ISHR | INTERNATIONAL SERVICE FOR HUMAN RIGHTS

ISHR submission to OHCHR Questionnaire in relation to General Assembly resolution 68/268

May 2019

This contribution is submitted pursuant to the following question:

Comments on the state of the human rights treaty body system in view of the upcoming review by 9 April 2020, of the effectiveness of the measures taken in order to ensure the sustainability (of treaty bodies), and, on any further action to strengthen and enhance the effective functioning of the human rights treaty body system.

Contacts

Vincent Ploton   Madeleine Sinclair

ISHR Geneva   ISHR New York

v.ploton@ishr.ch   m.sinclair@ishr.ch

I. Overall picture

The UN human rights treaty bodies are a vital and critical component of the international human rights architecture. Their guidance and authoritative interpretation of the core international human rights treaties have played a critical role in enhancing human rights protection, promotion and implementation in all regions of the world. The so-called treaty body strengthening process should not only contribute to maintain the effectiveness of treaty bodies in upholding global compliance with the treaties, but it should also ultimately contribute to improving it.

In 2005, the UN Secretary General noted that "The treaty body system remains little known; is compromised by the failure of many States to report on time if at all, as well as the duplication of reporting requirements; and is weakened further by poor implementation of recommendations.[1]" Despite some progress since 2005, similar comments could be made nearly fifteen years down the line.

GA res. 68/268 brought about some modest improvements[2] in the functioning of treaty bodies, which are analysed below. Yet overall, the resolution has failed to address the bulk of the issues facing the treaty body system. Five years on, some of the most fundamental challenges identified as far back as the 1990s remain unaddressed.[3]

The treaty bodies developed separately over time, and not as a coherent system, together, coherently from the start. Until the last round of strengthening, which culminated in 2014, the system was not equipped or resourced to deal with full reporting compliance by states. The current architecture is made up of individual bodies independent from one another and with limited mandate and capacity to coordinate, harmonise, or align their work.

Resolution 68/268 created a formula to ensure that resources would be provided to the treaty bodies commensurate with the volume of reports being submitted in the form of funding for meeting time[4]. Unfortunately, the system failed its first test when the General Assembly did not approve the required resources through its Fifth Committee in 2017. As regards individual complaints, there was no suitable formula for predictable funding resulting from the last strengthening process. The formula provided for communications erroneously focused overly on meeting time instead of increasing the number of specialized staff needed. Finally, the resolution provided no formula to ensure suitable financial resources for inquiries.

By way of contrast, it is striking that the state reporting compliance to the Universal Periodic Review, is close to 100%, while that of treaty bodies was at 17% as of December 2017[5].

Despite a generalised principled rhetoric that states should submit their reports on time, it has become an entrenched and widely accepted practice in all regions of the world that state parties don't. Historically this has been understandable if not defensible as the treaty bodies would not actually be equipped to review reports in a timely manner should all periodic and follow up reports be submitted on time. Indeed, historically, reporting on time has been disincentivised.

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[1] A/59/2005 ; §147

[2] http://www.ishr.ch/news/general-assembly-takes-modest-important-step-strengthen-treaty-bodies

[3] See Alston proposals at
https://www.ohchr.org/EN/HRBodies/HRTD/Pages/FirstBiennialReportbySG.aspx#Alston

[4] The formula did not account for the important reviews in absence of a report, which several treaty bodies undertake.

[5] A/73/309, §19.

II. State of the human rights treaty body system

This section analyses the main changes brought about by GA Res. 68/268 as outlined in an OHCHR public paper presenting the main achievements of the resolution in June 2014.[6]

2.1. Additional meeting time

The 20 additional weeks of meeting time (30%) provided by 68/268[7] were a welcome move to address the significant backlog of periodic reports pending review. The number of reports pending review decreased from 304 in December 2013 to 230 in December 2017,[8] representing a 24% decrease. It could be hoped that a 30% increase in meeting time would result in a commensurate reduction in the backlog, which hasn't fully been the case, due to continuing high demands on the TBs, including, for some TBs, a surge in individual communications.[9]

Furthermore, as mentioned above, the General Assembly did not actually approve the appropriate allocation of commensurate human resources (that is, secretariat support), which meant that not all treaty bodies were able to make full use of the additional meeting time.[10]

The linear growth of ratifications,[11] new treaties,[12] individual complaints,[13] and requests for urgent measures and inquiries, combined with unpredictable and ultimately insufficient financial resources being made available to the treaty bodies, presents a fundamental challenge.

The combination of treaty bodies' inability to review state reports in a timely manner due to persistent backlog, and the ongoing very poor reporting compliance, significantly hamper meaningful civil society access to, and engagement with the treaty bodies and the potential for the system to make a difference to rights holders. Both issues mean NGOs have very limited or no visibility on when the reviews are going to take place, which in turn contributes to a lack of engagement by some NGOs in treaty body reviews.

❖ Recommendations
  ➢ As recommended in the most recent report of the UNSG[14], the calculation of resources needed should be respected by all relevant bodies including the ACABQ and the Fifth Committee. Ensuring the necessary budget, which has already been agreed to in principle, is provided, must be a clear priority of the Secretary-General.
  ➢ The calculation of resources required for the treaty bodies should not only account for meeting time but also related human resources for the Secretariat, in particular with regard to individual communications. Resources required for reviews in absence of state reports should also be allocated.
  ➢ OHCHR should prioritise urgent measures to reduce the backlog of individual communications pending review, including through a reform of internal case

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[6] https://www.ohchr.org/EN/HRBodies/HRTD%20Newsletter/No.23,%20April%20to%20June%202014.pdf
[7] Idem
[8] A/73/309, Annex IV
[9]. E.g. see A/73/309, §38-39
[10] E.g. see A/73/140, § 56 and 61.
[11] E.g. 86 new ratifications globally between December 2015 and December 2017, A/73/309 Annex I
[12] Currently at least one new treaty body is being considered, on business and human rights (e.g. see HRC resolution 26/9), with preparatory steps envisaged for at least an additional treaty body on the rights of older persons (e.g. see http://bit.ly/2Iu2vIV)
[13] E.g. 977 individual communications were pending review as of 31 December 2017. See http://www.ishr.ch/news/treaty-bodies-backlog-individual-complaints-must-be-addressed-now for more information on the issues related to the current backlog of individual complaints.
[14] A/73/309 §91

management, and the establishment of an online platform with relevant information available for victims and defendants.

➢ A fixed and coordinated calendar of state reviews and related predictable review cycles[15] should be prioritized to comprehensively address the issues of backlogs of states' periodic reports and poor state reporting compliance.

2.2. Capacity building programme for States

ISHR welcomes the establishment of a programme aimed at enhancing the capacity of states to comply with their obligations under the treaties, especially the reporting obligation. In all world regions, the programme has helped some States to submit reports, many of which had been delayed for decades.[16] The second report of the Secretary General on 68/268[17] provides an array of relevant statistics on state reporting to the treaty bodies. The Programme has benefitted more than 350 State officials from 135 countries. It contributed not only to the submission of outstanding periodic reports, but also new ratifications, and the establishment of National Mechanisms for Reporting and Follow up (NMRFs). These are welcome achievements given how difficult the reporting process can be for smaller and lesser–resourced states

Notwithstanding the above, ISHR is deeply concerned that the programme does not seem to have had a significant impact in reducing overall overdue reports to treaty bodies. The most recent figures show that 83 per cent of reports are still not submitted on time. More worryingly, global reporting compliance has only increased from 11% in May 2014[18] to 17% in December 2017,[19] after three years of major investment in the capacity-building programme. While a six-point improvement is welcome, it certainly falls short of expectations given that the primary objective of the capacity strengthening programme was to improve reporting compliance. The results are particularly poor when compared with figures from 2008-2010 when global reporting compliance was 33% of states parties, which was already considered a poor rate at the time.[20]

It should also be noted that the average number of State party reports received annually by the treaty bodies has decreased steadily in recent years, from 140 a year from 2008 to 2010[21] to 128.8 a year from 2014 to 2017.[22] This at a time when conversely, the global number of ratifications has increased (+3.7% in just 2016-2017[23]).

In addition to the very limited global improvements on states' reporting compliance, ISHR is concerned that the capacity building programme has brought very limited or no benefit for civil society. The programme concept was designed by States and for States, and thus civil society has not been benefited meaningfully from the programme. At best, NGOs were invited to consultations related to the process of drafting government periodic reports. While those opportunities were welcome, the programme would have benefited from an integrated and dedicated component for civil society.

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[15] In a welcome development, the Human Rights Committee adopted a position in March 2019 which indicates the Committee's willingness to move to a predictable review cycle, the details of which will be made public during the upcoming session of the Committee in July 2019.
https://twitter.com/CCPR_Centre/status/1111585222439636994
[16] A/73/309, Annex X
[17] A/73/309 Annex II
[18] http://tinyurl.com/y2q7qt2l §8
[19] Compliance by States parties with their reporting obligations to international human rights treaty bodies, Note by the Secretariat (HR1/MC/2018/2)
[20] A/66/344, §21.
[21] A/66/344, §25.
[22] A/73/309 Annex III
[23] A/73/309 Annex I

❖ Recommendations
  ➢ A thorough, inclusive, independent and publicly available evaluation of the capacity-building programme should be commissioned ahead of the upcoming report of the Secretary General. Such an assessment should look into questions of relevance, effectiveness, efficiency, impact and sustainability, from the perspective of state and non-state users of the treaty bodies. The evaluation report should be made public.
  ➢ Any continuation or renewal of the programme should fully integrate the participation of non-state actors, including civil society and national human rights institutions

2.3. Webcasting and videoconferencing

The improvements brought about with the systematic webcasting of all treaty body sessions are far-reaching. In all world regions, webcasting is making a significant difference in 'bringing the treaty bodies home', enhancing visibility, transparency and accessibility to the system.[24]

The provision of videoconferencing to interact with states and other stakeholders was also a very welcome outcome of res. 68/268. Although it is still only used by national users in a minority of reviews, initial statistics point to an increase in use.[25]

❖ Recommendations
  ➢ As recommended in the previous report of the Secretary General, webcasting and videoconferencing should be funded through regular budget resources[26].
  ➢ The video archives of reviews should be indexed and searchable with relevant criteria, including speakers and/or themes.
  ➢ The use of videoconferencing should continue to be proposed in situations where face-to-face interaction with stakeholders is not possible, but only as a last resort. Videoconferencing is all the more necessary and helpful for smaller and lesser-resourced countries, for civil society who lack the resources to travel or are restricted in travelling, and to minimise the global carbon footprint.

2.4. Public information

The main developments related to public information about the treaty bodies' work are the universal practice of webcasting and the option of videoconferencing.

Despite these significant advances, ISHR has identified significant ongoing information sharing gaps in various areas of treaty bodies' work. Those include, but are not limited to:

- **Publication and ongoing updating of individual communications pending review by the treaty bodies**

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[24] "From September 2016 to June 2017, more than 200 State party reviews and other public meetings of treaty bodies were webcast live and archived on the United Nations Television platform, accessible worldwide" A/73/309, §36
[25] A/73/309 Annex XII, which evidence a 68% increase between 2016 and 2017
[26] A/73/309, §36

In a welcome development, some treaty bodies such as the CESCR,[27] Human Rights Committee,[28] CEDAW,[29] CRC[30] and CRPD[31] have started publicising lists of cases pending review. The establishment of the database juris.ohchr.org constitutes another very welcome development to enhance public access to information on treaty body jurisprudence. Nonetheless, the tables of cases pending review do not seem to be updated consistently, and some treaty bodies such as CERD and CED do not publicise updated lists of cases pending review.[32] Furthermore, no details or summaries of the cases are provided. Such information is vital for interested third parties, especially NGOs with an interest and expertise in the subject matter who may be able to inform the treaty bodies in their expert deliberations. This limited transparency makes third party and amicus curiae interventions very difficult. Treaty bodies ought to follow the good practices established by mechanisms such as the European Court of Human Rights[33] in this regard.

- **Information on follow up**

The expert meeting on follow-up to treaty body recommendations organised in October 2017 identified fundamental issues related to civil society engagement in the follow up procedure of treaty bodies.[34] As noted in the report "the follow-up procedure is important and there is a need to engage civil society through more accessible information".[35] "Any CSO that wants to make a submission, can do so…But more publicity should be given to the follow-up procedures in the countries".[36]

On the important question of predictability of follow up assessments, the report rightly noted that "It should .. be clear during which session a view is going to be considered",[37] which could equally be said on follow up to Concluding observations.

The report further noted that "the deadline to submit a follow-up report should be mentioned explicitly in the COBs. From the perspective of CSOs, it is sometimes difficult to understand when and how to access the work of UNTBs and to engage with them and their follow-up procedure, especially for CSOs in the field".[38] And finally, "in many of the cases the State does not submit a report on time, which puts the CSOs in a difficult position".[39]

The acknowledgment of the challenges and lack of information made available to civil society, especially at the national level on follow up, is well reflected in the above-mentioned report. Unfortunately, the "Possible elements of a common aligned procedure for follow-up to concluding observations, decisions and views for all treaty bodies"[40] endorsed at the 30th meeting of Chairs in June 2018 contain no provision or commitment that the treaty bodies will enhance public information sharing on follow up. This lack of public information will contribute to maintaining a high level of disengagement from civil society in follow up reviews, and risk treaty body assessments based solely or primarily on information provided by states parties.

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[27] https://www.ohchr.org/EN/HRBodies/CESCR/Pages/PendingCases.aspx
[28] E.g. https://www.ohchr.org/Documents/HRBodies/CCPR/RegisteredCases2018.docx
[29] https://www.ohchr.org/Documents/HRBodies/CEDAW/PendingCases.docx
[30] https://www.ohchr.org/Documents/HRBodies/CRC/TablePendingCases.doc
[31] https://www.ohchr.org/Documents/HRBodies/CRPD/Tablependingcases.pdf
[32] Statistical survey provided by CAT and CERD are substantially outdated, respectively 2015 and 2014
[33] E.g. see https://www.echr.coe.int/Pages/home.aspx?p=hearings/gcpending&c
[34] HRI/MC/2018/CRP.2
[35] §77
[36] §36
[37] §38
[38] §89
[39] §91
[40] A/73/140, Annex II

- **Inter-state complaints**

The first ever three inter-state complaints under the Convention on the Elimination of Racial Discrimination were registered in March and April 2018. Following a number of calls for information on this major international human rights jurisprudential development to be made public, OHCHR published an information note[41] on 30 August 2018. The note provides welcome details on the cases, and the stages of the procedure. Furthermore, in December 2018, the Committee published three decisions related to the three cases.[42] Despite the disclosure of some information related to the complaints, information on the substance of the cases, and copies of the complaints have not been made accessible to the public. This negatively impacts on the ability of civil society to be aware of the issues at stake and allegations of infringements to the Convention. It also contributes to the circulation of potentially unverified and/or erroneous information.

- **Follow up to CERD early warning and urgent action**

The early warning and urgent action measures of CERD are a unique and vital tool available to civil society and other actors to make states accountable. The swiftness with which the Committee can adopt decisions under this procedure is very valuable. Nonetheless, the Committee/OHCHR have established a practice of not publicising state responses to urgent action, and not proactively sharing responses with petitioners. ISHR is aware of at least one state party having proactively publicly disclosed its responses to CERD urgent action.[43] The Committee's/OHCHR's practice constitutes a clear disincentive for states parties to provide a response to the Committee, and an unacceptable lack of transparency and accountability towards victims and petitioners.

Against the above background, ISHR has called for a paradigm shift away from a culture where opacity and disparity are the rules, to a new culture where openness and unity prevail within the different parts of the treaty body system.[44]

❖ Recommendations
  ➢ All treaty bodies should publish timely information about pending cases and the procedures for third parties or amicus curiae to submit information which may assist the treaty body in its consideration of those cases.
  ➢ OHCHR should urgently and substantially increase efforts to improve public information sharing about the work of treaty bodies, especially through measures that are cost neutral (e.g. use of social media), and comprehensive, user-friendly and multilingual webpages.
  ➢ In line with the recommendations of the report of the expert meeting on follow-up to treaty body recommendations, the treaty bodies should proactively reach out to civil society organisations involved in a state review to encourage them to submit information on follow up and state compliance with the concluding observations. At a minimum, all treaty bodies should provide clear, timely and easily accessible information regarding what states parties are to be assessed as part of the follow up procedure during each session.[45]

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[41] https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23566&LangID=E
[42] Available at https://www.ohchr.org/EN/HRBodies/CERD/Pages/InterstateCommunications.aspx
[43] Japan, see https://www.mofa.go.jp/policy/human/pdfs/req_info_120731_en.pdf and https://www.mofa.go.jp/policy/human/pdfs/response_201301.pdf
[44] https://www.ishr.ch/news/treaty-bodies-call-vision-ambition-and-innovation-strengthen-system
[45] In line with a discontinued practice of some treaty bodies including HR Ctte and CEDAW

> ➢ The CERD Committee/OHCHR should post all correspondence with states related to early warning and urgent action on the website, including but not limited to state responses to letters to states parties adopted pursuant to article 9 (1) of the Convention and article 65 of its Rules of Procedure.

2.5. *Efficiency, transparency, effectiveness and harmonization*

The first report of the UNSG on follow up to res 68/268[46] noted that harmonisation was progressing "with varying results". The second report confirmed that considerable efforts were deployed "over the past decades" in that regard, yet "important variations among the Committees remain".[47] The comprehensive note prepared at the request of the chairs on the alignment of working methods and published in March 2018[48] provides a good overview of the significant discrepancies which remain among treaty bodies, despite the progress achieved in recent years.

The second report of the SG analyses the limits of harmonization inherent to the current set up of the annual chairs meeting, which serves primarily as a consultative body.[49] 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.

> ❖ Recommendations
> ➢ Without precluding their individual specificity and independence, the treaty bodies should urgently undertake a reform of the management of working methods based on the objective of finding best practice common ground rather than least common denominators. The reform could consist of the establishment of a joint treaty body working group or coordination committee 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[50]. The working group could be composed of 3 (troika) to 5 members and could integrate existing chairs. Such a coordination committee or joint working group could draw inspiration from other relevant bodies, including but not limited to the coordination committee of special procedures.

III. Effectiveness of measures to ensure sustainability

As stated above, it is clear that the treaty body system will continue to face great challenges unless and until far-reaching and long-lasting reforms are implemented across the system.

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, each of which is addressed below:

1. The lack of predictability in state reviews, including adoption of list of issues and follow up.

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[46] A/71/118

[47] A/73/309

[48] HRI/MC/2018/3

[49] In a joint statement of NGOs on the occasion of the 2015 meeting of chairs, signatories emphasized that "the implementation of decisions taken by TB Chairs has been disappointing" and further called on the chairs to propose a review of the GA resolution 49/178 with a view to ensuring a strong leadership and a clear timeframe in future strengthening steps". http://bit.ly/2UTvn3S

[50] In line with the 2011 recommendation by the chairs that "measures would be implemented by all treaty bodies, unless a committee subsequently disassociated itself from it". Pillay report, 3.1.2

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 currently results in unacceptable delays in the consideration of individual communications and requests for urgent action and inquiries.

3.1. Lack of predictability across the system

A number of proposals have been made in previous decades to address the lack of predictability of reviews and related stages, including adoption of lists of issues and follow up. As far back as 1989, Philip Alston called for a "more closely coordinated periodicity" and that due dates for state reports should be staggered.[51] Proposals for a single state report,[52] for a unified treaty body[53] and for a comprehensive (and predictable) reporting calendar[54] were not adopted, without any real attempts made to test their practical implications.

❖ Recommendations
➢ In line with the pledge recently announced by the Human Rights Committee,[55] all treaty bodies should move towards a predictable review cycle, in coordination with fellow treaty bodies.

3.2. Limited transparency and visibility of the system

The continued limitations in the transparency of the system are addressed in §2.4 supra.

A key aspect of the visibility of the system is at the national level, where states have a duty to implement concluding observations and views. ISHR welcomes the adoption by most treaty bodies of elaborate policies on follow up to concluding observations and views, which considerably improve the visibility on implementation.[56] We have called on UN country teams and UN agencies at the national and regional levels to disseminate and translate concluding observations and views, especially in countries with no OHCHR presence. NHRIs can and should also play a leading role in that regard.

❖ Recommendations
➢ Continue and strengthen efforts to disseminate treaty body Concluding Observations and views at the national level, including with support from UN field presences.
➢ The UN Executive Committee should make sure that UN country teams and resident coordinators are not only made aware of the relevant outputs of the treaty bodies[57]. They should also wherever possible and relevant facilitate the engagement of non-states actors

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[51] A/44/668; § 40-41
[52] A/57/387; §54
[53] HRI/MC/2006/2
[54] Navanethem Pillay report on Strengthening the United Nations human rights treaty body system, pgs. 37-46
[55] https://twitter.com/CCPR_Centre/status/1111585222439636994
[56] See "The development of grading systems on the implementation of UN treaty body recommendations and the potential for replication to other UN human rights bodies". An ISHR A contribution to the Academic Platform Project on the 2020 review of UN treaty bodies, available at http://bit.ly/2UTUCTL
[57] Joint NGO submission to the 2017 meeting of treaty body chairs https://www.ohchr.org/Documents/HRBodies/TB/AnnualMeeting/29Meeting/JoinNGOStatement.pdf, p.5

in the review process, and enhance the visibility of treaty bodies by organising public screenings of the review, and largely disseminate recommendations in national languages and through national and social media channels.

3.3. Fragmentation of working methods

In 2011, former High Commissioner Navanethem Pillay identified the urgent issue of fragmentation of working methods across treaty bodies and noted that the issue had to be addressed. Pillay proposed "that the treaty bodies prepare common written guidelines to establish common procedures for all treaty bodies with a complaint procedure".[58] In fact, that proposal could be envisaged not just for communications procedures, but more broadly for every aspect of treaty body procedures.

Nearly ten years after the Pillay report, there is limited progress in harmonisation of working methods. Despite the 2011 recommendation by the treaty body chairs[59] that measures to improve treaty body working methods should be implemented by all treaty bodies except those that dissociate themselves from it (*opt-out*), the practice has tended to be the opposite (*opt-in*). Rather than applying to all treaty bodies automatically unless one decides to opt-out, common working methods are currently only implemented by treaty bodies that affirmatively choose to adopt them. The problematic fragmentation of working methods that Pillay identified in 2011 thus continues today and arguably has worsened with the entry into force of new treaties.[60] It should also be noted that even where treaty bodies agree to a procedure, they do not systematically adhere to it.[61]

The following paragraphs provide a non-exhaustive overview of the limited progress achieved in recent years on the alignment of working procedures. For recommendations in that regard, see 2.5 supra.

- **Simplified reporting procedure**

ISHR welcomes the adoption of the SRP.[62] However, we note that it is difficult for human rights defenders and civil society to find information on which States have accepted the SRP and which have not. It is also confusing for civil society to identify the different modalities in implementation of the SRP, depending on whether states parties have accepted it or not. In order to reduce confusion for civil society and increase overall stakeholder participation, ISHR recommends that the SRP be compulsory for all treaty bodies and all States parties, or at minimum to move from the current practice of opting in only to opting out only.

- **Interactive dialogue with states**

ISHR welcomes the proposals made at the twenty-sixth meeting of chairs and invitation to treaty bodies for the guidance note on the constructive dialogue with States parties.[63] Despite this progress, different treaty bodies continue to apply different approaches in their interactive dialogue with

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[58] Navanethem Pillay report on Strengthening the United Nations human rights treaty body system, pg. 69, 4.3.2

[59] "The Chairs also recommended that such measures would be implemented by all treaty bodies, unless a committee subsequently disassociated itself from it". Pillay report, 3.1.2

[60] Such as the third optional protocol to CRC more recently.

[61] E.g. the report HRI/MC/2018/3 mentions that CEDAW Cobs continue to be longer than 6'000 words despite the Committee's decision to limit them to a maximum of 6'000 words (§33)

[62] For updated information, see HRI/MC/2018/3; section II

[63] For example, unlike other treaty bodies, CEDAW does not hold the dialogue over two consecutive working days. For more examples, see A/69/285

states.[64] The discrepancies are particularly challenging for organisations and NGOs which interact with multiple treaty bodies.

- **Concluding observations**

ISHR welcomes the endorsement by the chairs of a framework for COBs in 2014[65]. However, we are concerned by the fact that the average length of COBs still differs widely among treaty bodies,[66] and some treaty bodies have yet to adopt a concluding observations framework.[67]

- **Treaty body engagement with NGOs and NHRIs**

ISHR welcomes the progress made in recent years in enhancing treaty bodies' interaction with civil society, which in many cases has been enabled by international NGOs supporting the work of some treaty bodies[68]. However, we are concerned about the lack of implementation of the Pillay report's proposed unique model for civil society and NHRI engagement with the treaty bodies.[69] We echo Pillay's recommendation for uniform rules of engagement for civil society and NHRIs with treaty bodies, and agree with Pillay's statement that this would "significantly assist treaty body partners" and "enable an organization to strengthen its capacity to interact with treaty bodies progressively instead of having to learn new working methods each time it interacts with a different committee".[70]

- **General comments**

ISHR welcomes the adoption of elements for the elaboration of and consultation on general comments. However, we are concerned that as of August 2018, the Human Rights Committee and the CAT have not adopted the elements for the elaboration of and consultation on general comments observations that were endorsed by the treaty body chairs in June 2015.[71]

- **Inquiries**

ISHR welcomes the continued discussions by treaty body chairs of the inquiry procedure and their willingness to "further pursue that dialogue in order to promote increased alignment of the working methods of those treaty bodies with a mandate to conduct inquiries"[72]. However, we are concerned that at least two of the guidelines adopted by treaty bodies on inquiries are not public.[73] Echoing the recommendations formulated in a joint NGO submission to the 2017 meeting of chairs,[74] we encourage all treaty bodies undertaking inquiries to adopt a unified policy and follow the good precedent of

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[64] This is evidenced in Annex XIX of the Report of the UN Secretary General on treaty body strengthening, 6 August 2018 (A/73/309 Annexes)

[65] A/69/285, para. 54 and annex II.

[66] For example, the average length of concluding observations in 2017 for the HR Ctte was 8 pages, while the average length of the CRC's was 17. A/73/309 Annex XX.

[67] A/73/309 Annex XX.

[68] The INGOs are now part of a network called TB-Net

[69] Navanethem Pillay report on Strengthening the United Nations human rights treaty body system, pgs. 65-66

[70] Navanethem Pillay report on Strengthening the United Nations human rights treaty body system, pg. 66

[71] A/73/309 Annex XXI

[72] HRI/MC/2018/3; §59

[73] Idem

[74] https://www.ohchr.org/Documents/HRBodies/TB/AnnualMeeting/29Meeting/JoinNGOStatement.pdf, p.5

CEDAW to make public and publish on the OHCHR website the full report of inquiries, including the Committee's findings, comments and recommendations[75].

Finally, we are discouraged by the fact that the confidentiality around the inquiries process has become synonymous with opacity. Ahead of the 2017 meeting of chairs, we called on treaty bodies to develop a unified policy spelling out how they will publicize outcomes of inquiries and make those outcomes public.[76] We reiterate that call today.

- **Reprisals**

ISHR welcomes the publication of a new webpage with detailed information on treaty body responses to reprisals, including indications for victims on what to do, who to reach out to, contact details for each treaty body and what to expect in response[77]. We call on CESCR, which is the last treaty body which has not adopted the San José Guidelines, to urgently adopt them and align their positioning with that of other treaty bodies. We urge all treaty bodies to consistently implement the best practices identified in the course of the workshop on reprisals held in December 2018, including with regard to: enhancing the role of the rapporteurs or focal points on reprisals; undertaking preventative and further measures in the context of state party reviews, monitoring visits and inquiries, individual complaints, awareness-raising; enhancing coordination with other mandates, mechanisms, or procedures; monitoring the implementation and dissemination of the San Jose Guidelines.[78]

❖ Recommendations
  ➢ See above recommendation (2.5) on the proposal of a joint working group (or troika) of members or chairs, who could be mandated by the treaty bodies to propose and adopt common working procedures.

3.4. Chronic lack of adequate financial and human resources

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. More recently, the lack of resources has had dire consequences such as:

- OHCHR support to follow-up to concluding observations and views was reduced[79], and treaty bodies were requested to reduce the amount of inquiries, general comments/recommendations and general days of discussion[80]
- The SPT has had to reduce the amount of visits carried out in states parties to OPCAT[81].
- The amount of individual communications pending review by the treaty bodies has reached record levels, and the unacceptably low levels of staffing at OHCHR have resulted in treaty bodies unable to review individual communications[82]

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[75] HRI/MC/2018/3; §67

[76] https://www.ohchr.org/Documents/HRBodies/TB/AnnualMeeting/29Meeting/JoinNGOStatement.pdf, p. 5

[77] https://www.ohchr.org/EN/HRBodies/Pages/Reprisal.aspx

[78] https://undocs.org/HRI/MC/2019/2

[79] Resulting in CRPD having to put follow up to Cobs "on hold" in April 2018. See CRPD/C/19/2; Annex 1; §10

[80] Letter of the Deputy High Commissioner for Human Rights to the chairs dated 5 February 2018

[81] "the Subcommittee recognizes that it is not possible to continue its current level of work and will have to undertake fewer visits during the coming period" CAT/C/63/4; §60

[82] See http://www.ishr.ch/news/treaty-bodies-backlog-individual-complaints-must-be-addressed-now

- The serious financial constraints at OHCHR resulted in a potential cancellation of the third annual session of 2019 for several treaty bodies [83]

❖ Recommendations
  ➢ OHCHR should undertake a survey of strengthening measures which can be implemented at no or limited extra costs, and seek inputs from relevant actors in that regard, including treaty body members and NGOs.
  ➢ The High Commissioner should allocate a suitable amount of extra budgetary resources to the functioning of the treaty bodies

IV. Further action to strengthen and enhance the treaty body system

Despite the above-mentioned progress in recent years, the treaty bodies need to be further strengthened and supported in order to achieve the fundamental purposes of upholding the rights of rights holders, contributing to access to justice for victims, and promoting and supporting national-level implementation.

The establishment of new international human rights bodies of the Human Rights Council, such as the Universal Periodic Review; new Special Procedures; the multiplication of international human rights bodies including new treaty bodies such as CRPD, CED, and SPT have all contributed to a significant increase in the amount of recommendations made to States and other stakeholders. In the meantime, new national and international mechanisms and policies have been established to plan and monitor the implementation of these recommendations.

Much more remains to be done, however, to improve compliance and implementation, which may require optimizing the amount of recommendations. Measures are needed to contribute to improving the domestic implementation of the treaties and enhancing the protections of rights holders. Further action is needed to address the four previously mentioned challenges.

4.1. Testing new approaches & methods

We call on the treaty bodies, States Parties, OHCHR, and the Secretary-General to come up with a new vision, ambition, and innovation to tackle these challenges and propose further action to strengthen and enhance the functioning of human rights treaty bodies. We call on those actors to try new approaches, tactics, policies and methods that have been proposed as part of more recent treaty body strengthening processes.[84] These include sequencing or clustering reviews,[85] and the establishment of a reformed coordination or management mechanism that would replace or complement the annual meeting of chairs[86].

Additionally, we recommend that the treaty bodies adopt one single best practice process with the same methods for follow up to concluding observations, decisions, and views. This would significantly enhance the visibility, predictability and accessibility of the process for the relevant stakeholders, and improve the transparency and efficiency of the system.

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[83] Letter of the High Commissioner for Human Rights to the chairs dated 30th April 2019
[84] *See* Joint NGO Statement on the 2015 Annual Treaty Body Chairpersons Meeting, https://www.wiltonpark.org.uk/wp-content/uploads/NGO-Statement-2015-meeting-of-TB-chairsleads-on-WP-220615.pdf; Joint NGO Statement on the occasion of the Twenty-ninth meeting of UN treaty body chairs, p. 5, https://www.amnesty.org/download/Documents/IOR4066472017ENGLISH.pdf
[85] For example, all treaty body reviews could take place consecutively at a predictable moment. This would considerably improve participation by non-State actors.
[86] See recommendation supra under §2.5

We also recommend that all treaty bodies should adopt and comply with the Addis Ababa Guidelines, as encouraged in GA Resolution 68/268,[87] to ensure the independence of treaty body members. Compliance with the Guidelines would promote greater transparency and positive cooperation with the system.

4.2. Further action: dos and don'ts

ISHR convened a multi-stakeholder consultation on the political strategy of the strengthening process in May 2017. The consultation brought together a group of over 60 participants, including states, treaty body members, OHCHR staff, NHRIs, NGOs and academics. The consultation concluded that doing nothing ahead of 2020 was not option, and that a "status quo approach" would only benefit those with an interest in a weak treaty body system.

The report[88] further identified seven "dos and don'ts" of treaty body strengthening as follows.

SEVEN BUILDING BLOCKS OF TREATY BODY STRENGTHENING

1	Be collaborative, involve all relevant stakeholders in the process and foster consensus and a strong sense of ownership.
2	The perspectives and needs of rights holders and victims of human rights violations should be paramount.
3	Avoid least common denominators and be ambitious and open to change.
4	Identify a consensual and talented leader or leaders able to leverage support from a critical mass of relevant decision makers.
5	Identify good practices within Treaty Bodies and support adaptation and implementation across all of them.
6	If and when possible, avoid over-politicization of the strengthening process.
7	Be prepared and have a strategy to counter proposals aimed at curtailing the independence and effectiveness of Treaty Bodies.

In the current context, the further action we consider to be crucial and urgent are:

- To document, integrate and reflect the views and perspectives of the non-State users of treaty bodies, given their exclusion from recent preparations of the 2020 review.
- To identify one or several stakeholders, either neutral to the process, or key decision makers (such as the UN SG or the High Commissioner) to lead a process that can deliver the changes that are required to the system.

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[87] GA Res. 68/268 para. 36-37
[88] https://www.ishr.ch/sites/default/files/files/ISHR_TB_Report_A4_Eng6-change-%20w%20comments%20(1)(1).pdf

The need for competent, diverse, qualified, experience and independent members of treaty bodies is widely recognised.[89] Yet a number of problems persist, and there is no consensus as to how best to address these issues:

- A February 2018 study[90] found that 44% of treaty body members continued to have a background in their national executive sector. Although not a *de facto* indication of lack of independence or impartiality, the affiliation of members and candidates to national executives raises serious concerns.
- The Addis Ababa Guidelines have not been fully endorsed by all treaty bodies,[91] and there have been calls for an operationalisation[92] and/or expansion[93] of the Guidelines to enhance the composition of treaty bodies .
- Some states have adopted good practices on open, transparent, and inclusive processes of national identification of candidates,[94] but most states continue to identify candidates through closed and opaque processes, favouring candidates related or close to national executive branches.
- The entrenched practice of vote trading among states is wholly antithetical to the election of expert and independent members.

Some of the proposals put forward to address these situations and which could benefit from further exploration and testing include, inter alia:

- Adoption of a set of rules on state obligations in the nomination of candidates and elections,[95] possibly though an expansion or revision of the Addis Ababa Guidelines or voluntary pledges[96] of states.
- Organising private or public hearings of candidates prior to the elections, in order to vet candidates[97]. Inspiration could be drawn from the likes of the vetting process in place for the recruitment of UN Special Procedures, although candidates should be assessed and interviewed by independent experts (e.g. former treaty body members) rather than diplomats.

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[89] E.g. see Pillay report 4.4.2

[90] https://www.geneva-academy.ch/joomlatools-files/docman-files/Diversity%20in%20Treaty%20Bodies%20Membership.pdf

[91] E.g. see HRI/MC/2018/3; §55

[92] E.g. see HRI/MC/2018/3; §56

[93] E.g. https://www.ohchr.org/Documents/HRBodies/TB/AnnualMeeting/29Meeting/JoinNGOStatement.pdf, p.3

[94] "Summary Report - TB-NET Event on Treaty Body Elections", November 2018. https://www.amnesty.org/download/Documents/IOR4096082018ENGLISH.pdf. P.2

[95] https://www.ohchr.org/Documents/HRBodies/TB/AnnualMeeting/29Meeting/JoinNGOStatement.pdf

[96] Or ethical charter, see https://www.geneva-academy.ch/joomlatools-files/docman-files/Oslo%20Consultation%20-%20Final.pdf

[97] In pursuance with the suggestion formulated in the Pillay report to establish "An open public space for all States parties to present their potential candidates or nominees for treaty bodies"; 4.4.4. Also see the reference to " a platform for review and vetting" in https://www.geneva-academy.ch/joomlatools-files/docman-files/Oslo%20Consultation%20-%20Final.pdf