dialogues may be conducted by a delegation of the treaty body with Concluding Observations being adopted by the Committee as a whole.

## COPENHAGEN OUTCOME DOCUMENT

At the meeting organized by the Danish NGO Dignity, TB Members stressed that “although they are part of a system, the specificities of each treaty body need to be taken into consideration. The need to avoid a rigid approach to reform has been a recurring theme, and it is of great importance that this vision should be embedded in the 2020 treaty body review process.”

Some of the main points of its outcome document<sup>36</sup> are the repeated here, in so far as they were either not retained in the Chairpersons text or they provide more detail than the above mentioned common Chairperson position. The wording is copied from the statement without further mark of citation:

*a) Increase treaty body capacity*

- Treaty bodies should strengthen the role of their Chairs regarding decisions related to working methods and alignment of procedures.
- Secretariat resources should be increased in order to enable it to adequately perform its functions, namely to support the more widespread use of LOIPR, including for initial reports, and for the petitions unit in order to increase the capacity of treaty bodies to consider individual communications.

*b) Reducing the burden of State Party reporting*

- Building on the guidelines for initial reports which exist for some treaties, treaty bodies should explore the possibility of developing LOIPRs for initial reports which are convention-specific (as has been done by the CMW), and which could provide those states yet to report with additional guidance concerning the issues that should be covered in their initial report and to support the submission of initial reports by non-reporting States.
- Secretariat resources should be increased in order to enable support of the more widespread use of LOIPR, including for initial reports and for review in the absence of reporting.
- Treaty bodies should consider designating observers/focal points to liaise with other treaty bodies to strengthen coordination, including finding ways to address overlapping

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<sup>36</sup>[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CHAIRPERSONS/CHR/31/28550&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CHAIRPERSONS/CHR/31/28550&Lang=en)

issues (some treaty bodies have already appointed such observers/focal points), possible amendments to rules of procedures, and the expanded use of video conferencing for State party reviews in cases where a State party faces difficulties in being reviewed in Geneva.

*c) Enhancing the visibility and transparency of the treaty body system*

- Increase the visibility and accessibility of the treaty body system, including through a much-needed improvement of the OHCHR website.
- Increase the resources of the Secretariat's petitions unit in order to increase the capacity of treaty bodies to consider individual communications.
- Explore ways by which the treaty body membership selection process could be made more transparent and accessible, possibly by supporting the NGO initiative aimed at addressing this issue.

## 4. Recommendations from the academic process coordinated by the Geneva Academy

Following the adoption of GA Resolution 68/268, the [Geneva Academy of International Humanitarian Law and Human Rights](#) (Geneva Academy) has been coordinating academic input to the 2020 review of UN treaty bodies by the UN General-Assembly via the creation of an [Academic Platform](#) of independent researchers, a call for papers, a series of regional consultations, annual conferences in Geneva, as well as ongoing interaction with key stakeholders. Based on a shared understanding of the shortcomings of the current system, which effectively was never organized as a system in the first place, the recommendations aim at strengthening visibility, predictability, sustainability, user-friendliness and, as a result, impact of the treaty body system.

Key parameters of the research and resulting recommendations were 1) the respect for the current legal framework, i.e. not put forward recommendations which would require changes in the treaties and 2) ensure that the recommendations would be realizable roughly within the currently existing resources. This said, the recommendations obviously cannot be a comprehensive reflection of all academic thinking on the Treaty Body System, which goes far beyond the scope of this exercise, e.g. developing the thought of a World Court for Human Rights, which are not included in this summary.

### ESSENTIAL RECOMMENDATIONS ON THE REPORTING PROCEDURE

The proposals developed through the Academic Platform and presented in the report [Optimizing the UN Treaty Bodies](#) consider a wide range of issues. They are grouped under: (1) TB functions, states' reporting and dialogues with TB experts; (2) synergies, in and beyond the system; (3) the accessibility of the system; and (4) its structure. At the end, the report comments on (5) the transitional period that will be required to establish any significant changes to the TB system. The main recommendations relate to the consolidation of reports and state reviews, introducing a streamlined reporting and dialog procedure, based on the Simplified Reporting Procedure currently introduced by most treaty bodies (TBs).

In two variations, practical possibilities are presented to move towards with a Single State Report, based on a consolidated list of questions, and a combined State Review every eight years, or a Semi-consolidated State Report and two clustered reviews every four years.

Currently, the review of state party reports is challenged both by under- and over-reporting. A change in the review process would have a significant impact on TBs' work and could create conditions in which TBs could provide a universal and fair review of all state parties at reasonable intervals while increasing compliance. Both the options described would bring specific benefits: for instance, dialogues and conclusions would be more visible, duplication of reports and recommendations would fall, and states and other actors would be required to make fewer visits to Geneva, reducing costs and the burden of reporting.

The following models are proposed:

a) *A single state report combined with a consolidated state review*

Under this model, states parties would be reviewed by all relevant TBs during the same week every seven to eight years on the basis of a single state report (SSR). The SSR would contain a general section that covered all the treaties a state has ratified, followed by sections that are treaty-specific. The adoption of this model would not entail a radical shift in current practice, because the first general section would be the equivalent of what is now called the Common Core Document. The SSR would replace the various periodic reports that states parties are currently asked to submit to the relevant committees.

In a similar manner, the model foresees preparation of a single consolidated list of issues that the Committees would send to a state before its review. Its written replies on those would constitute its periodic report. However, the outcome of the review would include distinct concluding observations from the Committee of each treaty that the state had ratified.

In practical terms, this option would require all but one (SPT) of the ten Committees to sit simultaneously in Geneva in different meeting rooms for a week. States under review would meet each relevant Committee in turn.

b) *A semi-consolidated state report combined with a clustered state review*

The second option would also consolidate state reviews but would not require all committees to sit at the same time. Under this proposal, instead of appearing before all Committees in the same short period every seven to eight years, states would be reviewed twice, by different Committees, at four year intervals. They would therefore still be reviewed by all relevant committees over an 8-year cycle, but in two clustered reviews.

Clustering the reviews by Committees of the two general Covenants, and Committees of the treaties that address specific groups and themes, could strengthen follow-up and reinforcement while avoiding unnecessary and unintended overlaps.

c) *A Technical Review of Implementation Progress (TRIP)*

Complementing the recommendations of the Academic process, academic institutions and NGOs have come up with a mechanism to counterbalance the potential gap caused by the eight year cycle of reviews, suggesting a *Technical Review of Implementation Progress*, taking place at the national level between State Examinations. Consolidating the Follow-up stage in such way would allow for an increased role of domestic stakeholders, a strengthened visibility of the TB system in arenas distant from Geneva and would allow for the consideration of a selection of (different) TB recommendations between reviews.<sup>37</sup>

## PRACTICAL FEASIBILITY

Building on the recommendations developed by the Academic Platform, the Geneva Academy has moved on proving the practical feasibility of implementing the recommendations. A scheduling program was developed which optimizes the TB sessions in the way it groups states according to their ratification scheme. The [‘Treaty Body Scheduler’](#) allows planning, in

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<sup>37</sup> Norwegian Centre for Human Rights



the context of a consolidated report and single or clustered dialogue, the best schedules for TBs sessions.

While the duration of TBs sessions would remain approximately the same, the schedules developed by this tool would allow delegations to reduce their travels to Geneva. This type of organization would not only reduce national costs, but also promote greater interaction between Treaty Body Members as they would be in session simultaneously.

## RECOMMENDATIONS ON THE INDIVIDUAL COMMUNICATIONS PROCEDURE

As the issue of Individual Communications (IC) had only be addresses marginally in the Academic Platform process mentioned above, the Geneva Academy has complemented the Report on Optimizing the TB System with a specific study on the consideration of complaints from individuals alleging a violation of their rights: [\*Treaty Bodies' Individual Communication Procedures: Providing Redress and Reparation to Victims of Human Rights Violations\*](#).<sup>38</sup> The 2020 review of the United Nations treaty body system offers an important opportunity to strengthen procedures.

The top five recommendations for immediate action provided in the study are:

- 1) Enhance the visibility of treaty body output through a more user-friendly website and a readily accessible, up-to-date, comprehensive database
- 2) Digitize the registration of new complaints based on strict criteria
- 3) Give autonomy to both parties through an online, secure portal where both the author of the communication and the state party concerned can submit information and be kept informed of the proceedings
- 4) Harmonize working methods related to individual communications across treaty bodies
- 5) Continue to develop in all committees 'fast-track' techniques, and work in groups and internal chambers to speed up the process and deal with the backlog of cases

As mid-term measures, the publication suggests the creation of a registry on the basis of the existing Petitions and Urgent Action Section as another structural, sustainable solution to several challenges identified, mainly the increasing backlog, insufficient human resources and staff turnover. The registry would function as a legal service supporting the IC procedures.

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<sup>38</sup> <https://www.geneva-academy.ch/joomlatools-files/docman-files/UN%20Treaty%20Bodies%20Individual%20Communications.pdf>

## 5. The OHCHR

Unlike in previous strengthening processes<sup>39</sup>, OHCHR has as of now not published any particular proposal towards the outcomes of the 2020 Review. The OHCHR [website on TB Strengthening](#) provides an excellent overview of past initiatives, including the comprehensive June 2012 report of former High Commissioner N. Pillay which contains a range of recommendations most of which remain pertinent. Also of great relevance are the first two reports of the Secretary-General under Res 68/268 which provide a factual overview of figures and statistics around the status of the treaty body system, an analysis of the challenges facing the system and proposals for the way forward.

The statement of then High Commissioner Zeid in 2016 that the 2020 Review “is a key opportunity to help define the future of the Covenants and the treaty body system”<sup>40</sup> is still valid. OHCHR officials have urged the Treaty Bodies “to make use of every possible opportunity to contribute to the treaty body strengthening process during this critical time leading towards the conclusion of the Review in April 2020.”<sup>41</sup> In the few public statements towards the review, the current High Commissioner has repeated that her office is looking towards State Parties, TB Members and other stakeholders reacting to the proposals generated to date so as to widen the scope of engagement by States when they consider the status of the treaty body system in April 2020.

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<sup>39</sup> E.g. [High Commissioner Arbour’s proposal of a unified standing treaty body \(2006\)](#) or the strengthening activities in 2009-2012: <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBSConsultations.aspx> .

<sup>40</sup> <https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=20647&LangID=E>

<sup>41</sup> <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24250&LangID=E>