

UN Office of the High Commissioner for Human Rights

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Response by the Norwegian Centre for Human Rights (NCHR), Faculty of Law, University of Oslo, to the Questionnaire on the implementation of General Assembly resolution 68/268 on “Strengthening and enhancing the effective functioning of the human rights treaty body system”.¹

To the attention of the Office of the High Commissioner for Human Rights,

The Norwegian Ministry of Foreign Affairs has been in contact with the OHCHR and received confirmation that submissions from national human rights institutions and *other relevant organisations and institutions* are also encouraged in the preparation of the report on the status of the human rights treaty body system by the Secretary-General in January 2020.

It is in this capacity that the NCHR, as an academic institution, would like to share its comments on further action to strengthen and enhance the effective functioning of the human rights treaty body system. The following comments and suggestions mirror the outcome of a Consultation held in Oslo on October 17-18 2018, co-organized by the NCHR and the Geneva Academy of Humanitarian Law and Human Rights as an integrating component of the global discussion spurred by the Academic Platform on Treaty Body Review 2020.²

The theme of the Consultation was *The UN Human Rights Treaty Body Reform Agenda 2020: Reforms and Scope for Local and National Engagement*. The Consultation referred to and discussed the Report published in May 2018 by the Geneva Academy titled *Optimizing the UN Treaty Body System*³ and served the purpose of discussing reform proposals in light of a *domestic stakeholder* perspective.

The following observations are based on a selection of the presentations and deliberations during the Consultation and have been produced by the organizers of the event. The summary key recommendations are followed by a brief, more into-depth analysis of each proposal.⁴

¹ General Assembly resolution 68/268, *Strengthening and enhancing the effective functioning of the human rights treaty body system*, A/RES/68/268 (9 April 2014), available from undocs.org/A/RES/68/268.

² For more information, see <https://www.geneva-academy.ch/tb-review-2020>.

³ The Geneva Academy of International Humanitarian Law and Human Rights, 'Optimizing the UN Treaty Body System' (Academic Platform Report on the 2020 Review, May 2018), available from <www.geneva-academy.ch/joomlatools-files/docman-files/Optimizing%20UN%20Treaty%20Bodies.pdf>.

⁴ The complete report from the Oslo consultation is available from <www.geneva-academy.ch/joomlatools-files/docman-files/Oslo%20Consultation%20-%20Final.pdf>.



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Summary key recommendations

1. State Reporting Procedure

- Inclusion of a civil society segment to the intergovernmental process of the 2020 review;
- Introduction of a Technical Review of Impact and Progress (TRIP), to take place between State Examinations;
- Establishment of a set schedule for Country Reviews;
- Promotion of a more sustained integration and synergy between the TB system and other UN human rights mechanisms;
- Review of certain aspects of the constructive dialogue format which currently hamper domestic stakeholder engagement.

2. Individual Communications Procedure

- Establishment of a user-friendly and accessible Individual Communications database;
- Introduction of a standardized set of rules on admissibility criteria;
- Strengthening of the Petitions Unit by pushing for earmarked contributions by Member States.

3. General Comments

- Application of a more pragmatic, “user-friendly” approach to draft General Comments;
- Provision of information to stakeholders about the possibility to comment on Draft General Comments at an earlier stage;
- Communication of the expected timelines for adoption and expansion of the efforts at publicising General Comments.

4. Treaty Body Membership

- Establishment of a platform through which TB nominees submit their candidature;
- Introduction of an ethical charter for States regarding TB member nominations;
- Introduction of a training programme for newly elected TB members.

1. The State Reporting Procedure

The TB system as it stands today does not allow for an effective and functioning domestic stakeholder engagement. Main points of concern with the current setup relate to the *low levels of predictability, visibility* (hence accessibility) and *coherence* of the system. CSOs, independent national human rights institutions and ministerial representatives highlighted the difficulties they face in planning TB – related activities in advance of the reviews of their concern, with Follow-Up procedures currently not open to interaction with non-State domestic stakeholders. Available entry points for CSOs, NHRIs and Ombudsman bodies are not sufficiently clear and the means of information sharing between the formal TB infrastructure (TB Members and OHCHR) and domestic stakeholders do not allow for sufficiently predictable plans of action related to the various TBs and TB-specific stages.

In light of the above considerations, the Consultation highlighted the following recommendations:

The inclusion of a **civil society segment** to the intergovernmental process of the 2020 review, in line with precedents set in the recent past (as best practice, see the Global Compact for Migration and its mechanism of registration for CSO participation in the review⁵).

The introduction of a **Technical Review of Impact and Progress (TRIP)**, to take place in-country, between State Examinations. Consolidating the Follow-up stage in such way would allow for an increased role of domestic stakeholders, a strengthened visibility of the TB system in arenas distant from Geneva and would allow for the consideration of a selection of (different) TB recommendations between reviews. This idea builds on existing practice (see procedure for Follow-up to Concluding Observations) and introduces a domestic element to it. Beneficial to the idealisation of a most-effective introduction of the TRIP concept is the Subcommittee on the Prevention of Torture (SPT) - specific mechanism related to Visits to State Parties. Such a template can be used to identify a model applicable throughout the system which would allow TB Members (ideally a joint team of different TBs' country rapporteurs) to plan follow-up visits halfway in-between Country Reviews. SPT has issued relevant rules of procedure to be utilised as templates for conceptualizing a TB-wide TRIP model.

The establishment of a **set schedule for Country Reviews**, ranging a span of time sufficient for domestic stakeholders to plan their alternative reporting/input with reasonable predictability. The Treaty Body Scheduler⁶ was deemed a promising development towards a more predictable State reporting structure. Importantly, the Treaty Body Scheduler has shown that all TB sessions can be comprehensively planned, also taking into consideration the recursivity of UPR cycles. In addition, the introduction of a comprehensive and predictable schedule should not be affected by non-reporting States. Country Reviews should take place according to the pre-established schedule, with State Parties to be considered in absentia.

As common denominator to all the above considerations and proposals, the need for a more **sustained integration and synergy between the TB system and other UN human rights mechanisms**. There is a lack of policy coherence in the UN human rights system and the 2020 benchmark should be seen as an opportunity to galvanize initiatives dedicated to linking the Treaty-based and Charter-based systems of international human rights monitoring (above all with the UPR and Special Procedures). A logic and possible first step would be to coordinate the resulting TB schedule to other UN human rights mechanism, as shown by the pilot scheme employed by the Treaty Body Scheduler exercise. Participants agreed on the need for a strengthened correlation between TB recommendations and the Sustainable Development Goals as key to a fully cohesive and forward-looking human rights monitoring system.

The current **format for constructive dialogues** affects the system's overall effectiveness and as such the Consultation offered the following recommendations:

- The dialogue between the State Party and the Treaty Body should take place shortly after submission of the State Report.
- Fewer people in the room may enhance the quality and effectiveness of the dialogue. With the introduction of a chamber approach throughout the TB system, fewer committee members

⁵ For more information, see <https://www.iom.int/regional-civil-society-consultations-rcscs>.

⁶ For more information on the Treaty Body Scheduler: <https://www.geneva-academy.ch/news/detail/153-the-consolidated-reporting-model-and-treaty-body-scheduler-presented-for-the-first-time-to-un-treaty-body-members>.

would be required. If substantive information about issues to be discussed is provided to State Parties in advance, this will make it possible to scale down the size of state delegations as well.

- The introduction of roundtable setups, with face-to-face seating during the dialogues (as “it is not easy to have a dialogue with someone who sits behind your back”).
- The OHCHR should make it easier for State Parties to provide good answers to their questions, for instance by showing the questions on screen during the meeting.
- The introduction of a standardized use of key words and documentation structure.

2. The Individual Communications Procedure

A number of recurring problems affect the ability of domestic stakeholders in engaging with the individual communications procedure. Of particular concern, the growing backlog of pending communications, the difficulty in accessing information on the individual communications procedure and the capacity of TB members to effectively decide on cases under review. In light of such concerns, the Consultation offered a number of recommendations:

Establish a user-friendly and accessible **Individual Communications database**, inclusive of past Views as well as admissibility decisions.

Elaborate **factsheets** as easy reference for prospective users of the procedure.

Establish a **standardized set of rules on admissibility criteria** throughout the different TBs, inclusive of a “fast track” system which allows to process cases with similar patterns more swiftly (see European Court of Human Rights “fast track” procedure) and to prioritize most important and urgent cases under assessment.

Introduce an **“assisting lawyers” scheme** that facilitates contributions made by young lawyers. Related to this, the OHCHR could allow for more internship and volunteer-related positions (e.g. UNV) specifically targeted for the OHCHR Petitions Unit.

Push for **earmarked contributions to the Petitions Unit** by Member States, in order to increase the number of human rights officers dedicated to the individual communications procedure.

3. General Comments

Although domestic stakeholder engagement during the Days of General Discussion and throughout the issuance of General Comments has been increasing, the Consultation offered a number of suggestions on how to improve the system, especially concerning its transparency and accessibility:

General Comments should be drafted with a **more “practical” approach**, explaining within the instrument the steps required to uphold the Convention and make related assessments. Mention was made of the value of General Comments as possible “toolkits” for domestic stakeholders to use in their activity.

Domestic stakeholders should be **informed as early as possible about the possibility to comment on Draft General Comments** as well as participate as panellists during Days of General Discussion. Contribution to the development of General Comments is seen as an opportunity to maximize thematic information sharing with domestic stakeholders. It is also important for TB members to **communicate the expected timeline of adoption of new General Comments**, otherwise risking disengagement by domestic stakeholders during the

process. States and domestic stakeholders should also expand efforts at **publicising General Comments**, both in terms of dissemination as well as translation.

4. Treaty Body Membership

Lastly, the Consultation addressed the issue of capacity and independence of TB membership, offering the following recommendations:

The setup of a **platform through which TB nominees would submit their candidature**, and which would provide civil society the possibility to review and comment upon candidates prior to political negotiations in New York. This would finally allow civil society to enter a field which has so far been state-driven. This initiative could imply a comparative study amongst different nomination/election/appointment processes of international expert/judicial bodies (ECtHR, Council of Europe, UN Special Procedures, ACHPR, etc.) in light of the 2020 Review, inextricably linked to the issue of TB membership. Participants agreed on the potential role of academia in bringing this idea forward, through the idealization of a platform for review and vetting, thus facilitating the opening of public spaces for TB member nomination.

Considering the inextricable link between TB member election and the practice of exchange of votes amongst State Parties, participants considered the value of introducing **an ethical charter for TB member nomination**, which States agree to abide by when involved in supporting each other's candidates. Such Charter would list required standards for TB membership, specific to each nominee's profile in terms of both capacity and independence.

The introduction of a **training programme for newly elected TB members**. Such a programme would imply a comparative analysis of the different TBs' working methods and rules of procedure, which might be less complex and varied after the 2020 Review. A week-long course which would take place 2-3 times a year and would cover all TB procedures, as well as attendance to live TB sessions and meetings with staff from the OHCHR, was suggested. A training programme should also examine how civil society can interact with TB members in order to embed the TB system.

We thank you for this opportunity to offer our input towards the third biannual report by the Secretary General under GA. Res. 68/268.

Sincerely,



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