



# **Academic Platform Project on the 2020 Review of the Treaty Body System**

## **First Regional Workshop, Dublin 7<sup>th</sup> and 8<sup>th</sup> July 2016**

### **I. Report of the meeting**

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The General Assembly's 2014 Resolution A/Res/68/268 on Strengthening and enhancing the effective functioning of the human rights treaty body system calls for a review in 2020 of the operation of the UN human rights treaty system. The Geneva Academy for International Humanitarian Law and Human Rights (the Geneva Academy) is leading an academic process (the Academic Platform Project) in order to contribute to this review. To this end, it has planned a series of global consultations in all regions of the world, the first of which was held in Dublin from 7-8 July, 2016, hosted by the University College Dublin's Centre for Human Rights. The meeting included mainly academics, as well as observers from government, civil society and the Irish Human Rights and Equality Commission. The participants discussed many aspects of the treaty body system including its current strengths and deficiencies. The following report is a summary of the main issues covered at the meeting to the extent that they resulted in constructive suggestions which gained support at the meeting. On certain issues it was felt that further research would be required to establish the feasibility or modality of a proposal, and some academic participants undertook to do this research.

Any such research that emerges in future months will be made available. The paragraphs below do not seek to elaborate every aspect of the discussions in detail nor to give an exhaustive account of the meeting, but it is hoped that it will be of interest to those other consultations yet to occur and contribute to a more comprehensive report at the conclusion of the consultative process.

### **II. Overarching Considerations**

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1. The UN Human Rights Treaty Body System makes an essential contribution to ensuring the highest level of human rights protection for individuals and groups subject to the jurisdiction of States parties. The Treaty Bodies achieve this by assessing the progress of states in implementing the rights and, where possible, holding them accountable in situations where rights have not been guaranteed or have been breached. Although the system has evolved in a somewhat haphazard yet dynamic way over the years, treaty bodies have been highly instrumental in generating better understanding of the scope of states' obligations and have been key facilitators in strengthening respect of treaty obligations. Nonetheless, despite numerous efforts to improve the effective functioning of the system, it

was recognized that further improvements could still be made. It was considered that in spite of the considerable measures recommended by GA Res. 68/268 (some of which have undoubtedly resulted in certain improvements) it is likely that additional specific action will be needed to further enhance the effective functioning of the human rights treaty body system.

2. In considering the means by which the treaty body system could be made to function more effectively, participants considered the overall United Nations human rights context and how it now operates must be taken into account. In particular, the creation of the Human Rights Council in 2006 and the subsequent establishment of the Universal Periodic Review (UPR) process, along with the operation of a wide range of Special Procedures Mandate Holders operating on a broad spectrum of themes are all part of the international machinery seeking to ensure the promotion and respect for human rights globally. This gives rise to the need to consider how the treaty body system might best operate in a way that is complimentary to rather than overlapping with other UN human rights mechanisms, while still fulfilling the specific functions legally enshrined in the relevant treaty texts. Likewise, ways and means of forging awareness of and complementarity with regional human rights mechanisms is also an important factor.
3. It was noted that NHRIs in many States have become increasingly professionalized in their work and act as vital sources of reliable information for the treaty bodies in the performance of their functions, as well as in encouraging States to comply with treaty body recommendations. Participants considered that greater synergies could be forged between the work of the treaty bodies, civil society groups and NHRIs to ensure more effective implementation of treaty body recommendations on the ground.
4. It was also highlighted by some participants that while the major focus of the treaty bodies is on monitoring the adequacy of legal measures and policy frameworks in the States parties, bringing the “voice’ and perspective of victims of human rights violations into sharper focus in the work of treaty bodies should be further explored.
5. Additionally, participants discussed the need to ensure highest levels of expertise and independence in the membership of the treaty bodies, as well as the desirability of transparency in the nomination and election processes.
6. While participants largely agreed that there is a need to be visionary in regard to the making of proposals to improve the effectiveness of the treaty system it was also accepted that there could nonetheless be progress in the shorter term through taking some ‘small steps’. Accordingly, proposals discussed at the meeting are grouped as follows. The first cohort of proposals are grouped under the heading ‘General Proposals’ and relate to proposals that could be implemented in the context of the UN treaty system as it currently operates. Participants considered that these proposals should not imply any major restructuring or modification of the treaties and could thus be implemented more quickly if agreed. The second sets of proposals are grouped under the heading

'Proposals Requiring Structural Change' which would involve more far-reaching change to the current system.

### **III. General Proposals**

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#### **The Modalities of the Reporting Process**

7. In spite of the measures agreed to by the GA in Res. 68/268, the problem of non-reporting, under-reporting and over-reporting States continues to be one of the most pressing obstacles for an effective treaty body monitoring system. It was noted, for example, that the process of reporting to several treaty bodies, while at the same time engaging in other mechanisms of international review such as the UPR, can present a significant burden for States. Some participants were concerned that there could be a perception of a certain imbalance in the operation of the system, whereby States that do generally comply with their human rights reporting obligations appear to be held to greater account than those states that simply fail to submit any report at all.
8. The proposal for a comprehensive calendar for all treaty bodies first advanced by the UNHCHR in the 2012 Strengthening Report was discussed. While this original proposal was considered and rejected by the General Assembly in the Inter-Governmental process, participants at the Workshop thought that further consideration should be given to the advantages and disadvantages of this proposal and in particular, whether any useful variations could be made to it that might make it more feasible in practice.
9. It was noted that the Committee on Migrant Workers has in effect already implemented the Comprehensive Reporting Calendar by operating its reporting procedure around 'due dates' and considering situations in particular States in situations where a State fails to submit its periodic report. The importance of ongoing engagement between the treaty bodies and states in the reporting system was seen as being of great importance by participants. The introduction of a comprehensive calendar might be a mean of institutionalising this approach and facilitating the management of the various obligations falling on states as regards reporting.
10. Other means of "streamlining" the reporting process were discussed. For example, the question was raised as to whether the application of a "one-size-fits-all" approach to the operation of the reporting system was necessarily warranted. The need to tailor the process to the situation of states however needs to be balanced with the duty to ensure fair and even-handed treatment of all, but it was not felt that this need be compromised by being more adaptive. One suggestion raised was whether 'face-to-face' reviews of a State's performance in implementing treaty obligations could be reserved for several type of problems of implementation, whereas a 'desk review' would suffice at times.

11. It was pointed out that while the advisability and feasibility of this type of approach should be further researched and considered, there may always be a necessity for face-to-face review in regard to problems of implementation. Even if a State has a generally good record of compliance with its human rights treaty obligations, there may be long-standing systemic issues or urgent issues that still require focus and attention by the treaty bodies.
12. Participants also discussed the possible advantages of states compiling a single report in relation to all of the relevant treaties. Such a report could reduce the burden on states in the event of a comprehensive calendar being adopted, or in the event of a re-organisation of the treaty body structures which is discussed later. Some participants considered that a single report could present an excessive burden rather than making the situation easier, but it was an option that could appeal to some states according to the number of treaties concerned and the extent of their progress on implementation should they be given the choice.

## **Individual Communications**

13. It was considered that it was particularly important that treaty body members responsible for examining individual complaints should have legal expertise and knowledge of international human rights jurisprudence emanating not only from the treaty body system but also other international courts.
14. While the need for inter-disciplinarity amongst the members of treaty bodies was considered to be very important in regard to the reporting mechanism, it was highlighted that the credibility of treaty body views on individual communications depended on good quality legal reasoning.
15. It was considered that the adoption of more streamlined procedures for the consideration of individual communications should be further researched and that valuable lessons could be learned from the experience of other international bodies in handling individual communications, whenever regional and the universal systems are comparable.
16. The idea of treaty bodies prioritising particular cases (for example by theme/gravity of alleged violation/systemic issues or 'structural violations') was raised in discussion. It was also noted that an individual complaint could be dispatched to the most competent treaty bodies (for example, a complaint on torture to the HRC could go directly to the CAT, in cases where the member state has ratified both treaties).

## **General comments (GC)**

17. It was widely acknowledged that well-reasoned GC produced by treaty bodies can be useful for explicating or amplifying treaty body views on particular issues of the legal substance and certain procedural elements of the treaties.

18. It was noted however that the quality of legal reasoning in the GC is unfortunately not always clear.
19. Greater coordination between the treaty bodies on the development of GC needs to be systematised to ensure consistency, coherence and to diminish unnecessary overlap for example by several competent treaty bodies addressing joint General Comments on issues of common interest and competence for them.

### **Follow-Up of TB recommendations**

20. It was recognised that follow-up/monitoring of treaty body recommendations was of vital importance to encourage implementation of those recommendations on the ground. This was often assisted by the active engagement of civil society and NHRIs in the state concerned. While not all treaty bodies operate formal 'follow-up' procedures, it was acknowledged that for those which do, the requirement to engage in follow-up results in further work by both the treaty bodies concerned and the States parties.
21. It was pointed out that not all treaty bodies operate formal 'follow-up' procedures. The Committee on Enforced Disappearances, for example, uses a form of 'continuous observation' that could operate as a model for all.
22. Consistent with the theme of promoting on-going engagement, the need for treaty bodies to follow-up on previous recommendations in the Simplified Reporting Procedure (or LOIPR) was stressed by some participants.
23. Consistent with the theme of enhancing complementarity between the treaty body system and the UPR, it was pointed out that the UPR offers a good opportunity for the follow-up of treaty body recommendations and those of independent experts.

## **IV. Proposals for Structural Change**

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### **Re-organising the structure of the Treaty Bodies**

24. Participants discussed the idea of re-organising the structure of the treaty bodies and their secretariats along either functional or thematic lines. It was recognised that this would need to be carefully considered to ensure full consistency with the specific treaty requirements. However, looking at the actual requirements of each treaty in a fresh way could allow for the structures to be conceived distinctly from the current arrangements while still meeting the needs of the individual texts. These proposals included:
- The idea of establishing two separate treaty bodies, one to consider state reports and the other to consider individual complaints. Each of the two functional treaty bodies could further be sub-divided into chambers arranged along thematic lines.

- The idea of ‘merging’ treaty bodies solely along thematic lines, for example a treaty body dealing with issues of equality and non-discrimination, which could sit in tandem with a single body which would monitor implementation of the ICCPR and ICESCR.
- The creation of a single enlarged committee with ten specialised chambers was also discussed.

While interest was expressed in these proposals by a number of participants, others were concerned that re-structuring might risk diminishing the specialisation that exists under the current treaty system.

25. The idea of appointing treaty body members on a professional basis was also considered as a means of taking into account the burden imposed on members who often have other careers and can find it difficult to dedicate sufficient time to their mandates. Further research about how to implement the reorganisation of the Treaty Bodies structure should be undertaken.

## **Follow-Up**

26. There was general acknowledgement of the need to consider further the possible establishment of a joint follow-up mechanism serving all of the treaty bodies. Not only would such a body offer more continuous dialogue with reporting states but it would also serve as a focal point to which States parties, civil society, NHRIs and other national bodies (e.g. SNRMS) could turn when questions arise as to the implementation of particular recommendations. It was pointed out that a joint follow-up mechanism could also develop policies for in-country visits although this shall not be its main focus of activity.

## **Individual Communications**

27. There was considerable agreement that the scope for improving the overall responsiveness and outputs of the treaty bodies with respect to individual communications might be strengthened by the establishment of a joint working group or a separate committee on communications and that further research and reflection should be done on this idea. It was pointed out that the establishment of a ‘working group’ (as opposed to a separate committee with a mandate to ‘decide’ individual communications) might not necessarily require legal change and thus could be easily implementable.
28. It was agreed that the establishment of a single “working group” to consider individual communications would be likely to increase the coherence and quality of the views on individual complaints.
29. The need to preserve specialization as regards particular themes of human rights reflected in the treaties is essential in the establishment and membership of such a body. Such a body would need, therefore, to comprise representatives of each of the treaty bodies that operate complaint mechanisms.