

## TREATY BODY MEMBERS PLATFORM

# COVID WORKING METHODS MEETING OUTCOME

2 - 3 December 2020

This informal meeting, co-organized with the Paris Human Rights Center and open to all members of all UN Human Rights Treaty Bodies (TBs), served to discuss issues specific to the current COVID situation and how to best avoid the protection gap ensuing from the ongoing pandemic.

In particular, the meeting focused on the elaboration of Methods of Work (MoW) across each TB regarding dialogues with and issuance of recommendations to States, as well as measures to balance the impossibility to carry out country missions or inquiries, as well as follow-up procedures and implementation at the domestic level. The meeting served to highlight what can be shared and/or aligned across the TB spectrum. This included discussions around constructive dialogues with State parties, interactions with other stakeholders as well as follow-up and implementation of recommendations. The two days also considered the consequences of the pandemic on the goal of achieving a predictable and coordinated calendar, as well as the relation between COVID measures and the 2020 review.

This report summarizes the rich discussions that took place during the two-day meeting, following the same thematic structure: updates on the role and steps taken by the formal COVID 19 WG; concrete areas of the MoW – what can be shared and/or aligned; COVID-19 context and beyond; and next steps.

## Updates on the role and steps taken by the formal COVID 19 WG

The WG on COVID 19 (C19), mandated by the Chairs, has divided its focus on two broader themes:

- Impact of C19 on substantive human rights
- Impact of C19 on procedural aspects of TB work

It is clear that all TBs agree that online work should not replace in situ work and that online sessions should not become normal praxis. Towards this, the WG on C19 has committed to issue a joint statement on behalf of all TBs that will stress that online review will only take place if in situ reviews are not possible.

In terms of substantive impact, there is a need to categorize the different recommendations issued by all TBs under common themes, with the view to inform TB members of available (and future) responses in a collaborative manner. There is also a need to categorize under similar themes the different specific documents (RoPs, statements, papers, etc.) issued by all TBs on C19.

In total, the WG/OHCHR have selected five overarching themes to guide future initiatives:

1. Right to health
2. Emergency measures affecting civil and political rights
3. The effects of discrimination on marginalized groups
4. The effects of disproportionate economic hardship
5. Right to education

The WG on C19 has committed to issue a Draft Joint TB Statement on C19 by December 10<sup>th</sup> 2020, including a set of recommendations on how States should act to counter C19-related challenges and how TBs may monitor/respond to State policies implemented to mitigate the effects of C19. Such Statement has not been issued to date, due to lack of time for carrying out consultations. A new initiative brought forward by the OHCHR is the introduction of an [online portal on C19 and Human Rights Treaty Bodies](#), which contains all relevant information for both States and stakeholders alike. It includes a variety of useful documentation, including a [compilation of statements by human rights treaty bodies in the context of the C19 pandemic](#) and a [toolkit of treaty law perspectives and jurisprudence in the context of C19](#) (September 2020). Such toolkit underlines two specific aspects: (1) rights and issues restricted by C19; (2) State responses/emergency measures adopted to mitigate the effects of C19.

Concerning the procedural impact of C19 on TB working methods, a number of common challenges affect the online work of all TBs, including *accessibility, different time zones, availability for interpretation, matters of confidentiality, challenges related to persons with disabilities and domestic stakeholder engagement*. In light of these challenges, it is important to share information among all TBs on steps taken under a common matrix. It is also important to introduce a mechanism that enables all TB members to receive information of C19 developments in a timely fashion. The WG on C19 is currently putting together the on-line working methods of Committees who carried out on-line reviews, not only on methodology but also substantive issues raised, i.e. impact of COVID-19 on the implementation of rights covered in the Convention, reference to vaccines, etc.

The latest TB Chairpersons meeting received a [discussion paper](#) from the WG on C19 (July 2020) on how to mitigate the procedural impact of C19. A number of recommendations have been put forward, including assistance of OHCHR staff in offices outside of Geneva (due to different time zones and the limits related to Geneva office hours). Such proposals have not yet been implemented and the time is ripe to consolidate such procedural reforms. One hopeful development comes from the CESC Committee, which will issue a methodology paper on online reviews by January 2021 (two pilot schemes for online reviews have also been developed by the CESC Committee in relation to the reviews of Latvia and Finland). Another innovative step in order to streamline online receipt of submissions, is the introduction by the CESC Committee of its new digital [Submission System portal](#).

The first segment proceeded with a tour de table from selected representatives of each TB. Each TB representative outlined the steps taken by their Committee during the pandemic-affected sessions. Common themes include the following:

- Most activities have managed to proceed, albeit with notable limitations, except interactive dialogues with State Parties (CED held first ever fully online dialogue on Iraq). In 2020, online sessions have mostly focused on the issuance of LOIs/LOIPRs (e.g. HRCtee issued 35 LOI/LOIPRs, the CRPD issued 6 LOIs, CERD issued 4 LOIs, CESC issued 7 LOIs) Individual Communications (e.g. HRCtee issued 64 Views, largest ever number; CRPD issued 4 Views), General Comments (CEDAW GC on trafficking, CERD GC on racial profiling, HRCtee GC on right of peaceful assembly);
- For sessions in 2021, it is important to limit themes to cover during the dialogue. There appears to be a renewed interest on the introduction of Focused Reviews and this period may be an opportunity to refine a possible methodology for such Focused Reviews to take place;
- There is a need for comparable formats for State Party reviews among all TBs, including the identification of common priorities;
- How to best communicate and allow a meaningful participation of domestic stakeholders, including OPDs;
- How to compensate the lack of State Reviews and TB Members' Country Visits by further enabling the work of domestic stakeholders, such as NHRIs and NPMs;
- There is a need for more flexibility in terms of compensation for TB members;
- With a view to the post-pandemic period, it is important to continue efforts to introduce meetings in the region and a dedicated WG could be envisaged.

Positive effects of the digital shift include:

- broader engagement and increased virtual exchanges with domestic CSOs and NHRIs that would have difficulty in attending sessions in Geneva (e.g. CESC PSWG on Italy, HRCTee CSO briefings facilitated by CCPR Centre);
- more flexibility on TB activities both during session and inter-sessionally;
- the implementation of the first online election campaign for SPT (jointly run by the APT and the OHCHR), with virtual dialogues between State Parties and TB member candidates, inclusive of a digital platform specifically set up to increase awareness of SPT election among the wider stakeholder community. An element of contention however appears to be the different technical standards and capabilities pertaining to the different candidates. In order to avoid instances of discrimination, this aspect requires further considerations

From a CSO perspective, there is a need for more clarity on the 2021 calendar, including a precise timeline of upcoming sessions. To date, the OHCHR website does not provide sufficient clarity for interested stakeholders, although some steps have recently been taken in this regard ([Information on upcoming remote sessions of the treaty bodies in 2021](#)). In October 2020, TB Net issued a [letter](#) (co-signed by 500+ CSOs) highlighting the concerns in relation to the effects of C19 on TB work. The letter urges TBs to resume State reviews in a systemic manner and calls for a clear vision on what can be expected from the 2021 agenda (e.g. which State Parties will be reviewed, which modalities for CSO engagement, clear indication on relevant deadlines etc). As of April 2021, almost the totality of TBs have resumed or have plans to resume States reviews.

## Concrete areas of MoW – What can be shared and/or aligned?

The meeting dedicated ample time to discuss MoW in relation to constructive dialogues and/or review of states reports and only partially took into consideration MoW in relation to interactions with stakeholders.

The discussion kicked off with the practice of the HRCtee in its efforts to continue its monitoring function during 2020-21. In essence, the Committee's approach has followed the same steps as the in-person constructive dialogue, with one caveat: the review took place for 2h each days, over 3 days (tot. 6h, as in-person dialogue).

In this context, the Committee sets up a **task force** (composed of a country rapporteur and four other TB members), who are assigned to take the floor during the dialogue with the State Party. Other members are involved only if the task force has managed to conclude its interventions during the limited time available. It is due to such limited time that in online sessions the role of the task force has become more central. The LOIPR have also increased in importance due to the online modalities.

The issue of **selection criteria** was raised in the context of States Parties to be reviewed under the "online monitoring procedure". Three main criteria for such selection are:

- Willingness of behalf of States Parties
- Calendar-related considerations (States that were supposed to be reviewed during 2020)
- Regional representation

Other issues raised include the following:

- the need for **streamlining MoW of online sessions**, especially due to the challenges of this digital turn (e.g. very strict timing required for both TB members and State responses – with such timelines shared in advance). Good practices that can be worked with included:
  - CED Review of Iraq
  - HRCtee MoWs, transferrable to other committees
  - HRCtee practice to establish equivalent of lunch-time briefings with domestic stakeholders in order to prepare LOIPR, also with facilitation by CCPR Centre.

- the value of **using the crisis as an incentive** to boost smart prioritization of steps to take in order to strengthen TB work, focusing on harmonization, simplification and innovation. More specific issues to focus on include the predictable calendar, working methods, and the format of State Party reviews, with the introduction of the Simplified Reporting Procedure throughout the system high on the agenda.
- the need for **sessions to be uploaded on UNTV more swiftly**, so as to allow TB members in different time zones to access the discussion more promptly after it took place.
- if interpretation is only available for a max of 4h a day, committees which sit in joint chambers might face further difficulties.

## COVID-19 context and beyond

The meeting also focused on the consequences of C19 towards the goal of achieving a predictable and coordinated calendar. This stems from the co-facilitators report's conclusions on the usefulness of introducing a predictable calendar as well as an alignment of the different MoW currently in place.

Concerning the **predictable calendar**, its essence entails that all State Parties should be scheduled for review under a fixed periodicity. This would be the case with or without the timely submission of the State report.

Even though most conventions mention periodicity (4 years), the reality is that for the State report to be translated and for TB members to adequately prepare, this requires one further year. As such, we should start distinguishing between reporting cycle (4 years) and review cycle (5 years).

For example, concerning CAT (170 State parties) this would amount to 34 reviews per year. Currently, the capacity allows for 17 reviews per year, requiring a doubling of the efforts. So, how to double this capacity? One possible solution is to introduce a **two-stage process**, alternating between:

1. A **full review**, in Geneva, covering all articles of the treaty;
2. A **focused review**, in-country/region, carefully identifying 5 - 10 issues (compared to the current 30 LOIs) according to salience/urgency.

Such solution would allow for a quicker process, shorter COBs and would save money and resources at the same time. As 2021 will also be affected by C19, focused reviews could be tested/piloted during this period, based on State reports already submitted. The ultimate goal is to then to proceed with lessons learned from online focused reviews and start introducing focused reviews in-country when the situation allows.

The meeting furthermore covered developments in relation to the TB review 2020, from a New York perspective. The value of holding sessions in the region (e.g. CRC Extraordinary Outreach session in Samoa, 2020) was raised as an interesting

development that echoed in the more political arena in New York. However, the encouraging signs contained in the co-facilitators report have not been matched by related budget discussions at the General Assembly's 5<sup>th</sup> Committee level. Whilst a number of States realize the need for further support to the TB system, a number of countries are not as receptive of this need. As such, there is **no clarity on the steps forward, especially on budgetary issues**. The President of the General Assembly does not seem keen to follow-up to the recommendations of the co-facilitators report. There seems to be a risk that the adaptability demonstrated by the Committees to work online could hamper discussions on further allowing travel money for future committee work. On the other hand, there seems to be "huge interest" from States Parties to adaptation of funding to the C19 crises. A welcome development comes from the 2020 Secretary General (SSG's Call for Action, which argues for "financial stability.... including in relation to the TBs". To counter such challenges, it is important that **TBs act in a coordinated manner** and bilaterally with the OHCHR, in an effort to apply possible changes within their allowed fields of action (MoW, RoPs, etc.), speaking with one voice.

Another focus of the discussion was centred on the **consequences of C19 on sessions** (in presence/online). Online sessions have destabilised the normal framework and changed the balance between "in session" and "inter-sessional" time: members are requested to work on an informal basis, either through email, or through "informal" meetings online in between sessions, without interpretation. As such, members work on a continuous basis.

**The format of the sessions has changed:** the issue of time zones imposes to change times of session and the number of hours per day – as it is in fact impossible to meet from 10.00 am to 6.pm Geneva time without "losing" members from the Pacific region, Asia or from the American continent. In addition, the limited availability of interpretation is such that the committees can only have 2 – and more exceptionally 4 hours – of "formal" session per day – interpreted in the three working languages.

The COVID-19 period also caused sessions to sometimes spread over a longer period of time than what was initially programmed. As example, for the CED in "pre-COVID times", it seemed "obvious" to close session after 2 weeks (for the CED) because the concept of "session" was intrinsically linked to members' physical presence in Geneva. The latest CED session in practice spread over more than two months.

In the future, we may imagine a different organisation for committee sessions, without being constrained to hold sessions consecutively and without having to hold the session for the whole in presence. For instance for a committee that has 4 weeks of session, we could imagine to have 2 weeks in presence in Geneva the first half of October, suspend the session, and then resume the session "online" the first week of November, and then again the first week of December. Another option could be to save some session days for more punctual events like webinars or consultations with stakeholders. This new flexibility in organising committee sessions may prove very useful, especially if considered in the perspective of a fixed and coordinated agenda of review among treaty bodies. It may facilitate the "coordination" aspect, by allowing various TBs to coordinate and "sequence"

the timing of their dialogues with a state party. For instance, one Committee may program the review of a state party in presence during its session and another committee or other committees though not in session - and thus not in Geneva - may undertake the online review of the same state party one month after etc. For those committees that are moving towards more “focused” reviews, it may also present a real asset, allowing them to better coordinate their “themes”, and thus enhance their complementarity on overlapping issues.

In addition, this leads to one further question: will the committees be *constrained* to use these new methods of work in the post-COVID era? We may also find ourselves in a situation where the General Assembly will, at some point, reduce session time in Geneva because of budgetary constraints and ask to “resume” sessions online to complete the business not completed. However, the risk is that with the generalization of online activities of TBs, this inter-sessional work becomes a substantial part of the work as committee members and that in the end, the capacity to handle work properly may be reduced.

For these reasons, it is crucial that the TBs anticipate these evolutions and be creative in order to harness the possible consequences of the online sessions as a new regular modality of work in the post COVID period.

### Wrap-up and next steps

In conclusion, the meeting highlighted the **worsening working conditions of treaty body members** this year. As a form of precondition for the efficient functioning of the system as whole, the change in working conditions need to be discussed, above all in relation to the following aspects:

- In 2020, Members have often spent own time and money towards the sessions and this should not be the case;
- The principle of discrimination is present in all COBs but current modalities of work online set barriers for many, including members with disabilities. Also the alignment of working schedules with the GVA time zone presents instances of discrimination and as such, criteria for working hours need to be paid attention to;
- The interpretation modalities are not sufficiently good to carry on committee work;
- There is an urgent need for stability and further resources for the essential work of OHCHR staff;
- The lack of direct dialogue with the High Commissioner is a notable weakness of the system.
- The issue of membership compensation is also another notable issue to solve.

The meeting also offered the opportunity to outline **next steps to initiate concrete actions on common issues**. In relation to online reviews, it is important to consider the following aspects:

- Need for a **common methodology for online reviews**, with the CED experience and the HRC methodology as useful tools to work on;
- Need to establish **common selection criteria** for countries' online sessions, including how to engage the SP to check availability for online sessions;
- **Pre-session preparation** for the dialogue including identifying questions and dividing questions, with the CED experience and the upcoming common review of Finland by HRCtee/CESCR as useful examples to work on;
- The need to pay close attention to **in-session timing**;
- **Sharing the methodology** with States Parties and partners;
- **Engagement with domestic stakeholders**, with the HCRTEE/CCPR Centre partnership a useful experience to draw on;
- **Ensuring transparency**, particularly given the nature of on-line activity.

Concerning aspects that have worked under COVID that can be maintained, the following were mentioned:

- **Engagement with new stakeholders**, as digital tools allowed for broader participation of actors that would not have otherwise managed to participate in committee proceedings;
- **Intersessional work**, including
  - Chairs meetings (e.g. further developing the focused review methodology for online use, in light of future use in the regions);
  - COVID WG, as example of inter-committee exercise, to be adopted in other thematic fields as well;
  - further bureau meetings, EWUAP and thematic webinars.
- **Rethinking sessions** – flexibility offered by on-line work.

One immediate step to take is thus to **share existing methodologies between Committees**, possibly through the COVID-19 WG, including through the involvement of the OHCHR. One further aspect for the immediate future is to start devising an **effective advocacy plan**, with all Committees speaking with one voice under a coordinated strategy, highlighting key dates for the publication of joint statements, linking TB efforts to the SG's Call for Action.