**Submission by the Geneva Human Rights Platform in reply to the call for written submissions by the co-facilitators of the 2020 TB Review process, circulated on 17 June 2020.**

[Submissions should be sent in English as a MS Word Document to the following address [treatybodies@gmail.com](mailto:treatybodies@gmail.com) by 7 July 2020. All submissions will be published on the OHCHR webpage dedicated to the process, where all other information is also available: https://[www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx](http://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx)]

The [Geneva Human Rights Platform](https://www.geneva-academy.ch/geneva-humanrights-platform) welcomes the opportunity to provide formal input to the 2020 TB Review process in reply to the call for contributions issued by the co-facilitators on 17 June 2020. At the outset, we want to commend the openness of the process and the opportunity for civil society to actively engage in the consultations.

The Geneva Human Rights Platform has led since 2015 academic efforts to contribute to the strengthening of the Treaty Body System, engaging also with Treaty Body Members, States, OHCHR, NHRIs and civil society. The outcomes of the 3-year global academic consultation process of the Academic Platform are available here: (<https://www.geneva-academy.ch/tb-review-2020> )

Further publications and conference reports are available on the GHRP website (<https://www.geneva-academy.ch/geneva-humanrights-platform/initiatives/detail/70-treaty-body-review-2020> )

1. **The functioning of the treaty body system: its efficiency, effectiveness, strengths and weaknesses; suggestions for its further improvement;**

The treaty body system is a victim of its own success. The adoption of new specific treaties, increasing ratifications, more state reporting, and more individuals who see in the individual communication procedure a realistic promise to find redress for the violations they suffered have not been matched by an equal expansion of the supporting structure. Treaty Body Members are at the maximum solicitation of input and time they can afford in a part-time voluntary structure and treaty body secretariats are overcharged following through with all mandated activities of the treaty bodies. As the Treaty Bodies depend in their work heavily on the secretariat, at the same time being independent, the secretariat needed to find a way to develop its mandate without infringing this independence. The mandate of the Secretary-General to “..provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.”[[1]](#footnote-1) is no longer satisfactorily fulfilled an in its vague formulation insufficient.

A strength of the system is that it provides in-depth, coherent monitoring of states compliance with their legal obligations and the realization of human rights enshrined in the treaties. And it does so in relative political independence.

It is difficult to evaluate the effectiveness and efficiency of the treaty body system, and even more so to attribute causality of each to the various actors involved: States, Treaty Body Members, and Secretariat. The effectiveness, additionally, depends a lot on the level of engagement of civil society in any given country, advocating for the implementation of the recommendations stemming from the system, in absence of any binding implementation mechanism. In short, the effectiveness could surely benefit from enhanced efficiency, and the latter is clearly a weakness of the system, which indeed never was conceived as a system in the first place. The view prevails of each treaty body being only an entity in its own right and not an integral part of a broader set of entities that together constitute the system.

Our publication [Optimizing the UN Treaty Body System](https://www.geneva-academy.ch/joomlatools-files/docman-files/Optimizing%20UN%20Treaty%20Bodies.pdf) lays out a number of measures to improve efficiency and effectiveness of the TB system, in particular in the area of state reporting.

Our publication [Treaty Bodies Individual Communication Procedures](https://www.geneva-academy.ch/joomlatools-files/docman-files/UN%20Treaty%20Bodies%20Individual%20Communications.pdf) contains measures to improve efficiency and effectiveness of the case handling capacity of the treaty body system.

**Measures to improve efficiency:**

* Coordinate fixed reporting schedules (with the option to review states in absence of a report)
* States to provide coordinated reports
* TBs to conduct coordinated State Reviews
* Make Simplified Reporting Procedure the default procedure
* Coordinate lists of issues prior to reporting

**Measures to improve effectiveness:**

* The efficiency measures above
* Monitor the human rights situation in all Member States equally on fixed reporting schedules. What seems redundant is the one measure that would change effectiveness most dramatically. The current reporting compliance of 19% (SG report) means that 81% of member states across the treaty body system escape regular scrutiny.
* Sufficient human and financial resources
* Political peer pressure to respect and implement recommendations and views emanating from the system
* Enhanced civil society space, internationally, but more importantly nationally and locally
* Institutionalized and comprehensive follow-up on recommendations and views.
* Drawing lessons from follow-up work from other parts of the UN Human Rights System, such as the Special Procedures and the Universal Periodic Review. For lessons, in this context, from the UPR see [our Research Brief](https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20Universal%20Periodic%20Review%20.pdf) .

1. **Implementation of UNGA resolution 68/268 and views on biennial report of the UN Secretary-General on the status of the treaty body system;**

The state of implementation of the UNGA resolution 68/268 has been well documented in the biennial reports of the UNSG. The reports are concise and give the necessary factual information, including through their detailed annexes. On the other hand, the report remains short of political recommendations as to the development and increased effectiveness of the system.

A main shortcoming regarding areas that States can decide on via a resolution is the non-respect by States themselves of the funding commitments calculated via the “formula”, implying increase in budget proportional to increases of reports and individual communication cases. Automatic allocation of resources as per 68/268 has not been implemented. More reports, as consequence of a fixed schedule, will imply more resources, and/or different and more efficient structures for the reviews.

1. **Good practices and methodologies in relation to working methods and procedural matters, including harmonization and alignment of working methods;**

In recent years, the Treaty Bodies have made remarkable progress on their working methods, and sometimes the alignment thereof, supported by their secretariats. In addition, informal initiatives, such as those provided by the Geneva Academy/ Geneva Human Rights Platform also helped shaping the working methods. Many states supported these processes.

Methodologies / concrete examples:

* TBs have used the Chairperson meetings and also created a network of focal points to further discuss the 2020 review and the overall strengthening and alignment of the system.
* They have also resorted to informal support from academic and NGO stakeholders.

Decisions on changes of working methods always stay with each TB (deciding in plenary), a methodology that does not lend itself to swift changes and rapid development, so it’s further development should be supported by States.

Good practices / concrete examples:

* Adoption of various guidelines and common procedures across the system
* Alignment of working methods
* Enhanced and harmonized engagement with NHRIs
* Coordination in the establishment of list of isues (until now, rather ad-hoc)
* References and mutual reinforcement via recommendations

1. **Coordination and predictability in review cycles and reporting;**

Predictability of the review cycles remains unsatisfactory, not allowing stakeholders to fully prepare and engage. While most treaties establish clear timelines and TBs establish the date for the next report, the reality is that political will of states decides the reporting calendar (sometimes aggravated by the back-log of reports in certain TBs). This results in delays of reporting up to several decades. An added factor of concern is that some States have not even presented an initial report. The result is an absolute absence of accountability.

Positive steps have been taken by the Treaty Bodies:

* The Human Rights Committee, offering a fixed schedule to all member states.
* The CESCR seems to follow suit.
* While there are notable exceptions, such as SPT and CED which do not follow the same logic of regular state reporting, further establishment of fixed reporting schedules and their coordination across the system is a must and should be strongly encouraged.

1. **Current reporting system, including common core document, and ways to further improve and simplify reporting for States parties whilst ensuring the substantive quality of the national reports;**

Equally important as a common core document would be the coordination among TBs of LOIPRs. This would lead down-stream to coordinated reports, the CCD being only one part of the mosaic. State reporting could further be simplified by presenting clustered reports including the specific information under various treaties, if a country is scheduled to appear before the corresponding treaty bodies in close timing.

1. **Dialogue between States and treaty bodies both in preparation for and during States reviews as well as in follow-up to the review**;

To an outside entity, this dialogue seems to vary on a scale between inadequate to absent, depending on the respective State party. Generally, States seem more willing to seek dialogue before the review than after.

1. **Assessment of the concluding observations and recommendations;**

* Could be more specific and precise. Could follow the [SMART](https://www.upr-info.org/sites/default/files/general-document/pdf/upr_info_guide_for_recommending_states_2015.pdf) typology adopted in the UPR process.
* Could be better linked
* Could be less numerous and prioritized
* Could be coordinated with UPR and, when possible, country visits of Special Procedures.
* Need to be well founded and well informed, which reinforces the need for high-quality honest reporting and supplementary NGO information.
* The implementation of recommendations would benefit from expanded, institutionalized follow-up at national level

1. **Strengthening the engagement with civil society and other relevant stakeholders;**

Any alignment of working methods in regard to engagement with civil society and other relevant stakeholders should be aimed at current best practice. Engagement with civil society, as integral part of any National Human Rights System, is key to enhance effectiveness (see above point 1).

1. **The capacity-building programme, experiences and impact, in terms of reporting and in terms of national implementation of recommendations;**

The SG reports do not yet show whether the capacity-building program can be considered a success, given the resources invested. To be fair, processes take a long time and full results can only be expected later. A potential expansion of the capacity building program should not necessarily focus on broadening, but in deepening support. Though the initial objective of the CBP was to encourage reporting, it is now equally important to support implementation on the ground of the recommendations of the TB’s, linking them additionally to those of SR and the UPR.

1. **Use of new information and communications technologies and its potential to further increase efficiency and accessibility;**

* Disseminate good practices to overcome the constraints resulting from COVID, ranging from informal inter-committee coordination to decisions on documents to the transfer of sessions online.
* Encourage use of virtual meetings, including by ensuring their accessibility, starting with official simultaneous interpretations in each Committees working languages
* Find proper compensation-scheme for time spent in online sessions
* Necessity to ensure privacy and confidentiality especially in engagement with CSOs and victims, when using the generally more accessible online avenues

1. **Opportunity of reviews in countries or in regions;**

* CRC experience of a review in Samoa is encouraging
* Continue in emblematic cases, and where resources permit.
* It will be a complex task to bring regional activities in line with overall reporting schedules, as those would not be aligned according to regional groupings.
* While there exists a nexus with regional activities, there must be clarity on efficiency, effectiveness and prioritization in the event of overlaps
* Regional mechanisms provide encouraging examples, but too easily, the nature of global and regional bodies is confounded.

1. **Preserve and strengthen the independence and impartiality of treaty body members and ensure diversity in terms of gender, geography, background, expertise, representation of different forms of civilization and principal legal systems, as well as the participation of persons with disabilities;**

* Transparent nomination process, along criteria laid out in [Addis Ababa Guidelines](https://tbinternet.ohchr.org/Treaties/CHAIRPERSONS/Shared%20Documents/1_Global/A_67_222__21887_E.doc)
* No vote trading on non-qualified candidates

1. **Enhancement of the coordinating role of treaty bodies Chairpersons;**

* It is in the authority of the Treaty Bodies to decide upon the level of decision-making authority given to the Chairs. A question of trust, this could be enhanced in following recommendations in point 12 above.
* States need to give the opportunity to TB Chairs to consult and coordinate, including outside session time, by providing them with resources for virtual and face-to-face meetings.

1. **Overall coherence of the treaty body system and the collaboration among treaty bodies as well as within the UN system and with regional monitoring bodies;**

* Treaty Bodies need to be provided with opportunities for exchange, online and offline. (such as offered by the [Treaty Body Members Platform](https://www.geneva-academy.ch/geneva-humanrights-platform/initiatives/detail/15-treaty-body-members-platform))
* The main actor ensuring coherence and collaboration is OHCHR, acting as secretariat to all TBs. It’s role needs to be strengthened in this regard, e.g. via a GA resolution
* A cross-linked online jurisprudence data-base, including TBs and regional bodies outcomes would facilitate substantive coherence in views and recommendations.
* States should make more use of the UPR as follow-up to TB recommendations and views, focusing questions in particular on implementation thereof.
* Coherence across the UN human rights mechanisms would be strengthened by the use of a joint implementation matrix to serve national level adaptaion, as suggested in [our Research Brief](https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20Universal%20Periodic%20Review%20.pdf) on this issue.

1. **Funding of the treaty body system and ensuring that treaty bodies have an adequate allocation of financial and human resources for all their mandated activities;**

* Funding in respect of the formula of 68/268, in particular concerning staff time, not only session time
* Adjustment of the formula to include treating individual communications
* Adjustment of budget based on projection, not (faulty) retrospection

1. **Current system of processing individual communications, inter-State communications and urgent actions: its efficiency, effectiveness, strengths and weaknesses; suggestions for its further improvement;**

The IC system is already currently treating a high number of cases per year and shows important results. Given the increase of its use, and the growing backlog of cases (see SG report) it needs to be adequately resourced. To function well, two major updates are needed:

* A modern (digital) case management system linked to a jurisprudence data-base;
* A clear streamlined procedure, clearly setting out the functions and mandate of secretariat support, and a joint template for communications under all treaties.
* Specific suggestions regarding the improvement of the IC system are detailed in our publication: [Treaty Bodies Individual Communication Procedures](https://www.geneva-academy.ch/joomlatools-files/docman-files/UN%20Treaty%20Bodies%20Individual%20Communications.pdf).

1. **Accessibility for persons with disabilities and wider accessibility and visibility of the work of the treaty bodies;**

Accessibility needs to be implemented across the system, not only in CRPD. Moves to digital participation offer great opportunities in this regard. Further aspects of accessibility include the visa policy of the host country where TB sessions are held.

Visibility of TBs depends on many factors. While dedicated communication services are a necessary step, this is not sufficient. TBs will become more visible, if their impact is growing, including through consistent and predicable engagements with national level actors, more so in the follow up stage. Further, a clustering of reports and reviews, along with a predictable reporting schedule will allow media and civil society to focus and strengthen the visibility.

1. **Efficient and effective use of the meetings of States parties.**

Taking decisions on funding in a system-wide resolution was a positive step forward to strengthen cooperation and coherence. Thus, the State party meetings could mainly serve to present and discuss nominations for membership, and to comment on the development of understanding and interpretation of the legal provisions contained in the specific treaty by the treaty body.

**Additionally, we would like to share the following considerations on the way forward:**

The outcome document of the consultation should address all the aspects given above. Yet, this is only part of the review process. State action in a potential UNGA resolution in follow-up to 68/268 needs to zoom in on fewer issues, where the GA has a mandate to undertake changes.

In an eventual resolution, States can

* Commit to collective action,
* Encourage bilateral state action,
* Recommend to TBs and TBMs to do something,
* Concretize the mandate to the UN Secretary-General, and through him to OHCHR as part of the UN Secretariat, to complete specific tasks – this last option, along with the guarantee of the necessary funding for the system, should be the center in any future resolution.

1. E.g. Art 36 ICCPR. The other treaties contain similar paragraphs. [↑](#footnote-ref-1)