

OPTIMIZING THE UN TREATY BODY SYSTEM

ACADEMIC PLATFORM REPORT
ON THE 2020 REVIEW

MAY 2018

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This report was written by Claire Callejon, Kamelia Kemileva, Felix Kirchmeier and Domenico Zipoli, members of the project team at the Geneva Academy.

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DISCLAIMERS

This report is the work of the project team of the Geneva Academy. It is based on the outputs from regional and thematic meetings and over 60 written submissions received following a general call for papers. The report sets out and explains various proposals that were advanced on all facets of Treaty Body work. The views expressed in the report do not necessarily reflect those of project partners or supporters or any person who provided input to the consultations or commented on earlier drafts of the report. The selections and omissions in this final report are the responsibility of the Geneva Academy.

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EXECUTIVE SUMMARY

BACKGROUND

Since the United Nations took form, many political factors and negotiations have influenced the development of the human rights treaty system. A particular feature of the human rights treaties is that (with one exception) each treaty creates a dedicated Committee (treaty body) that is responsible for evaluating states' compliance with the legal obligations that states acquire under the treaty when they ratify and accede to it.

Collectively the ten treaty bodies (TBs) are known as the 'the human rights treaty body system'. It is considered a cornerstone of universal human rights protection. Numerous efforts have been made to make the growth of the human rights treaty bodies system sustainable. The most recent resulted in the adoption of Resolution A/RES/68/268 of the UN General Assembly in 2014, which opens the way to a review of the system in 2020.

To prepare for this review, the Geneva Academy of International Humanitarian Law and Human Rights set up an Academic Platform on the 2020 TB Review. It acted as the platform's scientific convener, coordinator and adviser, and collected and published ideas that emerged from consultations with its partners across the globe.

The project and this report aim to provide substantive options for inter-governmental discussions and negotiations during the 2020 General Assembly review. The project does not address all issues related to the treaty bodies. The proposals described were evaluated against a list of criteria that the report outlines. The report includes some bolder reform initiatives. The final objective is to make the TB system 'fit for purpose'.

MAIN RECOMMENDATIONS

The proposals developed through the Academic Platform consider a wide range of issues. In the report, they are grouped under: (1) TB functions, states' reporting and dialogues with TB experts; (2) synergies, in and beyond the system; (3) the accessibility of the system; and (4) its structure. At the end, the report comments on (5) the transitional period that will be required to establish any significant changes to the TB system. The main recommendations relate to the consolidation of reports and state reviews.

Combine state reviews in a consolidated state report and a single review or a semi-consolidated state report and two clustered reviews.

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

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

Under this model, states parties would be reviewed by all relevant TBs during the same week every seven to eight years on the basis of a single state report (SSR). The SSR would contain a general section that covered all the treaties a state has ratified, followed by sections that are treaty-specific. The adoption of this model would not entail a radical shift in current practice, because the first general section would be the equivalent of what is now called the Common Core Document. The SSR would replace the various periodic reports that states parties are currently asked to submit to the relevant committees. In a similar manner, the model foresees preparation of a single consolidated list of issues that the Committees would send to a state before its review. Its written replies on those would constitute its periodic report. However, the outcome of the review would include distinct concluding observations from the Committee of each treaty that the state had ratified.

In practical terms, this option would require all but one of the ten Committees¹ to sit simultaneously in Geneva in different meeting rooms for a week. States under review would meet each relevant Committee in turn.

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

The second option would also consolidate state reviews but would not require all committees to sit at the same time. Under this proposal, instead of appearing before all Committees in the same short period every seven to eight years, states would be reviewed twice, by different Committees, at four year intervals. They would therefore still be reviewed by all relevant committees over an 8-year cycle, but in two clustered reviews. Clustering the reviews by Committees of the universal Covenants, and Committees of the treaties that address specific groups and themes, could strengthen follow-up and reinforcement while avoiding unnecessary and unintended overlaps.

¹ The exception is the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT).

Implement incremental changes in working methods.

The report draws attention to potential synergies in the system – benefits that could be obtained by aligning working methods, sharing information, or establishing a joint working group on follow-up. Synergies can be obtained beyond the system too, for example, by interacting with other UN human rights mechanisms such as the Universal Periodic Review (UPR), and meeting and cooperating with regional and national human rights mechanisms to share information on jurisprudence, implementation and follow-up.

If the TB system is to achieve its purpose, it is essential to improve the accessibility and visibility of TB outputs. Contributors to the Academic Platform and regional consultations suggested that this could partly be achieved if Committees sometimes met in other locations: a ‘roving’ system would bring them closer to stakeholders. Some technological solutions have already been implemented but could be developed, such as webcast and online participation in sessions, the creation of an online jurisprudence database, wider use of social media, and more web pages dedicated to TB activities.

It is also important to address the backlog in processing individual communications, because the number of petitions received continues to rise steeply. Techniques to identify structural problems could reduce the number of similar cases that have to be examined in detail. TBs may also be able to simplify their procedures in cases that do not raise complex legal issues and prioritize cases that could set important precedents. Finally the registry function of the secretariat should be strengthened.

Consolidate the TB system’s structure.

Committee members work without remuneration. Their quality, and the quality of their selection, are critical to the performance and credibility of the TB system. A number of proposals therefore addressed national and international nomination and selection processes.

The OHCHR Secretariat also plays a critical role in supporting the TBs to fulfil their mandate. It can improve the performance of individual Committees, and strengthen coordination between TBs and between TBs and other human rights mechanisms and stakeholders. Several contributors proposed steps that should be taken to strengthen the funding, expertise and size of OHCHR’s TB Branch.

INTRODUCTION

THE TREATY BODIES’ OUTPUT AND ACHIEVEMENTS

The United Nations human rights treaty body system is a key component of universal human rights protection, anchored as it is in the international legal obligations accepted by states. Treaty bodies (TBs) are expert supervisory bodies (Committees) established by international human rights treaties to evaluate the compliance with those treaties of states that have ratified them (states parties). There are currently ten TBs.² Their functions are to:

- **Review state party reports.** A state is periodically required to report to the relevant Committee on the steps it has taken to give effect to each treaty to which it is a party. Country examinations also provide an opportunity for states parties to dialogue directly with Committees. At the end of their examination, the Committee adopts ‘concluding observations’ that contain recommendations on how the state party can improve implementation of the treaty at domestic level.
- **Consider individual complaints³** and develop jurisprudence. Individuals under the jurisdiction of a state party who believe that state has violated provisions of a treaty are entitled to send communications to the relevant Committee. This crucial function is grounded in the idea that individual human rights cannot be said to be meaningfully guaranteed unless persons whose rights have been violated have the right to complain to an international authority. The decisions that TBs have reached on individual communications are referred to as ‘views’ and represent an

² The Human Rights Committee (CCPR) monitors the International Covenant on Political and Civil Rights (ICCPR). The Committee on Economic Social and Cultural Rights (CESCR) monitors the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Committee on the Elimination of Racial Discrimination (CERD) monitors the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The Committee on the Elimination of Discrimination against Women (CEDAW) monitors the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The Committee against Torture (CAT) monitors the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The Committee on the Rights of the Child (CRC) monitors the Convention on the Rights of the Child (CRC). The Committee on Migrant Workers (CMW) monitors the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW). The Committee on Enforced Disappearances (CED) monitors the Convention for the Protection of All Persons from Enforced Disappearance (CED). The Committee on the Rights of Persons with Disabilities (CRPD) monitors the Convention on the Rights of Persons with Disabilities (CRPD). The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) has a preventive mandate derived from the Optional Protocol to the Convention against Torture (OP-CAT).

³ Interstate complaints (which have never been used) are also allowed under the following treaty provisions: Article 21 and Article 30, CAT; Article 74 and Article 92, CMW; Article 10, Optional Protocol to the ICESCR; Article 12, Optional Protocol on a communication procedure to the CRC; Articles 11-13 and Article 22, ICERD; Article 41-43, ICCPR; Article 29, CEDAW; Article 32, CED. Since they have not been used, these procedures are not addressed in this report.

impressive body of jurisprudence. Eight of the ten TBs can receive individual complaints.⁴

- **Interpret human rights treaty provisions.** Through General Comments and Statements, TBs clarify the scope and meaning of treaty provisions, and thereby the content of human rights and states parties' substantive and reporting obligations.
- **Prevent human rights violations.** Six Committees are empowered to conduct inquiries if serious or systematic human rights violations are alleged to have occurred in the territory of a state party.⁵ The Subcommittee on Prevention of Torture (SPT), as its name indicates, has a preventive mandate.⁶ The CERD has developed early-warning measures and urgent procedures.⁷ The CED may resort to urgent action procedures to prevent specific human rights violations.⁸

Although little known to non-expert audiences,⁹ TB independent experts play a vital role in the UN human rights system. Their contribution to the promotion and protection of human rights is widely acknowledged¹⁰ and studied.¹¹ TBs have clari-

4 This function is restricted because states must not only have ratified the treaty but must also declare they recognize the Committee's competence to receive and consider such communications. They can do so by a declaration recognizing the competence of the Committee (CAT, ICERD, CMW and CED) or by ratifying a protocol (the Optional Protocols of the ICCPR, CEDAW, ICRPD, and ICESCR).

5 The six Committees in question are the CAT (under Article 20, CAT), CEDAW (Article 8, Optional Protocol to CEDAW), CRPD (Article 6, Optional Protocol to CRPD), CED (Article 33, CED), CESCO (Article 11, Optional Protocol to ICESCR) and CRC (Article 13, Optional Protocol to CRC on a communications procedure). Each of the above Committees may initiate inquiries on its own initiative if it receives reliable information containing well-founded indications that a state party has seriously or systematically violated a right contained in the convention it monitors.

6 The SPT does not perform the same functions as the other nine treaty bodies. It is mandated to visit places of detention and advise National Preventive Mechanisms. The SPT does not examine individual complaints or periodic reports by states parties.

7 The CERD established these procedures by adoption of a working paper in 1993. Its early warning measures aim to prevent problems from escalating into conflicts. Its urgent action procedures respond to problems requiring immediate attention and aim to prevent or limit the scale or number of serious Convention violations.

8 See Article 30, CED. The Article seeks to prevent enforced disappearance by requesting the state party to provide information about a disappeared person 'as a matter of urgency'. See also Article 34, under which the Committee 'may, after seeking from the state party concerned all relevant information on [well-founded indications that enforced disappearance is being practised on a widespread or systematic basis], urgently bring the matter to the attention of the General Assembly of the United Nations, through the Secretary-General'.

9 This view was widely shared by those who participated in the consultations on which this study is based. See 'The current reform process and the role of the Academic Platform' below.

10 For example, it has been described as 'one of the greatest achievements in the history of the global struggle for human rights' by the UN Secretary-General and 'one of the greatest achievements in the efforts of the international community to promote and protect human rights' by the High Commissioner for Human Rights (HCHR) in 2012 (in United Nations reform: measures and proposals, Document A/66/860, 26 June 2012, p. 7 and p. 8). Its 'vital importance' and 'very considerable achievements' were also affirmed in Philip Alston, Initial report on enhancing the long-term effectiveness of the system, Document A/44/668, 1989, para. 8.

11 See, for example, Christof Heyns and Frans Vijojoen, *The Impact of the United Nations Human Rights Treaties on the Domestic Level*, Kluwer Law International, The Hague, 2002; ; Navi Pillay, 'The International Human Rights Treaty System: Impact at the Domestic and International Levels', Human Rights Brief 21, no. 1 (2014), 32-34.

fied and interpreted states parties' obligations under the treaties, while monitoring their compliance and engaging with their representatives. TB findings on individual cases have generated an important body of jurisprudence, resulted in relief being provided for many victims of human rights violations, and led to changes in domestic law and practice. All stakeholders benefit from TB work: governments, rights holders, national human rights institutions and civil society organizations. Finally, TBs provide unique input to the work of other international, regional and national human rights bodies and mechanisms.

CHALLENGES CONFRONTING THE SYSTEM

A number of challenges confront the TB system. They concern its effectiveness, efficiency and coordination.

- **Overload due to the system's growth.** The number of TBs has doubled in the last decade and growth is likely to continue. The number of ratifications is also growing. The effect is a considerable backlog in the consideration of reports. The number of individual communications has also risen sharply. Overall, TBs have struggled to keep up with their workload, and the burden of work is bound to increase as more states ratify more treaties and as work and procedures of TBs become better known.
- **Non-compliance with reporting obligations.** Many states do not report to the Committees on time or do not report at all. According to a report in 2012 by the Office of the UN High Commissioner for Human Rights (OHCHR) on strengthening the TBs, only 16 per cent of the reports due in 2010 and 2011 were submitted on time (A/66/860, p. 21). According to an update report in 2016 on implementation of GA Resolution 68/268, only 13 per cent of states parties had fully met their reporting obligations on 19 January 2016 (Document A/71/118, para. 5).
- **Inadequate resources.** The TBs' increasing workload has not been matched by a corresponding increase in resources, either in number of staff or level of expertise.
- **Coherence.** The ten TBs have developed their own working methods and procedures. Some work on similar issues without much coordination, though aligning their working methods would not undermine their independence.
- **Membership.** The ten TBs are currently composed of 172 independent, part-time, unpaid experts. National selection procedures and UN election processes lack the openness and transparency required to secure a suitably qualified and competent membership that is independent of government. In addition, the growth in workload raises doubts about the viability of a system that depends on part-time members who give their services *pro bono*.

- **Leadership.** The chairpersons of the ten Committees have assumed a leadership role on matters of common concern, such as the harmonization of working methods. They convene informal meetings and adopt joint statements. However, Committee members have not always endorsed the decisions that chairpersons have taken and many decisions have not been implemented.
- **Implementation.** Implementation of international human rights treaties and related TB recommendations and decisions is jeopardized by a number of factors, including states' non-compliance, the weakness of the diverse follow-up procedures adopted by Committees, lack of access to TBs' work, and their low visibility.

PREVIOUS REFORM INITIATIVES

Several initiatives have sought to remedy shortcomings in the TB system.¹² Past TB reform initiatives include reports by independent expert Philip Alston (1988–1996), and a proposal by the UN Secretary-General (2002–2006). In 2006, the High Commissioner for Human Rights (HCHR), Louise Arbour, proposed to create a unified standing TB (HRI/MC/2006/2, 22 March 2006). This ambitious idea did not receive much political support and has not been reconsidered since. In 2012, HCHR Navanethem Pillay presented a new set of proposals. They included a comprehensive reporting schedule, a simplified and aligned reporting procedure, a joint TB working group on individual communications, and measures to strengthen the independence and expertise of TB members and enhance the system's accessibility and visibility (A/66/860, 26 June 2012).

The TBs themselves have taken steps to increase the system's effectiveness. To rationalise the consideration of state reports and reduce the backlog, TBs started reviewing reports in *two parallel chambers*¹³ and examined some overdue reports jointly (i.e., the first and the second reports together). To facilitate the reporting process for states parties and avoid redundancy, TBs also introduced an *expanded or common core document*,¹⁴ in which states combine information that is relevant to all or several treaties, or relevant to all or several Committees. The 'expanded core document' is submitted in tandem with a treaty-specific report to each relevant committee. Preparation in advance of *lists of issues* also facilitates the Committees' dialogues with states; under this procedure, a Committee submits a list of issues and questions to a reporting state before the session at which its report is formally considered. In a further development of this practice, Committees have created

¹² For an overview of past TB reform initiatives by the United Nations, see the dedicated page on the OHCHR's website. At: <http://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx>.

¹³ CRC introduced this measure in 2003 (in accordance with GA Resolution 59/261). The HRC also used a two chamber system in order to review more state party reports, but this practice has currently been halted.

¹⁴ In June 2003, the second inter-committee meeting and the fifteenth meeting of chairpersons requested the Secretariat to prepare draft 'guidelines on an expanded core document and treaty-specific targeted reports and harmonized guidelines on reporting under the international human rights treaties'.

a *Simplified Reporting Procedure*, which builds on the 'list of issues' by prioritizing some issues; and the state's replies replace the state's report. This procedure has been offered in different forms by CAT since 2007, by the HRC since 2010, by the CRPD since 2013, by CEDAW, CERD, CMW and CRC since 2014, and by CESCR since 2017. It inspired the proposals developed in this report.

TBs have also developed *follow-up procedures*. States parties are requested to provide complementary information on the measures they have taken to implement previous concluding observations (on state reports) and views (on individual complaints). To maximize meeting time during sessions, all TBs have also *reduced the time allocated for the State review* from 9 to 6 hours (Document A/66/860, 26 June 2012, p. 31). TBs have also made significant efforts to *reduce operational costs*.

These reforms have resulted in modest change, but challenges to the system remain.

THE CURRENT REFORM PROCESS AND THE ROLE OF THE ACADEMIC PLATFORM

The most recent reform initiative was launched by the General Assembly in 2014 when it adopted Resolution A/RES/68/268. This foresees a review of the system in 2020. To prepare for it, at the 27th TB Chairpersons' meeting (held in San Jose in 2015) the Government of Costa Rica declared that innovation, fresh ideas and proposals are needed. It called for a worldwide academic reflection on the future of the TB system.

In response, the Geneva Academy of International Humanitarian Law and Human Rights (the Geneva Academy) set up an academic research project titled the Academic Platform in December 2015 (www.geneva-academy.ch). A concept note and background papers were developed and widely publicized. To secure a broad range of perspectives from across academia, the Geneva Academy also issued a call for submissions, and in 2016 and 2017 it held several thematic and global conferences and partnered with numerous academic institutions worldwide to organize seven regional consultations.¹⁵ The Geneva Academy acted as the Platform's convener, coordinator and adviser, to ensure the coherence of consultations and input, and collect and publish the ideas of partners across the world. The outputs of the meetings and over 60 written submissions received under the general call for papers provide the basis of this report.

¹⁵ The seven regional consultations were held in Dublin, Ireland (7-8 July 2016); San José, Costa Rica (19-20 November 2016); Moscow, Russian Federation (18-19 November 2016); New York, USA (1-2 June 2017); Nairobi, Kenya (20-21 July 2017); Amman, Jordan (21-22 September 2017); and New Delhi, India (13-14 October 2017). Reports of the regional consultations are available on the website at www.geneva-academy.ch.

CRITERIA

Reform proposals by contributors to the Academic Platform and participants in regional consultations have been evaluated against the following criteria:

- **Reforms must protect human rights.** The TB system's object and purpose is to protect human rights. This should remain the key consideration and should prevail over concerns of technical expediency. Reform initiatives must therefore place rights-holders at the centre, be victim-oriented, and uphold the essential integrity of the system. The main criterion should be whether a reform advances the system's ultimate purpose (universal protection of human rights) and benefits rights holders.
- **The system must be fair to all states parties.** Ultimately, a Committee's aim is to review the human rights situation in every state that is a party to the treaty it monitors. The TBs will genuinely function as a system when their working methods and means of operation provide comprehensive, consistent, and efficient responses to violations of the human rights treaties. TBs' methods of work and TBs' functions should assist states to comply with their reporting obligations. States that cooperate with the system should not be alienated by complex, uncoordinated procedures. Conversely, states parties that do not cooperate with the TB system should not attract less attention than states that are diligent.
- **The system must be accessible to stakeholders.** The TB system should be accessible and useful to rights-holders, including through the medium of civil society organisations (CSOs). Accessibility implies adequate visibility, because the system will not be used if it is not known. It should also achieve a consistent level of predictability, allowing CSOs (among others) to plan TB-related activities ahead of schedule and benefit from available entry points.
- **The system must be economically viable.** If TBs are to fulfil their mandate, they must receive adequate resources. At the same time, the financial implications of reform proposals must also be taken into consideration.
- **Reforms must uphold the integrity of the human rights treaties.** A general consensus emerged during consultations that incremental change within the existing legal framework should be the goal. The current reform process should not cause amendment of the treaties and should maintain their integrity.
- **The reform process should be open to bold reform initiatives.** The previous criterion does not preclude bolder reform initiatives. The Geneva Academy considers these complementary to the ideas expressed in this report. Short-term reforms should be undertaken while contemplating longer-term changes.

- **The review should be open to broader discussion of the UN human rights machinery.** Likewise, while the current review process and the Academic Platform focus on the TB system, this does not preclude a broader discussion of the UN human rights machinery. The TB system is part of a larger whole and should interact effectively with other components of the UN human rights system, including independent mechanisms such as the Special Procedures of the UN Human Rights Council, and the Human Rights Council itself. The Human Rights Council review due in 2021 will provide a further opportunity to address wider aspects of the UN human rights system.
- **The system must be fit for purpose.** The system needs to be designed and equipped to cope with its growing workload. When the first TBs started work, far fewer States were party to fewer treaties. It is understandable that the saturation of the system was not foreseen, but today it threatens to become unsustainable.

These criteria should also guide consultations leading to the 2020 review.

SCOPE OF THE REPORT

The ambition of this report is to provide substantive options for inter-state discussions and negotiations during the 2020 General Assembly review. It does not address all issues that relate to treaty bodies.

As noted, this report is based on more than 60 individual submissions and seven regional consultations (see www.geneva-academy.ch). It does not reflect an academic consensus (which does not exist) but sets out options for discussion and proposals that emerged from submissions and consultation.

The proposals cover a wide range of issues, which are categorized under: (1) TB functions; (2) synergies that could be developed inside and outside the TB system; (3) the system's accessibility; and (4) the system's structure.¹⁶

The following charts indicate the content and trend of submissions received by the Academic Platform. The percentages indicate how often certain terms occurred in the submissions received. More charts are available on the project's webpage.

¹⁶ Other UN human rights mechanisms, such as the Human Rights Council, its Special Procedures, and the Universal Periodic Review (UPR), are not addressed because this research focused only on the TB system.

Chart 1 shows that the overwhelming majority of submissions called for incremental change. Only a very small minority recommended an overhaul of the system, requiring the treaties to be reopened.

Chart 1 Overhaul vs. incrementalism

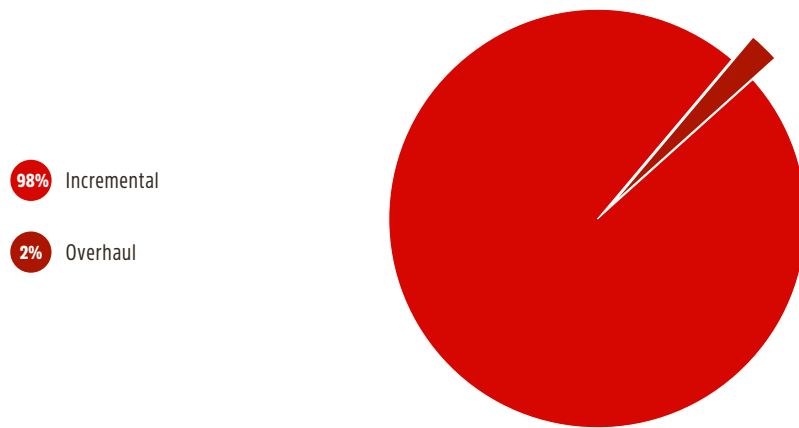
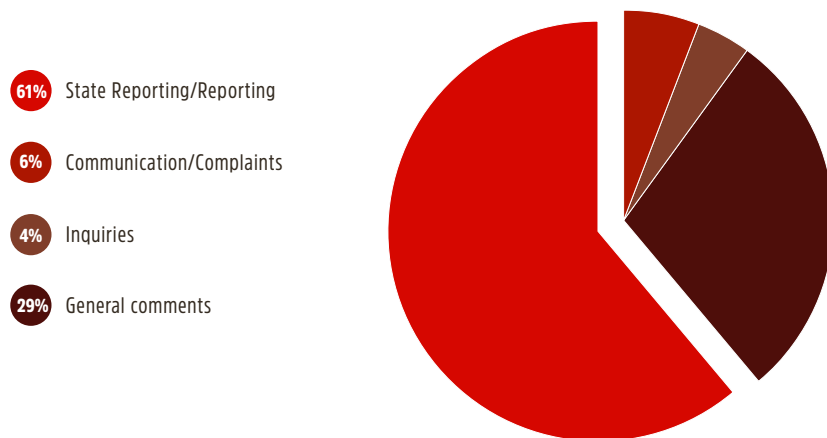


Chart 2 shows which areas of TB work the contributors most frequently discussed. Only 6 per cent of the contributions addressed individual communications. State reporting received most attention. As a result, this report focuses mostly on proposals in this area.

Chart 2 Percentage of submissions addressing specific TB activities



1. STRENGTHENING THE TREATY BODIES' CAPACITY TO PERFORM THEIR FUNCTIONS

The TB system aims to consistently monitor all human rights guaranteed by the UN human rights 'core' treaties and thereby promote the universality and indivisibility of all rights and their equal promotion and protection. Currently, however, the system is reaching the limits of its capacity to perform its functions, the most time-consuming of which is the review of state party reports.

A. CONSOLIDATING COUNTRY REVIEWS

The main proposals that emerged from the Academic Platform's consultations relate to country examinations based on states parties' periodic reports. Two different options were proposed:¹⁷ a single state report and review every seven to eight years, or a clustered report and review every four years. Both aim to improve coordination of the reporting process and tackle various challenges. In particular:

- TB reporting schedules are not coordinated. Under the existing system, states parties are required to report to each Committee according to timetables that are established either by the Committee or the constitutive instruments that govern its work.¹⁸ This means that state delegations must travel several times to Geneva for different 'constructive dialogues' and interactions with Committees. Non-governmental organizations (NGOs) and national human rights institutions (NHRIs) must make similar ar-

¹⁷ See Geneva Academy, Report on the regional consultation for Latin America and the Spanish-Speaking Caribbean, San José, Costa Rica, 19-20 November 2016, p. 4.

¹⁸ Article 40 of the ICCPR states that a state should submit its initial report one year after the date at which the Covenant enters into force; the CCPR designates the dates of subsequent reports. (In practice, the Committee applies a periodicity of three to six years. The exact dates are largely determined by the urgency of the human rights situation in the state party concerned and the availability of other international review mechanisms.) Article 17 of the ICESCR delegates the reporting timelines to the UN Economic and Social Council (ECOSOC). ECOSOC Resolution 1988/4 set a period of two years for the initial report, and five years for subsequent reports. Article 9 of ICERD requires the initial report after one year and establishes a two year reporting cycle, which the Committee can change. (In practice, CERD normally asks for combined reports at four year intervals.) Article 18 of CEDAW requires an initial report after one year and sets a reporting cycle of no more than four years, which the Committee can change. Article 19 of CAT sets an initial reporting period of one year succeeded by a four year reporting cycle. Article 73 of the ICMW requires the initial report after one year, succeeded by a five year reporting cycle, which the Committee can change. Article 35 of the CRPD requires an initial report after two years, succeeded by a reporting cycle of no more than four years, which the Committee can change. Article 44 of the CRC requires an initial report after two years, succeeded by a five year reporting cycle. Article 29 of CED requires an initial report after two years; subsequent reports are requested by the Committee at intervals of three to six years.

rangements to participate in a variety of uncoordinated reporting events and processes.

- There is a significant overlap in the written and oral questions and recommendations that Committees present to reporting States. Recommendations issued by one Committee are often used by other Committees when they list the issues they want states parties to answer in writing or discuss at constructive dialogues in Geneva. This practice increases the coherence and consistency of TBs' work, but also generates much repetition in state reporting and in Committees' concluding observations and creates a potential for inconsistencies. The simplified reporting procedure (SRP),¹⁹ which several TBs employ, permits states to replace their periodic reports by written replies to lists of issues, which partly resolves the problem of excessive reporting.²⁰ However, it does not address problems of substantive repetition or the need to coordinate the numerous reporting obligations of states, including periodic reviews.
- Many states parties do not comply with their reporting obligations. On 19 January 2016, only 13 percent of states had fully met on time all their reporting obligations under the treaties they had ratified.
- The number of periodic reports, responses to lists of issues, and follow-up reports that states parties are requested to prepare for TBs continues to grow, as do other international and regional reporting obligations.
- Committee procedures vary.

The proposals set out below aim to address the problems of over- and under-reporting, and the lack of coordination and organization. It should be noted that neither of the two options requires an amendment of relevant treaties or a serious budget increase. The main difference between them is the reporting schedules: one calls for a single consolidated review by all relevant TBs every seven to eight years, the other for two clustered reviews over eight years (one every four years).

While detailed costing has yet to be done, the project budgetary implications (PBI) contained in GA resolution 68/268 (A/68/779) include all the numbers required to calculate the cost of one week's meeting time (see the excel sheet on p. 26/40 of A/68/779) and the review of a single individual communication. This information does not generate a precise calculation, however. The UN system is complex and different parameters need to be combined that are not found in one place. In this case, broadly speaking:

¹⁹ This procedure was introduced by the HCHR in a report in 2012, to simplify and align reporting processes. See Document A/66/860, p. 48.

²⁰ 'Excessive reporting' is a term that is often mentioned but has no agreed definition. Some believe that states should report separately to each Committee in order to increase the number of occasions on which TBs and CSOs can review state compliance with international obligations. Others consider that, since no mechanism obliges states to report, multiplying reporting obligations can have a counterproductive effect by increasing the level of non-compliance.

(1) The Conference Service Division (CSD) is responsible for meeting time, translations and interpretations, documents, and related staff (in effect, the logistics of meetings). Elements managed by the CSD are autonomous and separate from OHCHR. (To illustrate, a pre-sessional working document of 8,500 words that was also translated by CSD would cost USD 29,000.)

(2) OHCHR is responsible for substantive content. Costing this input requires OHCHR to calculate the expert time required to coordinate and revise a report, prepare communications, etc. Individual communications take longer to prepare than state reports.

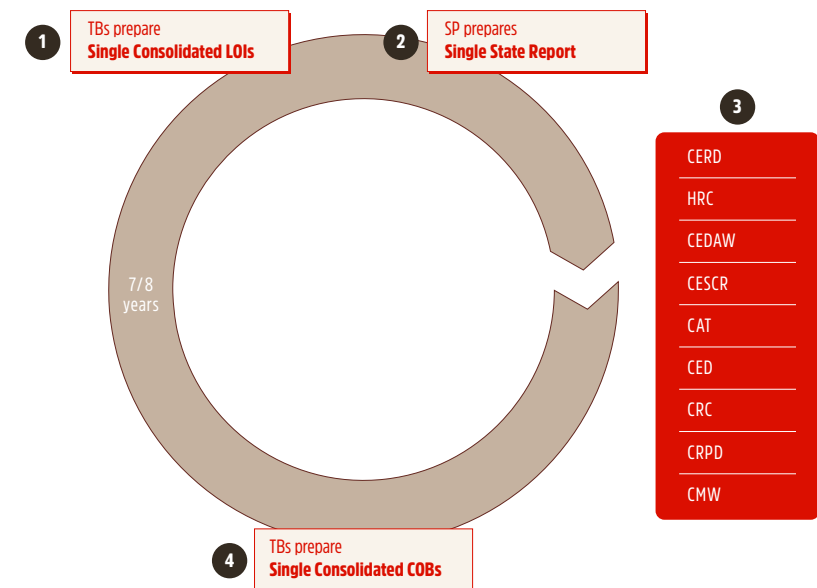
To obtain an exact costing of one TB working day, one must therefore sum (1) and (2), and probably add some other related costs, such as OHCHR costs associated with TB experts, and OHCHR management costs, which are not directly calculated.

More thought needs to be given to this costing pattern. In certain respects, costs may need to be reduced. One solution might be to attribute funds differently; another might be to use external translation and editing services, which would significantly lower their expense.

Finally, the above calculation does not consider the national costs that states parties incur when they prepare and present reports. It is likely that the models presented below would primarily reduce national costs.

To test the models' feasibility and cost, each could be piloted by an interested state party.

1. OPTION 1: A SINGLE CONSOLIDATED REVIEW



Under this model, each state party would be reviewed by all relevant TBs during the same week every seven to eight years on the basis of a single state report (SSR). The SSR would contain a general section relevant to all the treaties the state has ratified, and several sections that were treaty-specific. Importantly, this shift would not require a radical change in practice, because the first general section would be the equivalent of what is now called the Common Core Document. The SSR would replace the various periodic reports that states parties are currently asked to prepare for relevant TBs.²¹ Similarly, a single consolidated list of issues would be prepared and sent to each state before its review. Written replies to the list would constitute the state's periodic report. The outcome of the review would integrate the concluding observations of each Committee to a treaty the state had ratified.

In practical terms, this option would require nine committees (all except the SPT) to sit simultaneously in Geneva in different meeting rooms during the same week. States under review would meet each relevant TB in turn, one after the other.

Retaining a review period of six hours is a possibility. However, because the model is expected to increase compliance, meeting time and therefore costs would rise as a result. For this reason, the proposal poses financial difficulties.

Expenses could be held close to the current level if sub-groups (chambers) of each Committee reviewed state reports and proposed recommendations, and each Committee then approved recommendations in plenary. Such an arrangement would be acceptable under treaty law, which has no quorum requirement. This solution still requires more interpretation and secretariat services, but could be manageable, is legally feasible, and requires no change to the treaties.²²

To conduct a one-week consolidated state review of each state party every four to five years, it might be necessary to reduce sessions to three or four hours (rather than six as now). The fact that consolidating reports reduces duplication might help to meet this objective.

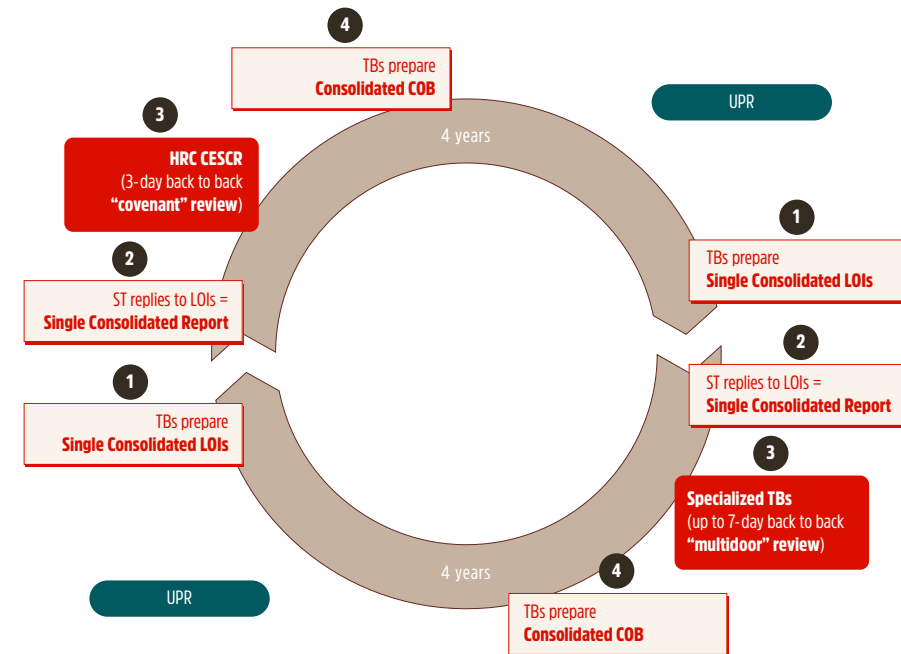
Alternatively, single consolidated reviews could take place every seven to eight years. Though a cycle of this length might be considered too long from the perspective of

²¹ With respect to word limits, paragraphs 15 and 16 of GA Resolution 68/268 state that reports should not exceed the following limits: initial reports 31,800 words; subsequent periodic reports 21,200 words; common core documents 42,400 words; other documents 10,700 words. The Report on the regional consultation for Latin America and the Spanish-Speaking Caribbean (p. 12) proposes to cap word limits per TB on an annual or sessional basis, rather than by document, thereby granting TBs a degree of discretion while responding to institutional constraints.

²² Committees may separate into working 'chambers' under the treaties if chambers remain formally under the authority of the Committee in plenary. It is generally within the competence of an international body to establish subsidiary organs unless a specific provision prevents this. None of the human rights treaties contain such a provision. By contrast, if Committees were to divide into chambers without remaining under the authority of the plenary, an issue of interpretation would arise. The treaties provide for the establishment of 'a Committee' (for example, in Article 28(1) of the ICCPR). Read strictly, this implies a single organ; it may be argued, however, that a plurality of chambers together constitute a Committee. On this reading, Committees could work in chambers without revising the treaties and states parties would not need to approve the arrangements made.

human rights protection, in practice reporting frequency is already approaching this length. A cycle of this length²³ could accommodate six hour sessions.

2. OPTION 2. CLUSTERED REVIEWS EVERY FOUR YEARS



The second option also consolidates TB state reviews but does not require all committees to sit at the same time. This proposal would hold clustered reviews every four years, rather than a single review every seven to eight years. Each state party would appear before all relevant Committees over an 8-year cycle, but the reviews would take place in two clustered hearings lasting one week each, held at intervals of four years.

Since the human rights treaties have shared but also different scope, under this proposal it would be necessary to decide how the Committees should best be clus-

²³ An analysis of the reporting record of a randomly selected sub-set of countries (including states from all regional groups) shows that many are already on a seven to eight year reporting cycle. Albania, for example, ratified CAT in 1994 and last reported in 2009 for a report due in 2007; and ratified CRC in 1992 and last reported in 2009. Poland ratified the CRC in 1991 and last reported in 2012; and ratified CEDAW in 1980 and last reported in 2012 while the due date was 2010. Italy ratified the ICESCR in 1978 and last submitted a report in 2012; and ratified the ICCPR in 1978 and last a report in 2015 which was due in 2009. Germany ratified CAT in 1990 but submitted no report between 2009 and 2017; and ratified CEDAW in 1985 but submitted no report between 2007 and 2015. Brazil ratified CEDAW in 1984 and last reported in 2010; and ratified CED in 2010 but has submitted no report so far. Peru ratified CEDAW in 1982 and last reported in 2012; and ratified ICESCR in 1978 and last reported in 2009 for a report due in 2005. South Africa ratified the CRPD in 2007 but has yet to report; and ratified ICERD in 1998 and did not report between 2004 and 2014. Nigeria ratified CAT in 2001 but has yet to report; and ratified the ICCPR in 1993 and last reported in 1996. Bhutan ratified the CRC in 1990 and has regularly reported so far every 7.5 to 8 years; and ratified the CRPD in 2010 but has yet to report. Malaysia ratified CEDAW in 1995 and reported in 2004 and 2016; and ratified CRC in 1995 and last reported in 2006.

tered. Whereas the two covenants are general human rights instruments that address the rights of all persons, the specialized treaties deal with the content of a single norm (the prohibition of torture and ill treatment in the case of CAT, the prohibition of enforced disappearance in the case of CED), or the rights of a specific group (women in the case of CEDAW, children in the case of CRC, etc.). To enable a broad, multi-dimensional review, it would be desirable to take account of these different perspectives and their crossover dimensions.

One option would be to alternate reviews by general Committees (CCPR, CESCR) and other Committees.²⁴ Another would be to cluster Committees that monitor treaties applying to all individuals (CCPR, CESCR, CERD, CAT, CED), and Committees that monitor treaties that address specific groups (CEDAW, CRC, CMW, CRPD).

If the main purpose is to increase efficiency, any combination could be considered. However, clustering could, and should, also be used to strengthen coherence and opportunities for follow-up. Viewed from this perspective, the first option would be preferable.

Holding two clustered hearings over eight years has one clear advantage relative to a single combined report and review. It means that a state will interact with the UN human rights treaty body system every four and not every seven or eight years. This would both ensure that reviews are more contemporary and assist TBs and states to monitor and follow up past recommendations.

In both models, a state under review would receive a consolidated list of issues and its written replies would constitute its periodic report. The review's outcomes would include the concluding observations of each Committee that had reviewed it, but, unlike the current system, concluding observations would be consolidated by the secretariat, reducing the number of duplicated recommendations and the risk of contradictory recommendations. Separating the reviews of general covenants from the reviews of specialized treaties would generate some staff efficiencies which would free time to improve TB support.

Finally, the Committees could decide to establish an inter-committee working group to follow up their recommendations and views. This would help to reduce or avoid any protection gaps in relation to specific rights (see section 1.B below).

3. BENEFITS FOR THE TB SYSTEM

Both options principally benefit the TB system by improving the coordination and visibility of country reviews, and lightening the burden on states, for whom reporting would become less complex and less costly and involve less duplication. These reforms can therefore be expected to encourage and facilitate participation in the system. Building on the successful experience of Committees that have simplified their reporting procedures, a state would receive a single, consolidated list

²⁴ Some experts push this reasoning further and propose to merge the CCPR and the CESCR. See Section 2.A.3 below.

of issues, attend a single consolidated review session, and its written responses to the issues would compose its periodic report. States would file fewer reports and would also receive a final Committee response that combined the concluding observations of each Committee. As a whole, the reforms would significantly reduce the complexity, overlap and redundancy of TB periodic reporting and oral reviews.

Further, a predictable reporting schedule combined with consolidated hearings and documentation should make the reporting process more accessible for all stakeholders, including NHRIs and NGOs. If each state party is reviewed once every four years, or every seven to eight years, and at fixed intervals, the process will be easier to follow and more predictable, and for that reason may attract more attention. Other human rights mechanisms inside and outside the UN system should also find it easier to make contributions.

Additionally, the fact that all or some TBs will sit at the same time and in the same place should multiply formal and informal opportunities to exchange information and cooperate, enabling members to coordinate and share their practices (see section 2.A below).

To maintain the reporting schedule, states parties would be expected to report to and appear before Committees on time and would be reviewed even in the absence of a report. The TB system would finally fulfil its mandate to review reports from *all* states parties, and its output would be greatly enhanced. A more comprehensive approach would permit the TB system to be fair to all States.

With regard to civil society participation, some contributors expressed a concern that, because reviews would be consolidated into one week periods every four or every seven to eight years, some civil society organizations might have less access. On the other hand, civil society organizations that work in non-reporting States would finally be able to participate because TBs would examine states parties even in the absence of a report. A consolidated process would give NGOs working in such countries more access than now.

The single consolidated review proposal would probably have a relatively neutral effect on costs. The number of country examinations would increase because all states parties would be reviewed, but this would be compensated by the fact that reviews would occur less often. States would save significantly on the cost of preparing reports and the travel of their delegations.

The principal weakness of consolidation proposals is the time between reviews. The second consolidation option would provide more frequent reviews (every four years, rather than every seven to eight years). This would help to address the 'protection gap'. States would nevertheless report and travel to Geneva less frequently than they do under the current system.

A consolidated TB procedure would retain follow-up procedures and would improve their coordination. Robust follow-up would be particularly important if the consolidated single review option were adopted, given the long gap between country examinations.

It is important to be able to address urgent developments in a state that occur between reviews. Committees may already request special reports in such cases.²⁵ This issue could be addressed by enabling Committees to convene an emergency session in cases of crisis. In addition, hearings of the UPR provide opportunities to review the human rights situation in member states at regular intervals. With this in mind, it would be helpful to coordinate the reporting schedules of the TBs and the UPR.

Under both consolidation options, Committees will need time to perform their other functions. Consolidation should free some additional time for these.

B. REINFORCING OTHER MANDATED FUNCTIONS

The complaint function, which allows individuals to lodge with a Committee complaints against a state for violating rights under the treaty which that Committee monitors, is an integral function of eight of the ten treaty body Committees (CCPR, CESCR, CERD, CAT, CED, CEDAW, CRPD, and CRC).

The number of individual communications continues to increase sharply.²⁶ At the end of 2016, the relevant TBs had 3,952 communications registered for attention; another 906 cases were pending, and a number of unregistered cases also required work and resources. The vast majority of pending cases (approximately 700 when this report was published) concerned the CCPR. This significant backlog, which is only likely to increase, requires solution. Few contributions to the Academic Platform addressed this issue.

Participants in regional consultations and conferences repeatedly highlighted the shortage of OHCHR support staff and their turnover.²⁷ The Petition Unit currently has 14 staff, who are responsible for processing all individual communications that are registered. In addition to this essential resource issue, the few submissions on this topic to the Platform proposed changes that ranged from completely overhauling current procedures to making relatively minor adjustments.

1. STRUCTURAL CHANGES: JOINT APPROACHES

The less modest proposals recommended that Committees should divide into chambers to deal with individual communications. Two main options emerged. Under the first, the nine TBs that receive communications would act as treaty-specific chambers and would create a single common chamber, with a dedicated secretariat, to address individual communications. This idea is not new. In 2012, CERD proposed a joint TB working group on communications, composed of experts from

²⁵ For instance, in 1994 (during its 45th session) CERD attached an early warning and urgent action procedure to its regular agenda.

²⁶ Status of the human rights treaty body system, Document A/71/118, para. 21.

²⁷ See also section 4.1.

different Committees.²⁸ This proposal was criticised by some contributors on two grounds: that it would weaken the specialized expertise that TBs currently possess; and would be problematic to introduce without re-opening the treaties (see annexe, point 8).

On the other side, it was argued that a joint working group on communications would increase the coherence and quality of TB analysis of individual complaints, and would not require legal changes.²⁹

The second option proposed to create an internal task force on communications in each Committee that would deal exclusively with individual communications, thereby respecting the specialized character of each treaty. This proposal was criticized on the grounds that it would break the link between a Committee's work on state reports and on individual communications. Committee members have observed that individual communications frequently raise problems addressed in state party reports. Under this proposal, Committees would adopt their conclusions in plenary.

2. ADJUSTMENTS TO WORKING METHODS

The more modest proposals sought to enable TBs to manage their quasi-judicial function more efficiently. The CCPR has already responded to its large backlog by creating a pre-sessional working group on communications. Usually composed of five to eight members, it does preparatory work ahead of the session, reducing the time spent on communications in plenary. The working group's decisions on inadmissibility and on the merits of cases still proceeds to the full Committee for debate and formal decision. The CCPR has also developed a method of processing repetitive cases more swiftly.³⁰

In the same vein, one submission proposed to address the backlog issue and increase efficiency by developing a technique to identify structural problems that underlie repetitive cases, thereby reducing the number of cases that have to be examined in detail. It was also suggested that TBs could simplify their procedure in cases that do not raise complex legal issues, and prioritize cases that set precedents and cases that involve serious breaches of human rights.

²⁸ CERD, letter dated 9 March 2012. On this proposal and member states' reaction to it, see Report of the co-facilitators on the intergovernmental process of the General Assembly on strengthening and enhancing the effective functioning of the human rights treaty body system, Document A/68/832, p. 16.

²⁹ See Geneva Academy, Report on the regional consultation for Western Europe, Dublin, Ireland, 7-8 July 2016, 27-28.

³⁰ The working group examined four repetitive cases during its July 2017 session. At: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21823&LangID=E>.

C. PREVENTIVE AND INTERPRETIVE FUNCTIONS

TBs employ various mechanisms to exercise their preventive functions. Six of the Committees have an inquiry procedure to deal with gross or systematic violations of human rights, which can be triggered *ex officio* under certain conditions.³¹ The procedure is slightly different for each treaty and has been gradually strengthened. The CED may also act to prevent enforced disappearance by requesting a state to provide information about a disappeared person 'as a matter of urgency'.³²

CERD developed early warning measures and urgent procedures in a working paper in 1993. Its early warning measures aim to prevent problems from escalating into conflicts. Its urgent action procedure responds to problems that require immediate attention to prevent or limit the scale or number of serious violations of the Convention.

Finally, the SPT was created under the Optional Protocol to the CAT (OP-CAT) and was designed as a preventive TB. The OP-CAT established two mechanisms to prevent torture and ill-treatment of persons deprived of their liberty: a system of regular visits by members of the SPT to places of detention, and the creation by states of national preventive mechanisms (NPMs).

To further strengthen their preventive and protection function, TBs continue to develop their inquiry procedures. A number of contributors suggested that TBs should improve their consistency on substantive matters, in order to establish systematic and coherent jurisprudence on threshold criteria, such as when to conduct an inquiry, and the characteristics of grave or systematic human rights violations.

Additionally, all Committees apart from the SPT can adopt General Comments or General Recommendations under their respective constitutive instruments.³³ Through General Comments, Committees interpret and clarify treaty provisions and provide authoritative guidance to states on legislative, policy and other measures that must be taken to ensure full compliance with their obligations.

31 CAT (Article 20), CEDAW (Articles 8-10 of the Optional Protocol), CRPD (Article 6 of the Optional Protocol), CED (Article 33), CESCR (Articles 11-12 of the Optional Protocol), and CRC (Articles 13-14 of the Optional Protocol).

32 See Article 30, CED. See also Article 34, according to which the Committee 'may, after seeking from the State Party concerned all relevant information on [well-founded indications that enforced disappearance is being practiced on a widespread or systematic basis], urgently bring the matter to the attention of the General Assembly of the United Nations, through the Secretary-General'.

33 As of 28 February 2018, the CCPR had adopted 35 General Comments, CESCR 24, CAT 3, CRC 23 and CMW 4, while CERD had adopted 35 General Recommendations and CEDAW 37. The CRPD was finalizing 2 draft General Comments; the CED had not yet adopted any General Comments.

2. DEVELOPING SYNERGIES

To increase its efficiency and impact on the ground, the TB system needs to explore and exploit synergies. Many contributors to the Academic Platform and regional consultations stressed that coordination needs to improve, both between Committees and between TBs and regional human rights institutions as well as key national actors.

A. SYNERGIES BETWEEN COMMITTEES

Given that the TB system is currently composed of ten different Committees with a total of 172 members, it is not surprising that it remains a challenge to harmonize working methods, jurisprudence and interpretation of human rights issues. Contributors proposed various solutions to improve TB coordination and develop synergies.

1. ALIGNMENT OF WORKING METHODS

Streamlining working methods is an obvious way to enhance coordination. Due to the *ad hoc* nature of the system, each Committee has developed its own working methods and rules of procedure. Aligning these for country reviews, individual communications, follow up to recommendations and decisions, the conduct of inquiries, and the drafting of General Comments and Statements, would bring many benefits. It would become easier for states parties to comply with their TB obligations, for NHRIs and civil society to engage with the system, and for TBs to share and understand each other's work.³⁴

Following up TB recommendations is made harder, for example, by the fact that each Committee has its own procedures, methods of analysis, grading systems, and report styles for country examinations as well as individual communications. Several regional consultations discussed the formation of a joint follow-up mechanism serving all the Committees and the need to streamline procedures.³⁵ A joint follow-up mechanism could be especially useful if a consolidated single or clustered report and review process is adopted, because it would extend alignment of the system.

2. INFORMATION SHARING AND JOINT MEETINGS

Contributors also repeatedly highlighted the lack of horizontal ties between TBs. The Committees could improve communication with each other, and harmonize their working methods, by sharing information and, more directly, holding joint meetings.

34 See Geneva Academy, Report on the regional consultation for Latin America and the Spanish-Speaking Caribbean, pp. 3 and 6. On the same grounds, contributors suggested that Committees should reconcile their terminology. See Geneva Academy, Report on the regional consultation for Western Europe, 1.4. The OHCHR has issued a glossary of terminology: <http://www.ohchr.org/EN/HRBodies/Pages/TBGlossary.aspx>.

35 See, for example, Geneva Academy, Report on the regional consultation for Western Europe, p. 26.

TB members are not always familiar with other Committees' jurisprudence or even the past decisions of their own Committee. Better information flow could therefore enhance the work of individual TBs, help unify their jurisprudence, and improve their coordination.³⁶ To achieve these goals, a more accessible and user-friendly database of TB jurisprudence seems essential. The Venice Commission of the Council of Europe³⁷ provides a model: its information sharing and online communication between sessions have made its work more available and better known.³⁸

An evident and cost efficient way to achieve harmonization is to increase the coordination role of OHCHR. Indeed, this is exactly the mandate the treaties gave the UN Secretary-General.

Contributors also argued that joint meetings could improve communication and coordination. Meetings offer privileged opportunities to share experience and practice. Contrasting conclusions were drawn from the experiences of Inter-Committee meetings (ICMs) and the annual meetings of TB Chairpersons. ICMs were held annually from 2002 to 2011 and twice annually from 2008 to 2011. The first ICM in 2002 included the Chairpersons and two additional members of each Committee. The number of participants subsequently varied but meetings consistently included the Chairpersons and between one and three members from each Committee.³⁹ ICMs created working groups to focus on particular issues, such as follow-up,⁴⁰ and provided many opportunities for TB members to discuss and harmonize jurisprudence, General Comments and working methods. Based on this positive experience (and meetings of the Treaty Body Members Platform, organized by the Geneva Academy, which continue), many contributors recommended reviving and institutionalizing joint meetings.⁴¹

36 See, *inter alia*, Geneva Academy, Report on the regional consultation for Eastern Europe, Moscow, Russian Federation, 18-19 November 2016, 2.1, 2.3; Geneva Academy, Report on the regional consultation for Latin America and the Spanish-Speaking Caribbean, p. 11.

37 The Venice Commission of the Council of Europe or European Commission for Democracy through Law is an advisory body composed of 61 Member States. Its members include university professors of public and international law, supreme and constitutional court judges, parliamentarians, and civil servants. All participate in their individual capacity.

38 See Geneva Academy, Report on the regional consultation for Eastern Europe, 2.3.

39 A list of ICM participants can be found on OHCHR's website. At: <http://www.ohchr.org/EN/HRBodies/AnnualMeeting/Pages/ListParticipants.aspx#icm>.

40 The Inter-Committee Working Group on follow-up to concluding observations, inquiries, visits and decisions prepared two reports that reviewed the procedures, assessed their strengths and weaknesses, and drew conclusions. See: Follow-up procedures on concluding observations, inquiries and visits, Document HRI/ICM/WGFU/2011/2, 18 November 2010; and Follow-up procedures on individual complaints, Document HRI/ICM/WGFU/2011/3, 16 December 2010. The meetings ceased for lack of funding.

41 See, *inter alia*, Geneva Academy, Report on the regional consultation for Africa, Nairobi, Kenya, 20-21 July 2017, p. 9; Geneva Academy, Report on the regional consultation for Latin America and the Spanish-Speaking Caribbean, p. 12; Geneva Academy, Report on the regional consultation for Eastern Europe, 2.5.

By contrast, the annual meetings of Chairpersons have proved a less useful means of promoting discussion and coordination. The first meeting of Chairpersons took place in 1984 (GA Resolution 38/117). Four meetings were held between 1984 and 1992, and TB Chairpersons have met annually since 1994. They have also convened informal meetings and issued joint statements. However, these meetings face a legitimacy and governance challenge. According to experts and contributors, many of the decisions adopted by the Chairpersons in joint meetings have never been implemented because other members have not endorsed them. Some consider that the annual Chairpersons' meetings lack legitimacy and that each Committee should hold transparent and inclusive consultations beforehand.⁴² ICMs seem to have benefited from their more inclusive format, which allowed broader participation.

Contributors also suggested that an 'Executive Bureau' should be created, that would mandate and enable Chairpersons to take decisions. This might help resolve a separate issue, that the meetings have lacked continuity of presence.

Finally, as the first section of this report noted, formal and informal communication and information sharing between TBs and TB members would be much easier if all or several Committees were to conduct country examinations at the same time in the same location.

3. STRUCTURAL CHANGES

The strongest synergy between TBs would occur if they were merged in a single unified Committee. Several variants of this proposal were presented during consultations and in submissions to the Platform. This proposal was also presented by the HCHR in 2006. Short of such an overhaul, which would require re-opening the treaties, proposals for institutional change focused on increasing cooperation between TBs and harmonizing their working methods and jurisprudence.

Several contributors argued for separating state reporting and individual communications. One idea was to create a single unified TB to coordinate country examinations and reporting, while the existing Committees would carry out other TB functions. The unified TB would be divided into chambers on treaty or thematic lines.⁴³

Other proposals suggested merging the CCPR and CESCR, or taking smaller steps towards restoring the indivisibility of human rights affirmed by the Universal Declaration of Human Rights. This could be done without amending the treaties since the CESCR was not established by treaty but by an ECOSOC resolution. Under these proposals, the Committees that monitor the Covenants would either sit together or merge into one TB, while other specialized Committees would perform their reviews between sessions of the unified Committee.⁴⁴

42 See Geneva Academy, Report on the regional consultation for Latin America and the Spanish-Speaking Caribbean, p. 12; and Geneva Academy, Report on the regional consultation for Eastern Europe, 4.2.

43 See Geneva Academy, Report on the regional consultation for Western Europe, 24.

44 See, *inter alia*, Geneva Academy, Report on the regional consultation for Latin America and the Spanish-Speaking Caribbean, p. 4. This proposal was discussed and rejected by participants in the regional consultation in Asia. See Geneva Academy, Report on the regional consultation for Asia, p. 3.

B. SYNERGIES WITH REGIONAL INSTITUTIONS

On the question of TB engagement with regional human rights mechanisms, the Academic Platform greatly benefited from the input provided by participants to the seven regional consultations. Several proposals considered ways to increase mutual awareness and synergies between TBs and regional human rights institutions, by promoting access to comparative jurisprudence, sharing information, holding meetings and other forms of exchange.⁴⁵ We present these suggestions to provide a full picture of the outcomes of the Academic Platform's discussions. At the same time, we think these ideas could be developed independently and do not fall strictly within the review of the TB system.

1. ACCESS TO COMPARATIVE JURISPRUDENCE AND INFORMATION SHARING

TBs need access to comparative jurisprudence both to enhance the quality of their legal analysis and harmonize their jurisprudence with that of other human rights mechanisms.⁴⁶ At present, however, TBs do not enjoy organized access to this information, unlike the European and the Inter-American Commission and Courts, which have access to comparative jurisprudence from the TBs and other international, regional and domestic jurisdictions. Contributors proposed, therefore, that the OHCHR Secretariat or third parties should meet this need (as set out in 2.A.2 above).⁴⁷

The Committees would also benefit if they received information from regional human rights systems on specific countries and issues of concern. There would be a mutual interest, because TBs could help to follow up regional court rulings by integrating them in their country examinations. A more integrated form of cooperation was also suggested: TB experts could participate in the hearings of regional courts by making oral or written submissions as well as joint country visits.

2. PERIODIC MEETINGS WITH REGIONAL HUMAN RIGHTS INSTITUTIONS

Based on positive past experiences, contributors encouraged TB members to dialogue regularly with, and periodically meet, their counterparts in regional human rights commissions and courts. The CCPR has already held meetings with judges of the European Court and the Inter-American Court of Human Rights. TB Chairpersons have also met with the President of the Inter-American Commission. Such meetings have proved extremely useful but have only occurred on an *ad hoc* basis. TBs and regional human rights mechanisms would all benefit from more regular meetings to discuss common experiences, share procedural and jurisprudential developments, and promote coherence and best practices.

⁴⁵ See Geneva Academy, Report on the regional consultation for Latin America and the Spanish-Speaking Caribbean, p. 14.

⁴⁶ See Geneva Academy, Report on the regional consultation for Latin America and the Spanish-Speaking Caribbean, p. 15; Geneva Academy, Report on the regional consultation for Eastern Europe, 4.5.

⁴⁷ See Geneva Academy, Report on the regional consultation for Latin America and the Spanish-Speaking Caribbean, p. 15.

3. STAFF FOCAL POINTS AND EXCHANGES

A specific practical action would be to appoint focal points in the Secretariat or Registry of each institution. In 2014, the OHCHR signed a memorandum of understanding with the Inter-American Commission (no agreement has yet been signed with the Court).⁴⁸ Similar institutional links could be formed with other regional institutions. Staff exchanges between the TBs and regional institutions were also mentioned: these might offer additional opportunities to exchange knowledge and promote cooperation.⁴⁹

C. SYNERGIES AT DOMESTIC LEVEL

Several contributors made proposals to increase synergies between the work of the TBs and national actors, including states, NHRIs, civil society organizations, and UN country teams and field offices. They argued that such interaction is essential to engage local actors in the work of TBs and ensure that TB recommendations are implemented effectively at domestic level.

1. DEEPER ENGAGEMENT WITH STATES PARTIES

In accordance with General Assembly Resolution 68/268, the OHCHR has started to help states parties directly to prepare TB reports (para. 17(d)). Contributors recommended that the scope and nature of this technical support should be extended to the whole of the reporting cycle. States should receive assistance not only to prepare their country reports but during the follow-up and implementation phases. Contributors also suggested that civil society organizations should receive similar technical support from OHCHR, to help them participate in the reporting process and promote implementation of TB recommendations. Another proposal suggested that States parties' would find it helpful to receive information on best practices on reporting.⁵⁰

Contributors considered that 'national mechanisms for reporting and follow-up' (NMRFs) are efficient structures that help coordinate and promote state participation in the reporting process, from the preparation of country reports to implementation of TB recommendations. However, NMRFs⁵¹ are not well known and it was suggested that OHCHR could increase awareness of them among states parties and other stakeholders.

⁴⁸ At: http://www.oas.org/en/iachr/media_center/PReleases/2014/137.asp. The agreement designates contact or focal points for coordination, and calls for regular annual meetings and *ad hoc* consultations as well as regular exchanges of information and other forms of collaboration.

⁴⁹ See Geneva Academy, Report on the regional consultation for Latin America and the Spanish-Speaking Caribbean, p. 14. Participants suggested that a staff attorney from a regional body should be designated to work full time with OHCHR in the TB branch for a certain period of time, and vice versa. This rotation would promote exchange of knowledge and thereby engagement and cooperation.

⁵⁰ Geneva Academy, Report on the regional consultation for Eastern Europe, 1.7.

⁵¹ NMRFs were also called 'standing national reporting and coordination mechanisms' or 'inter-ministerial committees/mechanisms on human rights'. See OHCHR, *National Mechanisms for Reporting and Follow-Up, A practical guide to State engagement with international human rights mechanisms*, 2016. At: http://www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf.

With regard to the implementation of TB recommendations, contributors said that TBs should be more strategic when they discuss with states parties the implementation of their recommendations and views. In particular, TBs should take into account the fact that governments are complex entities composed of numerous departments. Rather than simply requesting states to disseminate their recommendations and views, TBs should identify the most relevant government actors, such as the legislature or a specific branch of the executive, to ensure that state bodies engage appropriately and at an appropriate level.⁵²

2. ROLE OF NHRIS AND CIVIL SOCIETY ORGANIZATIONS

Civil society organizations (CSOs) and NHRIs play vital roles in the TB system. They contribute notably by providing essential information on the human rights situation in their countries and communicating their recommendations and views. They also promote follow-up and in-country implementation. In general, contributors said that civil society should have a more streamlined role because the space for interaction differs from one Committee offer to another.⁵³ They also suggested that TBs should engage in a more sustained way with civil society organizations and institutions.⁵⁴

Contributors consistently highlighted the specific role of NHRIs. Unlike NMRFs,⁵⁵ under the Paris Principles NHRIs are independent of government⁵⁶ and have a mandate to interact with international human rights mechanisms and promote the ratification of human rights treaties. They enjoy a prominent role in national human rights protection systems. Their independence and functions give them privileged access to national decision-makers as well as civil society. On one hand, they advise the state on implementation of TB recommendations and disseminate these nationally; on the other, they monitor the state's performance and ultimately communicate their assessments in the TB submissions they make.⁵⁷

52 See Geneva Academy, Report on the regional consultation for Latin America and the Spanish-Speaking Caribbean, p. 15.

53 For example, the CESCR and CRC have adopted guidelines on NGO participation in their work. The CRC, CESCR and CERD have also prepared General Comments on NHRI participation.

54 See Geneva Academy, Report on the regional consultation for Latin America and the Spanish-Speaking Caribbean, p. 15.

55 See the previous section, Deeper engagement with states parties.

56 Principles relating to the Status of National Institutions (Paris Principles), adopted by General Assembly Resolution 48/134 of 20 December 1993.

57 TBs welcome written submissions or independent information from NHRIs before country examinations.

3. STRONGER COLLABORATION WITH UN COUNTRY TEAMS AND FIELD OFFICES

Contributors observed that TBs could share more information with UN country teams and field offices and that avenues of communication should be strengthened.⁵⁸ UN country teams and field offices can inform TBs of their human rights priorities and concerns before country examinations. Field offices are also in a position to disseminate TB recommendations to civil society and government representatives, thereby supporting follow-up and implementation. Participants noted that, for collaboration to be effective, UN field staff need to be adequately trained in the work of the TBs.

58 See Geneva Academy, Report on the regional consultation for Latin America and the Spanish-Speaking Caribbean, p. 13; Geneva Academy, Report on the regional consultation for Asia, New Delhi, India, 13-14 October 2017, p. 6; Geneva Academy, Report on the regional consultation for Africa, p. 7.

3. ENHANCING ACCESSIBILITY

Many contributors to the Academic Platform noted that the work of TBs and their contributions to human rights protection are little known. Various proposals were made to remedy this situation, by improving the system's accessibility and visibility or bringing TBs closer to stakeholders.

A. IMPROVING THE SYSTEM'S ACCESSIBILITY AND VISIBILITY

To meet its purpose, TB output must be accessible and visible. Many contributors expressed concern on this account. Modern technology offers easy solutions, some of which have been implemented but could be taken further.

Contributors unanimously welcomed the webcasting of country examinations⁵⁹ and consider it an important improvement. However, they recommended that webcasts should be broadcast and archived in all working languages, as well as the language in which the review is held – the only one that is available at the moment. They also suggested that webcasts should be easier to access via links on the OHCHR home page in each country and via each committee's session web page.⁶⁰

Many contributors also called for a readily accessible, up-to-date, comprehensive database of TB jurisprudence.⁶¹ It was noted that information on TB findings is currently hard to find (when available), that the database is incomplete, and that decisions are not always available in all UN official languages. Accessing and understanding TB jurisprudence remains a challenge for all stakeholders – whether they are victims of human rights violations, TB members, states, national and regional human rights mechanisms, civil society organizations, or scholars.

Contributors recommended that more user-friendly fact sheets and jurisprudence summaries should be prepared to disseminate TB findings and other important developments.⁶²

To increase visibility, contributors proposed maintaining dedicated pages on social media platforms. This would bring TBs' work to the attention of larger audiences,

59 At: <http://webtv.un.org/meetings-events/human-rights-treaty-bodies/>.

60 See Geneva Academy, Report on the regional consultation for Latin America and the Spanish-Speaking Caribbean, p. 9.

61 See, *inter alia*, Geneva Academy, Report for Northern America, New York, USA, 1-2 June 2017, p. 13; Geneva Academy, Report on the regional consultation for Eastern Europe, 2.1; Geneva Academy, Report on the regional consultation for Latin America and the Spanish-Speaking Caribbean, pp. 8-9; Geneva Academy, Report on the regional consultation for Africa, p. 5.

62 The Inter-American Court's use of bulletins and decision books and the European Court of Human Rights' fact sheets were mentioned as potential models. See Geneva Academy, Report on the regional consultation for Latin America and the Spanish-Speaking Caribbean, p. 9.

assist Committees to update information on their activities, and create followers. More generally, the system's achievements and impact on rights-holders should be better documented and publicized.⁶³

B. A ROVING SYSTEM? BRINGING THE TREATY BODIES CLOSER TO STAKEHOLDERS

To solve the accessibility issue, a proposal to bring TBs to the various world regions (re)surfaced.⁶⁴

1. BACKGROUND TO THE PROPOSAL

Clearly, it would be valuable to strengthen stakeholder ownership of TB activities. With this in mind, some contributors suggested that the Committees should physically move closer to them. They proposed roving TB sessions, both to put the TB system in closer touch with local realities and help to promote and disseminate its work.⁶⁵

Currently, all TB sessions take place in Geneva (34 sessions in 2017). Contributors in favour of roving argued that, wherever possible, the TBs should engage with people where they live, not merely with government officials and the few well-endowed NGOs that can travel to Geneva. In this regard, the TB system can learn from the experiences of the African and Inter-American systems. Since its inception, the African Commission on Human and Peoples' Rights has met biannually, usually once at its seat in Banjul, Gambia, and once by invitation in another African capital. The Inter-American Court of Human Rights (IACtHR) has held sessions in different states party to the American Convention two or three times a year since 2005.⁶⁶ For TBs, the proposal might be to meet in regional centres of the UN.

TB Chairpersons have already held some annual meetings in UN regional offices: in Brussels (2010), Addis Ababa (2012), San Jose (2015) and New York (2016, 2017, 2018). Some special procedures (working groups) of the Human Rights Council have followed a similar practice.⁶⁷ The SPT's experience is particularly relevant because its prevention and protection mandate have led it to adopt working methods that involve regular missions and in-country engagement.

63 See, *inter alia*, Geneva Academy, Report on the regional consultation for Asia, p. 2.

64 The idea of a roving TB system is not new. See Christof Heyns and Frans Vioen, *The Impact of the United Nations Human Rights Treaties on the Domestic Level*, *op. cit.* The idea was also discussed in previous TB reform initiatives.

65 See Geneva Academy, Report on the regional consultation for Africa, p. 5; and Geneva Academy, Report on the regional consultation for Latin America and the Spanish-Speaking Caribbean, pp. 9-10.

66 These sessions have had a marked social and media impact in the countries visited. For example, about 3,000 people attended the IACtHR's 2017 session in Mexico and 4,000 the IACtHR's 2015 session in Colombia.

67 For instance, the Working Group on Enforced or Involuntary Disappearances has held in-country sessions since the early 2000s, at the invitation of the state party concerned (Mexico, Belgium, South Korea, Morocco, Argentina, among others). The Working Group on discrimination against women in law and in practice has held sessions in New York (2012, 2018).

2. BENEFITS FOR THE SYSTEM

If some TB sessions were held in UN regional centres, it would enrich and strengthen the system as a whole, including its functions in Geneva, while making TBs more visible and accessible to national stakeholders. The proposal to move does not imply that Geneva will be abandoned as the TBs' principal meeting place. As a centre for human rights debate and negotiation, Geneva continues to have important advantages.

Contributors highlighted several benefits that would accrue from holding TB sessions in the regions. As noted, TB members would be closer to national stakeholders and local situations. As a result, hearings would be more inclusive and representative, and recommendations could be embedded more explicitly in regional and local contexts. Roving meetings would also sharply increase the visibility and exposure of TBs in the regions. Civil society representatives, NHRIs, specialized national agencies, and other stakeholders who could not engage with TB members in Geneva, would be able to participate in TB sessions far more easily.

It was suggested that a pilot scheme could assess the feasibility of this proposal and evaluate its practical and financial implications.

4. REINFORCING THE STRUCTURE

Contributors frequently discussed the TB system's structure. The OHCHR Secretariat holds the TBs together. Without its support, they could not fulfil their mandate. TB members are equally important and many contributors suggested ways to protect their independence and expertise.

A. STRENGTHENING SECRETARIAT SUPPORT

The support provided by the Secretariat underpins the ability of TBs to fulfil their mandate. It can also improve the performance of individual committees, increase the synergies between Committees, and strengthen Committees' relations with other human rights mechanisms and stakeholders. It should be remembered that the Secretariat's support for TB work is a legal requirement under the relevant treaties.⁶⁸

OHCHR activities are funded both by the UN regular budget and voluntary contributions. To increase the number of staff supporting TB activities, the OHCHR could therefore (1) fundraise for the TB system and (2) allocate funds that are not earmarked.

Contributors generally appreciated the quality of the Secretariat's work but identified some shortcomings. In particular, the Secretariat is under-resourced, not all staff have the required expertise, and staff turnover is high.⁶⁹ Numerous contributors said that the Secretariat's resources should be commensurate with the mandate and workload of the TBs. As mentioned above (see section 1.A above), the Petition Unit currently has 14 staff who are responsible for all individual communications received by the relevant Committees.⁷⁰ There are clear limits to the number of individual communications that a team of this size can process, whatever efforts TBs make to increase their efficiency and examine more cases.⁷¹

The need for support staff who are experienced, dedicated and professional, and possess relevant legal and research skills, was widely noted. Achieving and sus-

68 For example, see Article 36 of the ICCPR: 'The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant'.

69 See Geneva Academy, Report on the regional consultation for Latin America and the Spanish-Speaking Caribbean, p. 10.

70 The number of individual communications registered annually increased by 80 per cent between 2012 and 2015, from 170 to 307. OHCHR, Status of the human rights treaty body system, Document A/71/118, para. 21.

71 According to OHCHR, a team of 12 staff can process 200 decisions per year. A team of 22 staff could process 350 cases per year.

taining the right mix of capacity and expertise is undermined by staff rotation and OHCHR's reliance on short-term contract staff and interns. The TBs need permanent, stable, well-trained professional staff.

B. IMPROVING MEMBERSHIP

International human rights treaties require Committee members to be competent and independent.⁷² These 'qualities' are crucial to the efficiency and credibility of the TB system. To have influence, TB advice and recommendations must be perceived to be both legitimate and authoritative. The qualifications required of members are outlined in an array of UN documents, including the Addis Ababa Guidelines, an initiative of the TBs themselves.⁷³ Despite these rules, contributors noted that a significant number of experts simultaneously hold executive posts in their government and are not therefore independent; and that the quality of members' expertise is uneven.⁷⁴ Many also remarked that the process for electing members is not sufficiently open or transparent.⁷⁵

Several proposals were put forward to ensure the independence and expertise of TB members. Some of these already featured in the HCHR's 2012 report.⁷⁶ Most recommend the adoption of a neutral, external procedure for assessing candidates and a more open and transparent process for selecting them.

The proposal to create an independent assessment body foresaw a body that would review candidates' records and competencies and evaluate whether they meet the independence and expertise standards. Other criteria might be taken into account, for example to ensure diversity and balanced geographic representation. Such a procedure would assist States parties to make informed decisions when selecting candidates. Possible models include the Coalition for the International Criminal

⁷² See, *inter alia*, Article 28(2) of the ICCPR, which provides that members of the Human Rights Committee 'shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience'. The CAT adopts similar language (Article 17(1)).

⁷³ Guidelines on the independence and impartiality of members of the human rights treaty bodies ('the Addis Ababa Guidelines'), Document A/67/222, Annex I, 2012. Eight Committees have adopted or endorsed the Guidelines. The CESCR and CERD have not yet done so.

⁷⁴ See Geneva Academy, *Diversity in Membership of the UN Human Rights Treaty Bodies*, February 2018. This paper examines the gender balance, geographical representation, subject-matter expertise and professional background of TB members. At: <https://www.geneva-academy.ch/news/detail/112-new-paper-examines-the-diversity-in-membership-of-the-un-human-rights-treaty-bodies>.

⁷⁵ See: Geneva Academy, Report on the regional consultation for Asia, p. 5; Geneva Academy, Report on the regional consultation for Africa, pp. 8-9; Geneva Academy, Report on the regional consultation for Western Europe, p. 5; Geneva Academy, Report on the regional consultation for Latin America and the Spanish-Speaking Caribbean, p. 8.

⁷⁶ See Document A/66/860, in particular from p. 75. The paper proposes an open and transparent selection process and the introduction of term limits for all members, bearing in mind that the most recent treaties allow a maximum of two terms; and recommends that experts should not be nominated or elected while they hold government positions or any other position that might expose them to pressure, conflict of interest or generate a real or perceived negative profile in terms of their independence.

Court and the UN process for selecting Special Procedures mandate-holders.⁷⁷ In the same vein, some contributors suggested that civil society organizations should be involved more in the process of screening candidates, adding public scrutiny to assessment of their qualifications.⁷⁸

A number of contributors proposed setting term limits for all TB members as provided by the most recently adopted treaties.⁷⁹ Others criticized this proposal on the grounds that it would undermine the continuity and expertise of the Committees. Contributors also suggested that all TB elections should be held in Geneva (where only the CAT is currently elected) rather than New York,⁸⁰ because missions in Geneva are more familiar with the UN human rights system and are therefore more likely to select suitable candidates.

⁷⁷ Geneva Academy, Report on the regional consultation for Asia, p. 5; Geneva Academy, Report on the regional consultation for Latin America and the Spanish-Speaking Caribbean, p. 7.

⁷⁸ Geneva Academy, Report on the regional consultation for the Middle East, Amman, Jordan, 21-22 September 2017, p. 11.

⁷⁹ Geneva Academy, Report on the regional consultation for Asia, p. 5. See also a similar recommendation in the HCHR's 2012 report, document A/66/860, p. 76.

⁸⁰ Geneva Academy, Report on the regional consultation for Asia, p. 5; Geneva Academy, Report on the regional consultation for Latin America and the Spanish-Speaking Caribbean, p. 8.

5. TRANSITIONAL PERIOD AND THE PROCESS AHEAD

The proposals advanced in this report could be implemented incrementally from today. The changes proposed to reporting arrangements, especially the alignment of reporting schedules in a clustered or consolidated review, would require a transitional period to avoid a protection gap.

A. TRANSITION TO THE NEW MODEL OF REPORTING

The following remarks are to be understood as a ‘brainstorming’ exercise designed to show that it is operationally feasible to introduce the changes proposed. A transitional task force composed of the OHCHR and TB members could be established to handle a transitional period, to be as short as possible.

A transitional period should be designed around three parameters, to: (1) ensure that no protection gap occurs in the work of the treaty bodies; (2) obtain a temporary increase of resources during the transition; and (3) make sure that initial reports (following new ratifications) are dealt with correctly during the transition (and are not delayed by the TBs’ work backlog).

To boost reflection, we have imagined the transitional arrangements below, in order to assist the negotiators of a TB review package. It describes one of many possible transitions. It should be also stated that immediate incremental steps might decrease or eliminate the need for a transition and permit a smooth and gradual shift to one of the proposed models (i.e., a consolidated or semi-consolidated review).

The risk that a protection gap will occur can be avoided if states, TBs and the OHCHR confer during the transition period. Because it is essential to treat all states equitably, the TBs’ work backlog should be reduced to a minimum and divided between TBs. Some budget transfers should be agreed with TBs by OHCHR, which should be given some budgetary latitude during the transition period. The organization of the transition, including the first drawing of slots in the single consolidated or semi-consolidated report cycle, should take account of the constant and variable parameters below.

Constant parameters:

- 193 UN member states. In addition, several other states have ratified some treaties.
- 18 human rights treaties (ten ‘core’ conventions and covenants and eight optional protocols).

- 9 treaty bodies (minus SPT).
- Sessions of 6 hours per state. (Hearing sessions might be reduced to three or four hours under the single consolidated report model, as mentioned above.)

Variable parameters:

- Number of ratifications. The list of ratifications will need to be adjusted, for example at the start of each six month period. New ratifications will change the meeting time that states require and trigger the convocation of initial reports.
- The OHCHR should be given latitude (including financial latitude) to adjust the number of session days each year. (For example, if three countries ratify CAT in 2022, in 2023 the number of CAT session days should be increased by one and a half days to accommodate the three initial reports that will fall due.)

B. THE WAY FORWARD

In conclusion, the inputs gathered through consultation and the Academic Platform touched on most, if not all facets of TB activities. Contributions focused on the reporting and dialogue functions, since these are the most visible and time-consuming features of Committees’ mandates. This led us to focus on this function too, highlighting in particular the proposals to establish a single consolidated or semi-consolidated report and state review.

Our view is that the TB system needs reform on this scale, both to manage its growth and development, and respond to changes in the world. A procedure that has perhaps worked until now may become unsustainable in the near future. The TBs are becoming victims of their success.

In saying this, it is critical to underline that the changes proposed can be implemented without altering the legal framework. Our consultations confirmed strongly that there is no desire to reopen the treaties, and we share that position. On the other hand, the changes suggested might go well beyond the measures set out in General Assembly resolution 68/268. In our opinion, this is not problematic, because a follow-up resolution will be adopted by 2020. In the end, the political will and pragmatism of states, TB members and OHCHR staff will determine how TB procedures are gradually updated to meet the growing demands and expectations of states, victims of violations, and other human rights actors and mechanisms.

ANNEX: WHAT CAN BE ACHIEVED WITHOUT CHANGING THE TREATIES

Freedoms and limits of structural reform under the current treaties

Overall structure of the treaty bodies

1) Is the separation of a Committee into working 'chambers' permissible under the treaties?

It is permissible if the chambers remain formally under the authority of the Committee in plenary. It is within the general competence of an international body to establish subsidiary organs unless a special provision prevents it (which is not the case for the treaty bodies). If, on the contrary, a Committee were to be divided into several chambers without retaining a plenary, the issue becomes a matter of interpretation. The treaties establish 'a Committee' (for example, under Article 28(1) of ICCPR). Read strictly, this implies a single organ.

2) Is the merger of two (or more) Committees allowed under the treaties?

An amalgamation does not seem possible without amending the treaties, and probably a formal revision would be advisable. Each text establishes one Committee. That Committee cannot be abolished (which is what would happen legally in the event of a merger) without modifying the text establishing it. Consequently, two or more Committees cannot merge without revising the treaties in question, and a fortiori all Committees cannot be merged into a single body without treaty revision. The above considerations do not apply to CESCR, because this Committee was established under ECOSOC Resolution 1985/17 (28 May 1985) to carry out the monitoring functions assigned to the United Nations Economic and Social Council (ECOSOC) in Part IV of the Covenant.

3) Is the merger of all Committees into a single body, divided into ten chambers, permissible, if all the States Parties to all the treaties decide so?

To merge all Committees into a single body by decision of all the States Parties to the treaties would be possible, since legally this would be a new and subsequent agreement. (In character, it would resemble the decision of the League of Nations to dissolve. Approved by all Member States, the resolution accepted the transfer of certain assets, etc.). An informal but express amendment of treaties would occur; but it is possible.

4) Does any legal obstacle prevent OHCHR from establishing a common registry for all Treaty Bodies?

There is no obstacle to establishing a common registry for all Treaty Bodies. The registry would affect the administrative organization of the Committees, which is within the internal competence of each Committee. A joint registry could therefore be created by a decision of all the Committees. With respect to procedure, and its organization, the Committees' rules of procedure would determine the necessary voting majority, quorum, etc.; but, in the absence of a text to the contrary, a simple majority would be sufficient. Perhaps the best approach would be to proceed by unanimity.

5) Is a reduction in the number of Committee Members permissible under the Treaties?

It is not permitted. The total number of members must remain unchanged, as provided by the texts (e.g., Article 28(1) of ICCPR).

State Reporting

6) Do the treaties permit presentation of a consolidated/unified/single state report?

It is possible to present a consolidated state report under the current treaties, because a single report would also serve as a report on each treaty. The treaties state that state parties must submit reports (for example, Article 40(1) of ICCPR), and that the periodicity of reports is to be fixed by the Committee (for example, Article 40(1)(b) of ICCPR). It is therefore only necessary for the Committees to adopt the same deadline for submitting the consolidated report.

7) Do the treaties allow the periodicity of state reports (currently between two and five years depending on the Committee) to be harmonized (making it possible to construct a coherent timetable for a consolidated review of all treaties)?

The periodicity of State Reports may be harmonized, because Committees determine the reporting schedule and can therefore change their practice (for example, see Article 40(1)(b) of ICCPR). Even if some treaties indicate a specific timeframe, this could be upheld for the initial report but practical arrangements sought for follow-up reports, as is already the case in all Committees.

Individual Communications

8) Is it permitted under the treaties to establish a joint chamber of all Treaty Bodies to examine individual communications? If so, should the decisions of this joint chamber be confirmed in plenary by the Committee to which the case was addressed?

It is possible to establish a joint chamber on communications, subject to confirmation by the plenary. A joint chamber cannot be established to act in lieu of the former plenary without modification of the treaties, for the reasons set out under 2 above. But if the plenary remains in existence, the joint chamber becomes a subsidiary body and a matter of internal organization.

Transmission of state reports and individual communications between Committees

9) Can a Committee (for example, CAT) review reports and individual communications addressed to another Committee (for example, CED), such as state reports, alternative reports, communications, and state party replies, provided that the state has ratified both treaties? Is it possible to ask the registry to declare ex officio to each state party that the transmission of state reports and individual communications between Committees is possible internally, without asking the state to agree in each case? (The assumption here too is that the state has ratified all the treaties that are implicated.)

The transmission of state reports and individual communications between Committees seems difficult. With respect to the state reporting procedure, for example, the treaties declare that reports will be examined by the treaty body concerned (for example, Article 40(2) of ICCPR). Before a report could be considered by another Committee, the state concerned would need to give its approval (to a series of instances or a particular instance). With respect to individual communications, the state and the author would need to consent. It would also be necessary to assume that the treaties in question could be derogated from on the matter in question, and that issues of *ordre public* would not arise (see Article 41 of the Vienna Convention on the Law of Treaties). Derogation might be allowable and the absence of objections from other state parties would tend to give credence to such a new practice. However, this does not remove the legal difficulties. It is also necessary to ensure that each Committee has (internal) competence to examine reports that fall under another treaty, which is not self-evident. It would certainly be necessary to amend the internal texts of concerned Committees, though this would not imply a change to the treaties. On all these grounds, the transmission of state reports and individual communications between Committees is therefore an issue that raises many uncertainties.

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