

Joint NGO Statement

2015 Annual Treaty Body Chairpersons Meeting, 22-26 June, 2015, San José

This statement has been prepared by NGOs that regularly contribute to the work of the treaty bodies, many of whom also followed and contributed to discussions around the treaty body strengthening process¹.

It is composed of two parts, namely, an initial part which includes general considerations and recommendations to the Chairs, and a second part which focuses on issues on the agenda for the 2015 meeting of Chairs.

The [General Assembly resolution 68/268](#)² of April 2014 provides some welcome short to medium term solutions to some of the problems faced by Treaty Bodies. Meetings of Chairs represent welcome opportunities for further progress, as Inter-Committee meetings have done in the past. Items and proposed steps on the agenda for the 2015 meeting also represent further opportunities for progress. However, overall, the process has not yet resulted in the resolution of some of the issues that have been largely documented³, discussed, and for many of which, sensible solutions have been identified⁴.

Generally, the implementation of decisions taken by TB Chairs has been disappointing. 21 years after the adoption of [General Assembly resolution 49/178](#)⁵ of 23 December 1994 which still defines the mandate of the meetings of Chairs, some provisions such as cross referencing are still not implemented (see I.A below).

Stakeholders in the strengthening process, namely TBs, States parties, OHCHR, NHRIs and civil society, also have potentially diverging vested interests which do not necessarily play in favour of an ambitious strengthening process.

¹ Full list available on p. 8-9

² http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/268

³ E.g. see “Strengthening the United Nations human rights treaty body system: A report by the United Nations High Commissioner for Human Rights Navanethem Pillay”, June 2012, <http://www2.ohchr.org/english/bodies/HRTD/docs/HCREportTBStrengthening.pdf>

⁴ Including as part of the so-called Dublin process, see http://www2.ohchr.org/english/bodies/HRTD/docs/DublinII_Outcome_Document.pdf

⁵ <http://www.un.org/documents/ga/res/49/a49r178.htm>

I. General considerations

Some of the issues identified early in the TB strengthening process have been addressed, e.g. on the independence and impartiality of TB members with the 2012 [Addis Ababa Guidelines](#)⁶. The [Wilton Park conference of January 2015](#)⁷, evidenced that additional steps should be taken to address underlying challenges over the medium to longer term. Several TB members have also publicly expressed⁸ the need to move beyond the GA resolution 68/268. The Wilton Park conference [outcome report](#)⁹ includes 13 key points which the Chairs ought to prioritise. It was also repeatedly emphasized during the conference that the TB strengthening process needed strong leadership to overcome single-minded approaches of individual TBs.

KEY RECOMMENDATIONS:

1. TB Chairs should 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.
2. TB Chairs should consider the 13 key points identified during the January 2015 Wilton Park conference as priority issues. They should also disseminate the Wilton Park conference outcome report to their respective members and Secretariat.
3. TB Chairs should add a standing item to their agenda on the topic of improving implementation of recommendations and they should encourage each of the TBs to do likewise.

A. Fostering synergies between TBs, and with other UN human rights mechanisms

States parties often present reports to different TBs simultaneously. Additionally, States may simultaneously be reviewed under the UPR, and they may receive visits from Special Procedures.

Despite the complementarity of treaties and mechanisms on paper, and the discourse in favour of cross referencing¹⁰, in most cases it does not occur in practice¹¹. TBs seldom make references to recommendations of fellow TBs, including when they are recent and directly relevant or complementary. This is particularly problematic for countries that are subsequently reviewed on treaties with related provisions, such as the recent cases of Burundi or Venezuela, which were reviewed over a short time period by the CAT and the HR Ctte. The case of Burundi is particularly revealing as it was reviewed by the HR Committee in October 2014¹². A month later, it was reviewed by the CAT (but no mention was made of the HR Committee's recommendations). Almost simultaneously, Burundi was being visited by the Special

⁶ Guidelines on the independence and impartiality of members of the human rights treaty bodies <http://bit.ly/1Rn8WJx>

⁷ <https://www.wiltonpark.org.uk/conference/wp1375/>

⁸ For instance, in July 2014, one HR Committee member “noted that there were still some more fundamental problems behind the treaty body system than had been resolved with the General Assembly resolution” <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14860&LangID=E#sthash.uLr1sVS.D.dpuf>

⁹ <https://www.wiltonpark.org.uk/wp-content/uploads/WP1375-Report.pdf>, p.1 & 2.

¹⁰ E.g. see report of the 2011 meeting of Chairs, A/66/175, para. 31 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/429/18/PDF/N1142918.pdf?OpenElement>

¹¹ One exception is the CRPD which has been regularly addressing COBs adopted by other treaty bodies in its list of issues, dialogues and in its own recommendations where issues intersect. For example, of the seven States Parties reviewed at the CRPD Committee's latest session, five of the seven adopted COBs referring to recommendations made by other treaty bodies. See CRPD Committee's 13th session COBs at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=982&Lang=en

¹² CCPR/C/BDI/CO/2

Rapporteur on human rights defenders in November¹³, and on transitional justice in December¹⁴. Both the preliminary observations and recommendations of the SRs failed to make reference to the very recent recommendations of the CAT and the HR Committee. The Burundi example illustrates a lack of coordination, not only between the TBs themselves, but also between TBs, SPs and the UPR. This not only contributes to giving a fragmented and diluted signal to States under review but can also potentially lead to diverging and even contradictory messages, ultimately diluting the State's capacity and readiness to implement recommendations.

KEY RECOMMENDATIONS:

4. TBs should seek to mutually reinforce each other through cross referencing¹⁵, especially in cases of subsequent reviews of the same States.
5. TBs should design and agree on a common strategy of coordination with the UPR¹⁶, in keeping with the aim of mutual reinforcement, if suitable jointly with the OHCHR UPR Unit and/or member States.

B. Bringing TBs home

A major focus of the TB strengthening process has been on the need to bring the outputs of TBs, namely recommendations and views, home. However, despite the apparent consensus on this point, implementation of many of the concrete recommendations identified in previous years remains problematic.

1. *The primary relevance of Standing National Reporting and Coordination Mechanisms (SNRCMs)*

The importance of SNRCMs to foster the implementation of TB recommendations has been repeatedly highlighted by various stakeholders, notably by the High Commissioner in her 2012 report (4.5.4). At the time of writing, the UN Development Group was undertaking a study on the role of UN country teams in supporting SNRCMs¹⁷. Despite the rhetoric, TBs have not proactively supported the establishment of SNRCMs in practice. For instance, although in some cases, some TBs have acknowledged the establishment of SNRCMs, none have apparently recommended their establishment¹⁸.

2. *Assessing the level of compliance with Concluding Observations (Cobs)*

Harmonised follow up procedures have been a recurring agenda item for TB coordination for more than a decade. Yet in 2015, TBs all have different procedures, ranging from comprehensive procedures which include a grading system for the implementation of recommendations, at the HR Committee¹⁹, to situations of no procedure at all, as with the CRC.

¹³ <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=15338&LangID=F>

¹⁴ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15426&LangID=E>

¹⁵ The OHCHR's Universal Human Rights Index is extremely useful in that regard.

¹⁶ This should be done notably in light of the Poznan statement that the UPR should take "fully into account recommendations by Treaty Bodies and ensures that its recommendations to Member States be followed-up and implemented in synergy with the recommendations adopted by other main international human rights mechanisms, namely Treaty Bodies and Special Procedures"; para. 31. The OHCHR UPR Unit should also be seeking means to strengthen mutual reinforcement with TBs.

¹⁷ "Tracking the Implementation of Recommendations and Concluding Observations of the UN Human Rights Mechanisms" <https://undg.org/home/undg-mechanisms/undg-hrm/international-human-rights-mechanisms/>

¹⁸ According to data available from the Universal Human Rights Index

¹⁹ CCPR/C/108/2, October 2013, <http://www.ccprcentre.org/doc/2015/03/G1347689.pdf>

The practice of inviting NGOs to comment and including their input into this follow up process also varies widely from treaty body to treaty body. The diversity of procedures is particularly confusing for States, NGOs and other relevant stakeholders. It produces unnecessary complexity within the TB system and ultimately hinders progress for the benefit of rights holders.

3. *Ensuring a suitable dissemination of Cobs and views at the national level*

TBs have emphasized the relevance of country visits as part of the TB strengthening process. For example, participants in the Poznan conference welcomed “examples of follow-up missions by members of Treaty Bodies to States Parties concerned, involving interaction with a broad range of stakeholders, as a tool to facilitate the full implementation of Treaty Bodies’ concluding observations and views.”²⁰ Yet TBs still lack a coherent and consistent approach to participation in country missions, and they have yet to embrace them as a powerful tool for the implementation of their recommendations.

Likewise, TBs have also emphasized the importance of disseminating Cobs and views widely at the national level, including in local languages and accessible format. State parties should also establish official websites where all treaty body relevant materials are regularly posted and updated²¹. In light of the majority of instances where States parties are not fulfilling the dissemination requirement, TBs ought to agree on a consolidated and common dissemination strategy.

None of the ten TBs have their own social media presence. This is one factor which contributes to the widely acknowledged situation of limited outreach of the TB’s work²². A common approach could help to address this problem, notably through the use of simplified language aimed at a large audience of rights holders.

KEY RECOMMENDATIONS:

6. *TBs should avail themselves of relevant opportunities to promote the establishment and effective functioning of SNRCMs, including through their recommendations to States and other bilateral relations with States.*
7. *TB Chairs should adopt a clear timeframe and detailed goal on their follow up procedures, with a view to creating a unified procedure.*
8. *Good practices from TBs in follow up, such as assessing compliance and including NGO contributions (as with the HR Committee) and linking up with key stakeholders (as with the CEDAW procedure with Parliaments²³), should serve as a guidance for the harmonisation of follow up.*
9. *TBs should embrace opportunities to undertake country visits as a potential way of improving the implementation of their mandate.*
10. *TBs should adopt a consolidated and common dissemination strategy for Cobs and views, including at the national level.*
11. *TBs should recommend to states parties as part of their dissemination and implementation responsibilities that they establish official websites where all human rights treaty related information is regularly posted.*

²⁰ Para. 28.

²¹ E.g. see for example Paraguay at <http://www.mre.gov.py/mdhpy/Buscador/Home>

²² E.g. see Wilton Park report, op.cit. para. 21.

²³ <http://www.ohchr.org/Documents/HRBodies/CEDAW/Statements/Parliamentarians.pdf>

C. Utilising new technology tools to improve TBs' effectiveness

TBs regularly emphasize the importance of session live webcasts, teleconferencing and more broadly, making use of new technology to enhance and facilitate the implementation of their mandate. Although the GA Resolution 68/268 foresees the establishment of a webcasting and videoconferencing service for all TBs, the process is taking too long. The OHCHR, acting as the Secretariat of TBs, should also avail themselves of the opportunities provided by new technology to facilitate the process of data and information gathering, collaborative report drafting, as well as monitoring and tracking the implementation of recommendations such as the Swiss "Reporting on Demand" tool. Such tools could be promoted and used by relevant actors of the TB system, including the OHCHR, TBs themselves, States, civil society, NHRIs, UNCTs, etc.

The outdated practice of requiring NGOs to provide numerous hard copies of their reports comes at a major environmental cost and constitutes a hindrance for NGOs from the Global South with limited access to international mail. It is also less relevant at a time when the overwhelming majority of TB members have access to electronic devices during sessions. Committee members wishing to use paper copies could either arrange to print copies themselves, or ask OHCHR for support.

KEY RECOMMENDATIONS:

12. *TB Chairs should encourage OHCHR to pilot test tools such as the Swiss' "reporting on demand", that could facilitate the process of State reporting and/or following up on recommendations.*
13. *TBs should be encouraged to move away from the practice of requesting numerous hard copies of civil society reports, and encourage TB members to either consult those in electronic format, or print hard copies themselves.*

II. Agenda specific considerations

A. General considerations, including working methods and procedural matters (agenda item 4.a)

The need for an “advanced coordination and harmonization mode”, as defined in the [Poznan statement](#)²⁴ of September 2010, still holds true. Although various initiatives and steps have been taken, notably as part of the above mentioned GA resolution, and as part of the annual meetings of Chairs, the pace of reforms has been too slow. TBs have often demonstrated a tendency to stick to a rigid approach to the implementation of their mandate, rather than prioritising coordination and overall coherence. In that context, the Group of Chairs have often faced difficulties in convincing their fellow counterparts to leave aside their particularities and focus on the superior interests of rights holders.

To overcome their common challenges in a coordinated and coherent way, TBs need to take a proactive, open and flexible approach to implementing their mandate. Working methods and procedures do not need to be entirely equal for all TBs. However, they should be harmonised for the benefit of both duty bearers and rights holders. Eight years after the adoption by one TB (the CAT) of the simplified reporting procedure, the item is still on the agenda and TBs are still working out how to adapt to this “new” procedure.

KEY RECOMMENDATIONS:

14. TBs should strive to make the discourse on coordination and coherence a reality by taking a flexible approach to seeking coherence between their respective mandates in the interest of rights holders.
15. TB Chairs should adopt and make publicly available a detailed timeframe including agreed steps to be taken for increased coordination and coherence, responsible individuals or bodies, and deadlines.

B. Addis Ababa Guidelines (agenda item 4.b)

The undersigned welcome the continued TB focus on complying with the Guidelines, and the process of their adoption by each TB. The Guidelines constitute a set of minimum requirements which should be enhanced with a continued view to maintaining the highest level of TB membership. This relates inter alia to addressing the nomination and election process in a transparent way, as well as diversity of expertise, age and genders within TBs.

KEY RECOMMENDATIONS:

16. TB Chairs should encourage member States to undertake free and transparent nomination procedures and elections for TB mandate holders.
17. TB Chairs should encourage member States to foster diversity and a balance of expertise, age and gender within TB membership.
18. TBs should be encouraged to prepare an outline of skills that are needed on their Committee to better enable them to implement their mandate.

²⁴ The Poznan statement on the reforms of the un human rights treaty body system
<http://www2.ohchr.org/english/bodies/HRTD/docs/PoznanStatement.pdf>

C. Timely, late and non-reporting by States parties (agenda item 4.d)

The Note [HRI/MC/2015/5](#)²⁵ provides a useful overview of the steps taken by TBs to address the above mentioned problem, and it contains a thorough list of non-complying States. The additional OHCHR technical support to States (agenda item 4.e) for reporting purposes made possible by the GA Resolution 68/268 will hopefully contribute to addressing this issue.

KEY RECOMMENDATIONS:

19. *TB Chairs should seek to come to an agreement as soon as feasible for a unified approach to dealing with late and non-reporting States parties, including by using reviews in absence of a report more frequently, as well as addressing the issue of late and non-reporting after the adoption of LoIs and LoIPRs.*
20. *When possible and appropriate, TBs should request meetings with Permanent Missions in Geneva with a view to addressing any potential hindrances to States' reporting.*
21. *TB Chairs should request their Secretariat to disseminate more widely the information on late and non-reporting States, such as that available in HRI/MC/2015/5.*

D. Addressing threats and reprisals related to TB's work (agenda item 4.f)

Addressing reprisals against persons engaging with the TB system is one of the highlights and key achievements of the strengthening process. Developments in the processes of individual treaty bodies over the last year have been encouraging. The appointment by the UN Human Rights Committee of one of its members as Rapporteur on reprisals brings the number of treaty bodies with appointed rapporteurs on reprisals to five. In addition, the UN Sub-Committee on Prevention of Torture's recent policy to combat intimidation and reprisals makes an important point of not only emphasising the State's primary duty to ensure appropriate legal process in the case of alleged reprisals and intimidation, but also recognising UN human rights bodies' duty of care to those who cooperate with them.

Yet the policies adopted by TBs focus primarily on reprisals post facto, i.e. after human rights defenders (HRDs) have engaged with the TB system. During sessions, the problem of non-independent NGOs, or so-called GONGOs (Government Organised NGOs) and the potential threat their presence constitutes towards independent NGOs, is recurring. Different TBs and the INGOs which support the contributions of civil society thereto have dealt with the matter in different ways. Some efforts are made in some TBs to avoid or mitigate the potential threats posed by the presence and participation of GONGOs in briefings between TBs and civil society. However, no preventive or precautionary measures seem to be taken in other instances. That specific issue is not mentioned in the background note prepared by the OHCHR HRI/MC/2015/3. TBs ought to come to a joint approach to this matter.

KEY RECOMMENDATIONS:

22. *TBs should each adopt a comprehensive policy on reprisals, which recognises its legal obligation to respect and protect the rights of individuals to cooperate with the body, and to take all necessary steps to prevent, protect against and promote accountability for any alleged acts of intimidation or reprisals.*
23. *TBs should each establish a rapporteur on reprisals, mandated to promote the right to communicate with the body, to investigate allegations of intimidation or reprisals against those cooperating with the treaty body and - to the extent that the allegation is verified and the safety of the defender will not be put at risk - communication with*

²⁵ <http://bit.ly/1KHnTe>

the State in question regarding the steps required to prevent recurrence and to provide an effective remedy.

- 24. TBs should each create a public webpage on reprisals that includes the contact details of the individual member of the body responsible (rapporteur or focal point), as well as information regarding cases received, communications sent to States concerned, responses received and follow-up communications.*
 - 25. A system-wide policy on reprisals should ensure a coherent and consistent approach to reprisals by treaty bodies. It should, recognise the legal obligation of treaty bodies to protect those that communicate with the body; encourage treaty bodies to ask questions and make recommendations during reviews of State parties regarding the right to communicate with human rights bodies, and set out the functions of treaty body rapporteurs on reprisals.*
 - 26. The Meeting of Chairpersons should create a common database of cases of reprisals that would enable better coordination between the treaty body system and the wider UN human rights system.*
 - 27. The Meeting of Chairpersons should annually review all cases of reprisals across all the treaty bodies, assess action taken by State and the treaty body concerned and coordinate on follow up to cases of reprisals and intimidation.*
 - 28. TBs should consider the issue of participation of GONGOs in their briefings with civil society with a view to addressing the potential threats they can represent to independent NGOs.*
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Advocates for Human Rights

Alkarama

Asian Forum for Human Rights and Development

Asia Indigenous Peoples Pact (Thailand)

Association for the Prevention of Torture (APT)

Cairo Institute for Human Rights Studies

Centre for Civil and Political Rights

Centre for Constitutional Rights (South Africa)

Center for Justice and International Law (CEJIL)

Center for Legal and Social Studies (CELS, Argentina)

Centre for Reproductive Rights

Child Rights Connect

CIVICUS

Civil Society Prison Reform Initiative (CSPRI, South Africa)

Edmund Rice International

FIDH (International Federation for Human Rights)

Four Freedoms Forum

Franciscans International

Global Initiative for Economic, Social and Cultural Rights

Hawai'i Institute for Human Rights

Human Dignity

Human Rights House Foundation (HRRF)

Human Rights Law Centre (Australia)

Human Rights Watch

Human Rights Working Group (Indonesia)

International Commission of Jurists (ICJ)

International Disability Alliance (IDA)

International Movement Against All Forms of Discrimination and Racism (IMADR)

International Service for Human Rights (ISHR)

International Women's Rights Action Watch Asia Pacific (IWRAW)

OMCT (World Organisation against Torture)

US Human Rights Network (USHRN)