**Outcome Document:
Meeting of Treaty Body Members**

**26-27 February 2019**

**Copenhagen, Denmark**

# **Recommendations of UN Treaty Body Members concerning the Treaty Body Strengthening Process in the context of the 2020 Review by the UN General Assembly**

The following recommendations are the outcome of the meeting of UN treaty body members which took place in Copenhagen, Denmark on 26-27 February 2019. The meeting sought to discuss responses and areas for development in light of the upcoming review of the UN treaty body system in 2020, and to identify the views of treaty body members regarding reforms which should be implemented so as to increase the capacity and effectiveness of treaty bodies and to enable states to comply with their reporting obligations in a more effective way.

The overall principles for the treaty body strengthening process which were adopted by the chairpersons at their meeting in 2018 guided the discussions in Copenhagen, and are as follows:

* Strengthening protection of rights holders;
* Preserving the integrity of the treaty body system and the independence of treaty bodies and their experts;
* Enhancing the implementation of treaty obligations and related recommendations of treaty bodies;
* Balancing greater alignment of procedures on the one hand with the mandates and working methods of each treaty body on the other.

The golden thread of the interactions between the treaty body members present at the meeting (hereafter, ‘the treaty body experts’) was to recognize 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. There was clear consensus amongst the treaty body experts that any reforms to the system must reflect parity of esteem between them: In other words, a ‘one-size-fits-all’ approach to reform will be neither appropriate nor effective. Rather, reforms should acknowledge the diversity of the treaty bodies, their specific mandates, as well as the reflections and opinions of treaty body members, resulting from the treaties they monitor as outlined in this paper.

The following recommendations reflect the broad vision shared by the treaty body experts for the future of this system, which is central to the protection of human rights. It offers a package of reform options that merit consideration, and which, taken together, reflect an overarching unity of principle and purpose amongst the treaty bodies, whilst at the same time allowing for a diversity of approach to their application.

1. *Overarching Principles*
* The treaty bodies subscribe to the overall principles for the treaty body strengthening process adopted by the chairpersons at their meeting in 2018 (listed above), including recognizing the need to take account of the specificities of each individual treaty body and their authority to establish their own rules of procedure. Furthermore, all reforms should be focused on, and justified on the basis that they contribute to the more effective protection of human rights.
* Systematic coordination between treaty bodies in the drafting of Lists of Issues Prior to Reporting (LOIPRs) helps focus the dialogue, reduces unnecessary overlap, and provides more efficient ways of reporting for States.
* Whilst appreciating that a great deal of coordination has already taken place, more opportunities for the treaty bodies to coordinate and meet are still needed to facilitate the on-going alignment of procedures and working methods.
1. *Calendar*
* Each treaty body should establish a fixed calendar for the review of State party Reports, reflecting the periodicity enshrined in each treaty. This will ensure that there is predictability for all States Parties. Each treaty body should carry out reviews as scheduled, even in the absence of a State party report, in order to preserve the integrity and effectiveness of the review cycle, with some operational flexibility in exceptional circumstances.
1. *Increase treaty body capacity*
* Treaty bodies should explore the possibility of working in sessional chambers, as a potential means of increasing their capacity.
* Treaty bodies should explore all possible means by which non-reporting States can be encouraged to meet their reporting obligations, including through capacity building and enhancing the role of UN country teams and the OHCHR treaty body capacity building team.
* Treaty bodies should explore the possibility of conducting reviews outside of Geneva, subject to availability of resources, and where possible engage UN country teams and regional offices to support this.
* 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.
1. *Reducing the burden of State Party reporting*
* Treaty bodies should continue exploring ways in which to standardize the use of the simplified reporting procedure, including by considering making it the default procedure for reporting by all treaty bodies, including for initial reports.
* Treaty bodies should align and coordinate the simplified reporting procedures to ensure enhanced and effective coordination between treaty bodies during the LOIPR drafting process, with a view both to coordinate questions presented by the treaty bodies and possibly, also to reduce unnecessary overlap which diminishes or impairs the rights of stakeholders.
* 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.
* Treaty bodies should aim to limit the number of questions in their LOIPR to approximately 25-30 questions for a pilot phase and to assess the effective of this.
* 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 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.
1. *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.

# **Background**

The UN treaty body strengthening process has moved through several phases since 1988, with the most recent following the adoption of resolution 68/268 by the General Assembly on strengthening and enhancing the effective functioning of the human rights treaty body system. Resolution 68/268 provides for a review of the human rights treaty body system no later than 2020.

Since they form the very subject matter of the review, and in light of the highly relevant experience and insight that treaty bodies have of the system, a process was established to gather the views of treaty bodies regarding potential areas and proposals for reform in order to ensure that these important perspectives are taken into consideration. Several consultations have been held. 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 on 26-27 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.[[1]](#footnote-1) This is the first time that all the treaty bodies have come together in a meeting for such a purpose. The agenda was based on the questionnaire circulated to treaty bodies by the treaty body chairs.

The treaty body experts noted that much had already been achieved regarding the alignment of procedures and working methods in recent years, but that there was still potential for improvement. The experts agreed that new working methods must be adopted and expressed a joint willingness to explore new and creative ways to operate with the overall goal of strengthening the protection of rights holders through more effective monitoring and ensuring full reporting compliance by States parties.

At the same time, the experts underscored the importance of recognizing the significant steps that have already been taken at various levels to improve the sustainability and effectiveness of the treaty body system, most notably the enhanced levels of coordination amongst treaty bodies and the increased cohesiveness of the system as a whole. These achievements are highlighted throughout this report. The experts agreed that undertaking pilot projects could provide an important way of further developing their practice, and a number of potential projects are considered in this paper and reflected in its recommendations.

The purpose of this outcome document is to highlight the areas and issues discussed, developments concerning which have the potential to strengthen the treaty body system.

# **Reporting Calendar**

1. *Overview of the Geneva Academy proposals*

An academic process of review of the treaty body system has been undertaken by the Geneva Academy of International Humanitarian Law and Human Rights Academic Platform. This project is mentioned here as the main recommendations of its final report include two proposals concerning the consolidation of reports and State party reviews.[[2]](#footnote-2) These proposals are the following:

* Single consolidated review model, whereby each state party would be reviewed by all treaty bodies during the same week every 7-8 year on the basis of a single state report.
* Clustered review model, whereby the State party reviews are coordinated in an 8-year cycle, four years apart, resulting in review by five treaty bodies every four year. Under this model, States would still only be subject to review by each treaty body on an 8-year cycle.
1. *Periodicity of reporting*

There was agreement amongst the treaty body experts that the single consolidated review model proposed by the Geneva Academy, with a periodicity of 7-8 years, was not acceptable since this results in simply too long a period between reviews. There was widespread agreement amongst the experts that a periodicity for reporting of more than 4-5 years is too long. For this reason, the model of clustered review suggested by the Geneva Academy was also rejected by most experts, but not all. Most experts were against the clustered review, due to the suggested length of periodicity. Some, however, were supportive of the idea, noting that it represents an improvement on the current situation in which only some states are reviewed regularly, and that a division of labour between treaty bodies could address concerns regarding periodicity.

The discussions on periodicity reflect an acknowledgement that even a 4-year reporting cycle means, in practice, that States are only reviewed approximately every 6 years because of the time lag between the receipt of the report by a Committee and the scheduling of the actual review, and that is if they report on time. Extending the periodicity of reporting beyond 4-5 years would in practice lead to a periodicity of review that most treaty bodies consider too long. In addition, some experts thought that this model did not reflect the parity of esteem which exists between treaty bodies, while a minority of others noted that it reflected the varying scope of coverage of the different treaties. Several experts pointed out that the periodicity for reporting should take account of the reporting periods explicitly stipulated in the conventions.

The experts present also considered the suggestion that there be a single, consolidated report, which has been raised from time to time in discussions concerning treaty body reform. There was little support for this amongst the experts, as it was thought to dilute the specificities and depth of information required to be submitted to each individual convention. This would result in less effective monitoring and a lowering of protection for rights holders. Moreover, some experts pointed out that the rules of procedure for each treaty body would make it difficult for consolidated reporting to be put into practice. The experts noted that the various specific angles and focuses which each treaty body uses to address the protection of the rights in the convention which it oversees is one of the most important aspects of the treaty body system, and that any reform should not result in this being watered down.

1. *Fixed Calendar Common to all Treaty Bodies*

The clustered review model proposed by the Geneva Academy entails a fixed calendar for reviews common to all treaty bodies. With the exception of the treaty body experts from the HRC, the experts present were not in favor of a fixed comprehensive calendar system, fearing that such a rigid calendar would not take into account the need to be responsive to the circumstances of individual States parties in special cases (for example, the need to delay a report and/or scheduled review due to a conflict or scheduled elections), and that there is a need for a calendar to permit some flexibility and accommodation where appropriate.

The experts agreed that each treaty body should establish a predictable and fixed calendar of review, reflecting the reporting obligations of each Convention. Adherence to this calendar should be possible using the simplified reporting procedure (LOIPR), as well as through the consistent scheduling of reviews even in the absence of a State report. Furthermore, the calendar for review set by each treaty body would be based on the dates of *actual* review rather than be contingent on the submission of state reports. Another suggestion was for the date for the next review of a state party to be set out in the Concluding Observations arising from the previous review, as is already done by some treaty bodies, and that this next review should be scheduled and carried out even in the absence of a State report.

1. *Coordinated Calendar*

The treaty body experts were in favour of greater coordination in scheduling, whilst also ensuring the possibility of flexibility where needed and appropriate. Greater coordination was considered the best way to ensure that reviews take place with appropriate periodicity. However, flexibility is essential in order to reduce the burden on States parties by making it possible to avoid a situation in which a State might be required to submit many reports in the same year, and for accommodating other essential interests. Consolidating the submission of reports to several treaty bodies at the same time would work in the opposite direction, i.e., it would concentrate the reporting burden rather than allowing for it to be distributed more evenly over time.

It should be noted that there have already been some steps taken to ensure coordination between treaty bodies, but this could be formalized and further enhanced in a variety of ways. This could be at the level of the Secretariat (with, for example, the appointment of a central coordination facilitator) as well as by the treaty bodies themselves through the appointment of a focal point for coordination within each treaty body.

1. *Conclusion*

The treaty body experts agreed that the treaty bodies need to set their own, individual calendars, with a high degree of coordination between themselves, and that this should involve the use of the simplified reporting procedure and the scheduling of reviews in the absence of State party reports. Treaty bodies were willing to explore and experiment with different ways of ensuring that such coordination between treaty bodies is carried out in a more effective and enhanced way than is currently the case and were also agreed on the need for the Secretariat to play a significant role in facilitating such coordination.

# **Increasing Treaty Body Capacity**

1. *Individual Communications*

Several treaty bodies have a considerable backlog of individual communications – a problem that will only become more severe unless steps are taken to change how they are dealt with. Once again, a shortage of Secretariat resource is a significant factor contributing to the backlog.

Initiatives to increase the capacity of treaty bodies to consider individual communications include the ‘repetitive case’ procedure, which is a good example of how improved processes can significantly address a seemingly intractable problem.

1. *Time allocated for dialogue*

The treaty body experts agreed that the present allocation of time for dialogue with States parties, between 6 and 9 hours, is adequate. Any decrease in this time allocation would not allow treaty bodies to conduct a meaningful review of States parties and would affect the effectiveness of their monitoring role, which is essential for the protection of rights holders. However, treaty bodies could apply some flexibility to the time dedicated to a dialogue on a case-by-case basis.

1. *Use of sessional chambers*

The use of sessional chambers was discussed as a means by which the capacity of treaty bodies potentially could be substantially increased. Some treaty bodies already work in sessional chambers on specific issues. For example, the HRC has recently agreed to work in chambers to reduce the backlog of individual communications. Similarly, SPT visits are carried out by delegations of members, and has parallel working groups during its Plenary sessions, which are the equivalent of sessional chambers. The CAT has proposed that it works in sessional chambers in order to carry out reviews in regions rather than in Geneva.[[3]](#footnote-3)

The treaty bodies have different positions regarding the use of sessional chambers as a means of increasing treaty body capacity. One key issue concerns the adoption of concluding observations, given that not all members of a treaty body would have participated in the interactive dialogue with the State in question. The treaty body experts agreed, however, that sessional chambers should be an option that each individual treaty body could consider using as a means of increasing its capacity if it wished to do so.

1. *Consideration of State party reports outside of Geneva*

The questionnaire circulated by treaty body chairs raised the question of conducting reviews outside of Geneva. This idea is supported by some treaty bodies. Benefits include reduced costs for States parties, as they would not need to send delegations to Geneva for reviews and more of the costs of review would be shifted to the UN, thus reducing the financial burden on reporting states with development needs. Working in the region would be likely to facilitate the promotion of and raising awareness about the treaties, which is less easy to do when most treaty body work is undertaken in Geneva. Finally, conducting reviews in the region by sessional chambers, as currently proposed by the CAT, could significantly increase the capacity of treaty bodies.

Concerns relating to conducting reviews in the region, in particular by sessional chambers (groups of members), include the range of rights covered by the treaty that might not lend itself to such a modality, a include a possible lack of sufficient Secretariat resources and complications in the adoption of concluding observations. The treaty body experts agreed that the possibility of conducting reviews outside of Geneva should be an option that could be considered by individual treaty bodies as a potential means of increasing their capacity, possibly on pilot basis, if they wished to do so and have access to the necessary resources.

1. *Conducting reviews in the absence of a State report*

Several treaty bodies have positive experiences of scheduling States parties for review despite the absence of a State report. Experts from the CAT and HRC gave examples of cases in which scheduling a State for review in the absence of a report had prompted the State to submit a report which could then be considered. It was felt that treaty bodies should consider the possibility of scheduling States for review in the absence of a State report more often. This would not only maintain the periodicity of review and the predictability of the review calendar but could also encourage non-reporting States to submitting overdue reports.

# **Reducing State Party Reporting Burden**

1. *Simplified reporting procedure*

The Simplified Reporting Procedure (reports based on replies to Lists of Issues Prior to Reporting, LOIPRs) helps encourage States to report by making it easier for them to do so. Most treaty bodies consider that the Simplified Reporting Procedure should be offered to all States parties for this reason. The adoption of a common Simplified Reporting Procedure is an important goal for the treaty body system since this would increase predictability and make it easier for States parties, as they would not be faced with different reporting procedures for different treaty bodies. The treaty bodies will take initiatives to develop such a common procedure. However, the adoption and extension of the simplified reporting procedure can take different forms according to the specificities of each Committee and can be done in steps; e.g. introducing the simplified reporting procedure to operate concurrently with the procedures already in place.

There are some concerns that offering the simplified reporting procedure for initial reports (as opposed to periodic reports) might limit unhelpfully the range of information received by the treaty body at the initial reporting stage. CAT and CERD have positive experiences of the Simplified Reporting Procedure for initial reports, and it has helped draw previously non-reporting states into the reporting cycle. The HRC has on a few occasions decided to treat comprehensive replies to lists of issues in the absence of an initial report as a substitute for the initial report, in order to acknowledge the effort and cooperation of the State party reviewed.

The treaty body experts thought that a generic LOIPR for each convention might be developed for initial reports, providing detailed guidelines on issues that should be covered by States parties in initial reports. This might facilitate the submission of initial reports by non-reporting States parties, thereby bringing them into the reporting cycle. CMW has had positive experiences of developing and using such a generic LOIPR for initial reports. Since the LOIPR for initial reports would necessarily be different from those for periodic reports, this would require the existing reporting guidelines developed by each treaty body to be reviewed, but the idea of developing a generic LOIPR was considered worth developing.[[4]](#footnote-4)

It should be born in mind that the simplified reporting procedure places heavy burdens on the Secretariat. Whilst this is not an insurmountable obstacle to an expansion of the simplified reporting procedure, the wider use of this procedure would necessitate increased resources for the Secretariat.

 A further issue concerns overlap between the treaties. In a sense, there is no overlap to the extent that each treaty body approaches its work from their own specific perspective in accordance with the provisions of each treaty. However, in practice there is a degree of overlap. Whilst some overlap may produce unnecessary duplication, a degree of overlap is necessary to reinforce the ‘universal, invisible and interdependent and interrelated’ nature of all human rights and to facilitate appreciation of the intersectionality of many rights abuses as set forth in each of the treaties. Such reinforcement is positive and should not be reduced. Unnecessary duplication that impairs the rights of stakeholders should, however, be avoided.

The treaty body experts agreed that enhanced coordination of the LOIPRs is not only central to more effective monitoring across the treaty body system but might also help address unnecessary duplication without negatively effecting the rights of stakeholders. This requires improving communication and coordination between treaty bodies when drafting LOIPRs. One option might be the development of an online platform (website) where each treaty body could share its draft LOIPRs; another might be for the Secretariat to facilitate coordination by putting country rapporteurs in contact with each another during the LOIPR drafting process and assisting in ensuring enhanced coordination.

The HRC and CESCR are currently piloting a coordinated approach to LOIPRs. The CAT is similarly considering implementing a pilot project with the CED and CERD to coordinate the LOIPR drafting process.

1. *Limiting number of questions in LOIPRs:*

The treaty body experts recognized the need to limit the number and complexity of questions asked. It was agreed that some treaty bodies might pilot z project limiting LOIPRs to 25-30 questions, noting that this was an indication of a guideline rather than a rigid maximum leaving individual committees with room for flexibility.

1. *Use of video conferencing*

The treaty body experts thought that use of video conferencing might reduce the need for under-resourced States to travel to Geneva to participate in reviews. Several treaty bodies have had positive experiences of video-conferencing, but this require the necessary equipment to be available. There may be a role here for regional UN offices which might support video-conferenced reviews. The implications for UN interpretation services also needed to be considered.

# **Interactions with other stakeholders**

1. *Interactions with NGOs, NHRIs and NPMs*

The treaty body experts agreed on the importance of ensuring that NGOs, NHRIs and NPMs can interact with the treaty body system in a satisfactory fashion. This requires that the work of treaty bodies is visible and accessible, which is not always the case. The OHCHR-hosted treaty body website is neither satisfactory nor user-friendly and needs to be improved and updated in all official languages of the United Nations. UN resident coordinators and country teams should play a major role, in accordance with their mandates, to raise the visibility and accessibility of the treaty body system, as well as to take measures as appropriate to facilitate the implementation of the recommendations and views by the treaty bodies.

A further impediment to effective communication is the reduction in the number of working languages available to the treaty bodies, and the difficulties encountered in having treaty body documentation translated.

# **Membership of treaty bodies**

The treaty body experts believed that candidates for election to the treaty bodies should be selected though more transparent processes and be scrutinized by neutral external assessment processes. NGOs are proposing a platform for improving the selection process, and treaty bodies should consider whether this is something they can support. The experts agreed that it is important to promote the Addis Ababa Guidelines and to promote fairness and transparency in the election process, highlighting the importance of the independence of the treaty bodies and of their membership.

1. The only treaty body that was 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. [↑](#footnote-ref-1)
2. *Optimizing the UN Treaty Body System: Academic Platform Report on the 2020 Review*, Geneva Academy of International Humanitarian Law and Human Rights, May 2018. Retrieved from: <https://www.geneva-academy.ch/joomlatools-files/docman-files/Optimizing%20UN%20Treaty%20Bodies.pdf>. [↑](#footnote-ref-2)
3. This model is detailed in the CAT response to the questionnaire from treaty body chairs. [↑](#footnote-ref-3)
4. Other ways to encourage non-reporting States to meet their reporting obligations were also discussed, including building capacity of relevant actors to prepare initial and periodic reports. In this regard, the role of the capacity building program and of UN country teams was highlighted as essential. [↑](#footnote-ref-4)