

RESEARCH BRIEF

UNITED NATIONS TREATY BODY INDIVIDUAL COMMUNICATIONS PROCEDURES: WHAT IS AT STAKE IN THE STRENGTHENING PROCESS?

INTRODUCTION

United Nations human rights treaty bodies were established by the corresponding human rights treaties to supervise their implementation. The treaty body system, a key component of universal human rights protection, has been faced with various challenges related to its effectiveness, efficiency, and coordination. Due to its growth and its success, the system is overloaded, with a huge backlog in terms of State reports and complaints to be considered.¹ This even though most States fail to comply with their reporting obligations in a timely manner.² The system is not provided with the resources commensurate to the workload or with the necessary modern digital tools to improve its efficiency. Diverging working methods and practices amongst the ten treaty bodies have resulted in a lack of coordination and efficiency.

Various initiatives have sought to address these challenges. The most recent reform, the ongoing treaty body strengthening process, was launched by the General Assembly in 2014 in its resolution 68/268.³

With the review of State party reports, individual communications procedures are one of the two main mandated treaty body activities. Individual communications procedures enable complainants to vindicate their rights before treaty bodies. These procedures are essential to enforce the rights enshrined in the human rights treaties and a key entry point for victims of human rights violations in the United Nations treaty body system.⁴

Yet, United Nations treaty body individual communications procedures have received less attention than the reporting procedure in the context of the treaty body strengthening process.

To address this gap, the Geneva Human Rights Platform – in partnership with the Paris Human Rights Center (C.R.D.H.) and in collaboration with the Petitions Section⁵ of the Office of the High Commissioner for Human Rights (OHCHR) – initiated in 2019 a project to facilitate discussions amongst relevant actors and find concrete solutions to improve individual communications procedures.⁶

What is at stake is the overall efficiency of these procedures and the capacity for treaty bodies to deliver on a core mandated activity. Currently, eight of the ten treaty bodies examine individual communications⁷ with the support of the Petitions Section which centralizes all the complaints submitted to the relevant Committees. These procedures face significant challenges. The huge backlog undermines their efficiency. It is estimated that at current capacity the Committees would need approximately 6.65 years to clear the backlog without considering any new individual communications received.⁸ Furthermore, differences in working methods make it harder for all parties to engage and for the Petitions Section to support the procedures.

Ten years after the adoption of General Assembly resolution 68/268,⁹ a new biennial resolution on the treaty body system will be considered by the General Assembly in December 2024.

This paper aims to inform ongoing discussions regarding this overlooked yet important aspect of treaty bodies' mandate. The first part presents concrete harmonization achievements that have been accomplished as a direct result of the Geneva Human Rights Platform initiative. This ongoing project has also paved the way for further improvement of individual communications procedures. More broadly, the second part compiles and examines options that have been put forward by various stakeholders and converge to provide solutions.

OCTOBER 2024 | CLAIRE CALLEJON

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I. HARMONIZATION FACILITATED BY GHRP INITIATIVE

Since 2019, the Geneva Human Rights Platform and the Paris Human Rights Center, in collaboration with the Petitions Section, co-organized a series of events to address the issue of individual communications procedures.¹⁰ As part of this initiative, three closed meetings¹¹ were held in 2022, 2023 and 2024 to provide a space for relevant treaty body members¹² and the Petitions Section to discuss issues of common interest, share challenges and best practices and progress towards harmonization of working methods. Although not a decision-making forum, these meetings have proved very productive and successful.

WIDE RANGE OF ISSUES COVERED

On the basis of a comparative overview of working methods provided by OHCHR, participants discussed a wide range of issues in depth:¹³

- The concrete steps in the life cycle of an individual complaint, from the decision-making mechanism regarding the registration of cases, to the signature on the letters of registration and non-registration sent to authors of individual communications, the number of rounds of exchanges and reminders, and follow-up. Regarding follow-up, participants considered assessment criteria, various modalities, criteria for closing cases, and how to address non-compliance with treaty body Views.
- Interim and protection measures, including their timeline, nature and purpose, and related guidelines.
- Third-party interventions, including their content, concept and purpose, related processes and guidelines.
- Friendly settlement, including the role of treaty bodies and their level of involvement, based on the experience of CESCR and CEDAW
- Confidentiality and communication, including outreach and accessibility of the information on the OHCHR website
- The need for a coordination mechanism to harmonize working methods
- The digital uplift and a much needed case management system.

SIGNIFICANT HARMONIZATION ACHIEVEMENTS

As a direct result of the three retreats, working methods have been aligned regarding the following issues:

- All letters to authors on registered cases are signed by OHCHR as Secretariat
- The common complaints form is used in lieu of case summaries prepared by the Petitions Section
- The number of reminders has been harmonized. Only one reminder is sent to both parties in case of lack of response, with the possibility of exceptions to take specific circumstances into account (accessibility, if the author is a child without support, or in detention etc.)
- The number of rounds of exchanges has been aligned and limited to two rounds, with the possibility for the Rapporteur or Working Group on communications to authorize further exchanges due to the circumstances of the case (accessibility, specific issues, petitions submitted by children)
- A clear deadline of three working days to process interim measures has been established.

Behind these technical aspects lie efficiency measures and enhanced capacity for treaty bodies to fulfil their mandate.

OPTIONS FOR FURTHER IMPROVEMENT

Further options for harmonization and outstanding issues for discussion have also been identified for future meetings in relation to various issues.

Areas of possible harmonization include:

- The possibility to align follow-up assessment criteria and adopt the majority practice of having four assessment criteria
- Harmonization of the word limit for third-party interventions
- Consider extending CRC and CESCR practice of publishing a list of specific questions to encourage targeted third-party interventions.

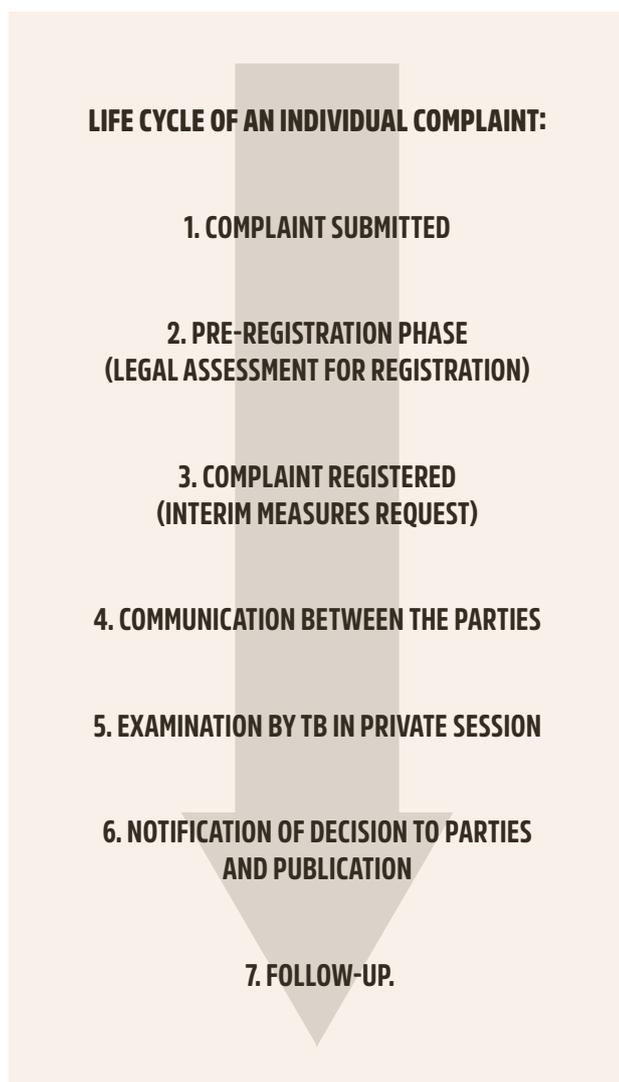
In addition, several procedural outstanding issues have been suggested for further discussion in relation to third-party interventions, interim measures, friendly settlement and follow-up to Views.

Finally, to harmonize working methods and practices across treaty bodies, it was suggested that further discussions and the development of common guidance could be beneficial regarding interim measures, criteria for prioritizing cases, and friendly settlement and good offices.

II. TAKING STOCK OF OPTIONS IDENTIFIED BY VARIOUS STAKEHOLDERS

In the context of the treaty body strengthening process, the question of how to address the backlog of individual communications and how to improve the efficiency of the procedures has been addressed in relation to three main aspects.

CONSIDERING THE FULL LIFE CYCLE OF AN INDIVIDUAL COMPLAINT



Currently, the resource formula enshrined in General Assembly resolution 68/268 does not take into account the full life cycle of an individual complaint as it leaves out the pre-registration phase, interim measures and procedural requests while a communication is pending, as well as follow-up, which are all resource intensive.

In this regard, OHCHR Working Paper sets out two simple options, namely:

1. To continue with the current formula, which does not account for all stages and ‘additional managerial and coordination responsibilities’ in relation to petitions; and
2. To adjust the formula to cover the full life cycle of an individual complaint and the needed managerial and coordination responsibilities by supervisors.

The Chairs,¹⁴ the Secretary-General in its 2022 biennial report¹⁵ and OHCHR in the Working Paper¹⁶ have all pointed out the need to consider the full life cycle of an individual communication and related human resources. Civil society organizations have called on States to ensure that the communications procedures are sufficiently funded, both through meeting time and staffing, and that the funding also addresses any technological needs that will increase efficiency.¹⁷

OVERDUE DIGITAL UPLIFT

Individual communications procedures still involve a largely paper-based process which is not fit for purpose. A modern digital submissions and case management system, which would form part of the broader ‘digital uplift and benefit all actors’, is well overdue to enhance efficiency.

Options identified in OHCHR Working Paper include:

1. To continue the current practice whereby petitions are submitted per email or as paper copies. The Secretariat manages the information in the format it is received, without sufficient resources to process it in a timely manner, and to systematically digitalize it. Any subsequent information-exchange with the victims is done by email or by mail, without a possibility for victims to consult the status of their case online.

2. To invest in modern tools and reduce the burden on all stakeholders. The complaint filing portal would provide digital forms with interactive guidance, while a legal case management system, along with a document management system, that facilitates case management by Human Rights Officers and allows for automated issuance of standard decisions and correspondence.

The need for OHCHR to be equipped with modern tools has been identified as a priority by OHCHR in its Working Paper,¹⁸ the Chairs,¹⁹ and the Secretary General in its 2022 biennial report.²⁰ Moreover, prioritizing the development or acquisition of a case management system was one of the recommendations in the audit report on treaty body system staff support.²¹ Similarly, in 2020, the co-facilitators concluded that “there should be investment to set up a digital case management system for individual communications”.²² Logically, debates on the OHCHR Working Paper reflected general agreement among States on this point.²³ Civil society organizations noted that the introduction of a case management system, accompanied with an online submissions platform would provide immediate improvements for the benefit of all parties involved.²⁴

COORDINATION MECHANISM TO FACILITATE HARMONIZATION

The harmonization of treaty body working methods, in addition to enhancing the efficiency and accessibility of the system, is a prerequisite to the much-needed digital uplift.

However, currently, harmonization of working methods is not institutionalized, and progress has been achieved on an *ad hoc* basis.

The options identified by OHCHR in the Working Paper are The status quo i.e. to continue the current practice of *ad hoc* harmonization efforts, which are not always implemented and are not supported with sufficient meeting time as they are not covered by the current formula.

To create a coordination mechanism which would work towards the harmonization of working methods, including on individual communications procedures, monitor the implementation of the related recommendations and report to the Chairs at their annual meeting.

When consulted, a number of States favoured the harmonization of working methods specifically related

to individual communications, without specifying which option they favoured.²⁵ The Chairs favoured the second option and concluded in 2023 that a coordination mechanism should be established.²⁶ At their latest annual meeting in June 2024, the Chairs concluded on the modalities for the creation of an “advisory mechanism for harmonization”,²⁷ whose mandate will be to advise the Chairs for decisions related to harmonization of working methods and alignment of procedures, including individual communications. This option will involve Secretariat support to enable the mechanism to meet virtually or in-person. For their part, the co-facilitators concluded in 2020 that the Chairs “should play a central role including by continuing initiatives to enhance coordination”.²⁸

CONCLUSIONS

The Geneva Human Rights Platform’s initiative on treaty body individual communications procedures, by facilitating informal exchanges between treaty body members and the Petitions Section, has contributed to harmonizing working methods and identifying options for further improvement. Solutions to improve the overall efficiency of these procedures have also been discussed and identified by stakeholders: States, Chairs of the treaty bodies, OHCHR, internal auditing body (OIOS), civil society organizations, and co-facilitators of the 2020 review process.

With regard to each point, options include:

1. The status quo, which is less costly but not sustainable and does not contribute to the strengthening of the system, or
2. To strengthen the system, which requires investing adequate resources.

RECOMMENDATIONS

- In view of the upcoming biannual resolution, the Geneva Human Rights Platform recommends that:
- States update the resource formula provided by General Assembly resolution 68/268 in order to take into account the full life cycle of an individual complaint as well as the needed managerial and coordination

responsibilities by supervisors;

- Treaty body members continue to their efforts to coordinate and harmonize working methods, thus strengthening the system;
- OHCHR be provided with a modern digital submissions and case management system as part of the broader 'digital uplift', for the benefit of all actors involved;
- The newly created advisory mechanism should remain flexible with regard to its membership and convene the rapporteurs on individual communications annually to continue the informal and fruitful discussions that have led to concrete harmonization results.

END NOTES

¹ As at 31 December 2021, the backlog of reports pending review was 441 reports and the backlog of communications pending review was 1,800, 4th biennial report by the Secretary-General on the status of the human rights treaty body system, A/77/279, paras 18 and 21. More recent numbers forthcoming in the 5th biennial report by the Secretary-General.

² As at 31 December 2023, 54 of the total of 197 States parties had no overdue reports under the relevant international human rights treaties and protocols (27.4 % of States parties), Compliance by States parties with their reporting obligations to international human rights treaties, 8 April 2024, HRI/MC/2024/3, para. 16.

³ See Geneva Academy, *Optimizing the UN Treaty Body System*, Academic Platform Report on the 2020 Review, May 2018, which presented challenges and recommendations to overcome them.

⁴ See Geneva Academy, *Treaty Bodies' Individual Communications Procedures: Providing Redress and Reparation to Victims of Human Rights Violations*, May 2019, which identified challenges and presented ways towards sustainable change.

⁵ The Petitions Section is the OHCHR unit which centralizes all individual complaints sent to the relevant treaty bodies and supports the Committees in carrying out this mandated activity.

⁶ More information on the Geneva Human Rights Platform website, *Treaty Bodies' Individual Communications Procedures: Towards a More Effective Functioning*.

⁷ CCPR, CESCR, CERD, CAT, CEDAW, CRC, CRPD, CED.

⁸ Conclusions of the Chairs of the human rights treaty bodies on their 36th annual meeting (24-28 June 2024), para. 1.

⁹ General Assembly resolution 68/268 notably encouraged treaty bodies to harmonize their working methods to enhance the efficiency of the system (para. 9) and set the budgetary formula to allocate resources based on the number of reports and communications received in the recent past (para. 26).

¹⁰ A first meeting took place in Paris on 22 January 2019 on "Treaty Bodies in action: consideration of complaints from individuals and States", with the participation of treaty body members, members of PUAS and members of the registries of the Inter-American system and of the European Court of Human Rights. A visit to the European Court was organized in February 2020, in partnership with the CCPR-Centre and the support of Open Society Justice Initiative and with the participation of PUAS. Another meeting followed, in a hybrid setting, on 17 June 2020 on "Steps towards a more efficient and coherent case-management".

¹¹ These meetings took place under the Chatham House rules to encourage free and constructive exchanges.

¹² All the Rapporteurs and Chairs of Working Groups on individual communications were invited to these closed meetings.

¹³ See Part II hereinafter for more details regarding options for strengthening the procedures in relation to the need to consider the full life cycle of a complaint, the much needed digital uplift and the proposal to create a coordination mechanism.

¹⁴ Conclusions on the 35th annual meeting of treaty body Chairs, 29 May-2 June 2023, para. 88.

¹⁵ Status of the human rights treaty body system, A/77/279, 8 August 2022, paras. 45 and 54.

¹⁶ OHCHR, Updated Working Paper, 29 May 2023, options and guiding questions 2.20.2, p. 92.

¹⁷ Joint submission by civil society organization to the co-facilitators process, 7 July 2020. ; OHCHR, Co-facilitation process on treaty body review 2020.

¹⁸ OHCHR, Updated Working Paper, 29 May 2023, para. 47.

¹⁹ Report on the 34th annual meeting of treaty body Chairs, A/77/228, 26 June 2022, para. 18, and part. 7(b) of their conclusions.

²⁰ Status of the human rights treaty body system, A/77/279, 8 August 2022, para. 81.

²¹ Audit of the activities, performance and results of staff support provided to the human rights treaty body system by the Office of the United Nations High Commissioner for Human Rights, A/76/197, 18 August 2021.

²² Report from the co-facilitators (Permanent Representatives of Morocco and Switzerland to the UN) on the process of the consideration of the state of the treaty body system, A/75/601, para. 22.

²³ OHCHR, Updated Working Paper, 29 May 2023 p. 172 and p. 174.

²⁴ Joint submission by civil society organization to the co-facilitators process, 7 July 2020. ; OHCHR, Co-facilitation process on treaty body review 2020.

²⁵ OHCHR, Updated Working Paper, 29 May 2023 p. 172; OHCHR, Co-facilitation process on treaty body review 2020.

²⁶ Conclusions on the 35th annual meeting of treaty body Chairs, 29 May-2 June 2023, para. 73.

²⁷ Conclusions on the 36th annual meeting of the Chairs, 24-28 June 2024, para. 21.

²⁸ Report from the co-facilitators, op. cit., para. 36.

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GHRP INITIATIVE SUPPORTING HARMONIZATION AND THE DIGITAL SHIFT OF THE TB SECRETARIAT

Under the initiative on Treaty Bodies Individual Communications Procedures, the Geneva Human Rights Platform (GHRP) – in partnership with the Paris Human Rights Centre and OHCHR's Petitions Section – facilitates discussions among the Rapporteurs on individual communications of all Treaty Bodies concerned on the current methods and scope for harmonizing approaches. We thank the Human Rights Hub of the Friedrich Naumann Foundation for their support to the latest meeting in 2023 and the publication of this research brief.

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