**The Consideration of the State of the Human Rights Treaty Body System**

**Introduction**

* 1. Enhancing the work of the Human Rights Treaty-body system to make it more effective and efficient will help the system better achieve its function as critical tool to promote and protect fundamental human rights, and to fully integrate human rights principles and treaty obligations into the national policies of States parties for the benefit of rights-holders. In turn, this will contribute to conflict prevention and to the realization of the 2030 Agenda for Sustainable Development, with the aim to leave no one behind.
  2. The main pillars of a functional and efficient treaty-bodies system are the preservation of the independence and impartiality of expert members of the human rights treaty-bodies, the non-interference with their mandate, the principle of genuine cooperation and dialogue with States parties, and the provision of necessary support by the secretariat, along with the full respect of States parties of their legal obligations under the International Human Rights Treaties to which they are party including to periodically submit relevant reports.
  3. The General Assembly resolution 68/268 titled “Strengthening and Enhancing the Effective Functioning of the Human Rights Treaty Body System” represents a unique State-led process aimed at addressing the issue of the functioning of the treaty body system. As such, this resolution forms the framework of the intergovernmental process leading to the consideration of the state of the Human Rights Treaty-Body system.
  4. The principle set forth in the preamble of resolution 68/268 recognizes the important, valuable and unique role and contributions of each of the human rights treaty-bodies in the promotion and protection of human rights and fundamental freedoms. The  resolution further suggests some measures, most of which the treaty-bodies have already adopted earlier in order to increase their efficiency, transparency and effectiveness, such as optimizing interactive dialogue on the implementation of treaty obligations, annual reporting by the treaty-bodies to the respective decision-making organs, the elaboration of an aligned methodology for a constructive dialogue with the States parties, as well as enhancing the working methods and the process of the nomination of experts; all while respecting the treaty provisions and the particularity of each treaty-body.
  5. The resolution recognizes the importance and added value of capacity-building and technical assistance provided in consultation with and with the consent of the States parties and provides several measures for capacity-building to help Sates fulfill their reporting obligations. It also provides the allocation of more meeting time for the treaty-bodies to enable them to eliminate the reporting backlogs and such other measures which have been approved by the General Assembly, thus allowing for an unprecedented increase in regular budget allocations in terms of human and financial resources for the treaty-bodies through the Human Rights Treaty Section at OHCHR.
  6. The resolution finally decides that the General Assembly shall "consider the state of the human rights treaty-bodies no later than six years from the date of its adoption", in order to: 1) "review the effectiveness of the measures taken in order to ensure their sustainability"; and 2) to "decide—if appropriate—on further action to strengthen and enhance the effective functioning of the human rights treaty-bodies."
  7. Considerable progress has been made in the implementation of resolution 68/268 towards greater efficiency, thanks to the intensive work by the treaty-bodies and the support by their secretariats at OHCHR. However, when approaching the review issue, there should be no misunderstanding about both the nature and extent of this review. It is not a review of the “role and functioning” of the human rights treaty-bodies. Rather, it is a review of the measures adopted in GA resolution 68/268 and—if appropriate—may include the consideration of possible measures to further strengthen treaty-bodies if need be, while the different legal competences should be respected.
  8. It is clear that the review is entrusted exclusively to the UN General Assembly. Member States, as the sole depositaries of the Human Rights Instruments should be the main parties involved in this process. The valuable contributions of civil society, including NGOs, and National Human Rights Institutions to the review should be taken into consideration. OHCHR’s affirmations that it would refrain from influencing, directly or indirectly, others with its own views on the review are highly appreciated. Therefore, the review should be done through a comprehensive States driven process, in full respect of the independence of the treaty-bodies, with the full participation of the general membership.
  9. In this regard, and within the above parameters, the following need to be considered—as appropriate—as bases for discussion on the review:

1. Replies from UN Member States to questionnaires circulated by OHCHR regarding the review of the implementation of GA resolution 68/268.
2. Views of expert members of the treaty-bodies.
3. Submissions from NGOs, National Human Rights Institutions, and views of independent research centers.
4. Biennial reports submitted to UNGA on the progress on the implementation of the measures stipulated in GA resolution 68/268.
   1. The following remarks and suggestions could be considered with regard to the issues raised, pending a broader approach towards assessing the implementation of GA resolution 68/268.

**Financial Resources**

* 1. Given the UN existing financial situation, the optimization of resources for the treaty-bodies should not mean extra expenses. A better management of available resources at OHCHR can well lead to such optimization. The Fifth Committee contribution in this regard is vital.
  2. Practical solutions are welcomed to the extent that they focus on the mandated activities of the treaty-bodies, and do not alter the distinct function, uniqueness and the particularity of each of the treaty-bodies, not only as underlined by GA resolution 68/268, but—above all—as prescribed in the respective human rights treaties.

**Predictability**

* 1. Resolution 68/268 invites the human rights treaty-bodies and the OHCHR, within their respective mandates, to “continue to work to increase coordination and predictability in the reporting process, including through cooperation with the States parties, with the aim of achieving a clear and regularized schedule for reporting by States parties”.
  2. The GA previously declined a proposal by OHCHR on a global calendar, which was not included in resolution 68/268 because of the extra expenses it entailed, uncertainties about its practicality, and the extra burden on Members States as well as unnecessary pressure on the States that cannot comply with their reporting obligations within that global calendar. The reporting schedule, referred to in the Resolution, already exists for each Committee. If compiled and harmonized, the schedules allow for predictability and coordination among the treaty-bodies taking into account, inter alia, the differing obligations of the State parties under the respective treaties, the overall human rights obligations of each State, and the increasing frequency of civil society participation in the reporting process. However, this does not imply that treaty-bodies have the mandate to review State parties in absentia. The use of costly digital aids in this regard does not seem to be indispensable.

**Reporting**

* 1. The reporting should not become unnecessarily cumbersome; rather it should be a motivation to engage relevant national authorities in the process of preparing the report and to increase awareness of the human rights treaties.
  2. It is important to work to achieve a clear and regularized schedule for reporting by the States parties. Action by OHCHR on this matter has to be in line with the reporting requirements of each respective treaty and with the approval of the Committee concerned. The submission of a combined report by a State party instead of two or more periodic reports, albeit an exceptional measure, has reduced the level of reports outstanding; and, in some cases, reduced backlogs. More often than not, recent developments are addressed at the time of consideration of the report before a committee. Although the States parties are only bound by the periodic reporting obligations defined in the respective treaties, the submission on an exceptional basis of short addenda covering the developments from the date of submitting reports and the date of their consideration is allowed in many instances, but with additional cost for the UN and the States parties. To avoid the duplication of efforts and discussions, as well as unnecessary pressure on limited resources, the reporting periods should be calculated from the date of consideration of the State party’s report instead of attempting to amend the reporting period prescribed in each treaty through a GA resolution.
  3. The simplified reporting procedure should remain optional for States parties, as their sovereign decision, but should not result in creating an unequal status for the reporting States parties and should be in conformity with both the nature and particularity of each respective human rights treaty.
  4. The common core document should remain optional for States parties but could be useful so long that it does not represent an extra reporting burden on the States parties, nor duplicate information provided in the treaty-specific documents indispensable for the work of each committee.
  5. The limit on the number of words in other UN documentation should not impinge on the quality of the treaty-bodies work. The limitation on “ ... all State Party documentation submitted to human rights treaty ...”, has to be applied with more flexibility and to all interested stakeholders, including NGOs, shadow reports, questions and concluding observations by Treaty-Bodies. For example, annexes and additional documents could be submitted in electronic form. As with the word limit on UN documentation, the savings from any limits have to be allocated for more meeting time to overcome backlogs, and/or the increasing committee work resulting from increasing number of ratifications, rather than being reallocated to other non-mandated activities of the Committee or the consideration of documentations not related to the State report or to the UN relevant documents.

**The Competence of Treaty-Bodies**

* 1. The responsibilities of the treaty-body members and those of the secretariats of each treaty-body and OHCHR are different. The members of the treaty-bodies provide expertise and perform the functions prescribed by each respective treaty, whereas the secretariat should provide secretarial but no substantial support and necessary services as required by the treaty-bodies.
  2. It is essential to fully respect the mandate of each treaty-body as enshrined in the relevant treaty. Any attempt to create a new mandate, be it to deal with urgent issues or act beyond the parameters of their existing mandates, would be invalid and unacceptable. It can also undermine the integrity and impartiality of treaty-bodies. For example, General Comments issued by human rights treaty-bodies are not legally binding on States parties, and do not constitute binding interpretations of treaties.
  3. The concluding observations and recommendations made by each treaty-body at the end of the consideration of States parties' periodic reports should properly reflect the dialogue with the relevant State party, and be short, focused and concrete, bearing in mind the particularity of the mandate of each treaty-body, national, historical, religious and cultural particularities of States parties, and the requirements of each of the reports (initial or periodic) considered.
  4. Efforts should be made to set out common practices and define standards of professional conduct and ethical behavior in discharging the mandates of the treaty bodies. For example, a code of conduct for treaty bodies could be negotiated and adopted by the United Nations General Assembly, in consultation with the Chairs of the treaty-bodies.

**Capacity building and technical assistance:**

* 1. The resolution underlined the need to further support States parties by providing funding to the provision of technical assistance. This provision requires a better allocation of the financial resources of the OHCHR to help the state parties to build sustainable capacity for the preparation of their reports to human rights treaty bodies.
  2. Therefore, efforts on capacity-building for State parties that opt for it should be prioritized. Such efforts should focus on enhancing the reporting capacity of State parties upon their request. The capacity to fulfill human rights treaty obligations is a much broader issue that lies beyond the scope of the review mandated by resolution 68/268. Separate funding has to be sought in this regard.

**The Functionality of Treaty-Bodies**

* 1. It is essential to preserve the multi-lingual character of multilateralism. The allocation of a maximum of four official working languages for the human rights treaty-bodies, was done on an exceptional basis, and should not be pursued beyond 2020.The six official languages of the UN have to be used on equal footing by all the human rights treaty-bodies.
  2. The role of the chairpersons of the human rights treaty-bodies should continue to facilitate coordination and harmonization of the organizational work, strictly within its technical scope and the mandate of each treaty-body. Suggestions by the chairs have to be approved by each treaty-body, in accordance with its respective rules of procedure. Timings, durations and venues of the chairs’ meetings have to be determined with a view to rationalizing expenses and avoiding unnecessary costs. Other initiatives by chairpersons of the human rights treaty body non-related to the methods of work and organizational matters often lead to an increase in the workload and the expenditures of the treaty body and shall, therefore, be avoided.
  3. Treaty-bodies should be encouraged to continue to progress in the direction of harmonizing their working methods, bearing in mind their respective mandates’ particularity and requirements.

**Dialogue**

* 1. The meetings of States parties to human rights treaties, as well as matters related to the implementation of each treaty, are strictly the prerogatives of the States parties. Meetings between each treaty-body and the States parties to the respective treaty should be encouraged.
  2. Treaty-bodies may—bearing in mind the particularity of each—elaborate harmonized guidelines for dialogues, including through a coordinated approach, including within the framework of the simplified reporting procedure, in order to avoid double consideration of issues by different treaty-bodies, duplication and overlap in the general observations and recommendations to the State Party, and to reduce the burden on both treaty-bodies and the States parties. It is to be noted, however, that—even before the adoption of resolution 68/268—human rights treaty-bodies have been already working for a harmonized methodology in this regard.
  3. An harmonized methodology for dialogue between a human rights treaty-body and a State party should be strictly based on the specific mandate of each treaty-body. Meeting time for dialogue with a State party has to be allocated in such a manner as to ensure a more interactive and more productive dialogue.
  4. Additional informal sessions, in different formats, with the States parties could also be useful to promote deeper understanding of the challenges.
  5. Inter-committee meetings of treaty-bodies should be held only when there is a need to focus on clear issues and tasks, while guaranteeing the most efficient use of allocated resources.

**The Role of the Secretariats of Treaty-Bodies and the Human Rights Treaty Section**

* 1. There is no such thing as a “treaty-bodies secretariat”. There is a secretariat for each treaty-body, consisting of an assigned secretary and staff. The role of each secretariat is to provide support for the respective treaty-body it is assigned to, in order to help it fulfill its mandate under the treaty establishing it while avoiding any substantive interference in the treaty-body functions. The OHCHR has the administrative responsibility to assign personnel and coordinate among the different secretariats of the treaty-bodies.
  2. In doing so, the Human Rights Treaty Section and the secretariats of the treaty-bodies have to comply with paragraph 35 of GA resolution 68/268 which stipulates that: “[the Assembly] underlines the importance of all stakeholders of the treaty-body system, as well as the Secretariat, respecting fully the independence of treaty-body members and the importance of avoiding any act that would interfere with the exercise of their functions;"
  3. Since the adoption of resolution 68/268, considerable financial resources have been consistently allocated to the OHCHR and the secretariats of the treaty-bodies in order to provide better support for treaty-bodies, not only in reviewing the States parties’ periodic reports, but also in overcoming backlogs of reports pending consideration, and, when mandated and with the consent of State Party, in conducting field visits. In this context, the OHCHR has the duty to maximize the performance of the secretariats of the treaty-bodies through an efficient management within existing resources.
  4. The secretariats of the treaty-bodies have an important function to fulfill in the preparation of accurate schedule of meetings and programs of work  for consideration and approval by the treaty-bodies, and in making available copies of States parties reports with all attachments and appendices, civil society reports, relevant material from UN organs and specialized agencies, country briefs and analyses as well as other credible material which are crucial for the conduct of a constructive dialogue with the State party delegation, hence allowing for the adoption of accurate and concise concluding observations with viable and concrete recommendations.
  5. Members of the secretariats should be carefully selected. While respecting equitable geographic representation, the different forms of civilization and the principal legal systems, and a balanced gender representation, they must be of high moral standard, sincerely committed to human rights, ready to work under the guidance of the treaty-bodies, and duly respecting the independence of all these bodies.

**Experts’ nominations and elections**

* 1. It is crucial that experts nominated have high moral standing, and recognized competence and experience in human rights, particularly in areas that fall under the mandate of each treaty-body, as mentioned in paragraph 10 of resolution 68/268, and—above all—as stipulated in the respective treaties. The nomination and election of treaty-body members remains the sovereign prerogative of States parties.
  2. The structure of treaty-bodies as stipulated in the relevant treaty, or by the main organ which established it as is the case with the Committee on Economic, Social and Cultural Rights, should be preserved.
  3. Although the treaties require an equitable geographical distribution between the members during their election, it should be noted that the reality shows that this distribution is not respected in certain treaty bodies. This issue needs to be prioritized and addressed.
  4. The neutrality of OHCHR in preparing information concerning the election of members of the human rights treaty-bodies also has to be preserved and encouraged, be it on the composition of the respective treaty-body, geographical and gender balance, the competence and expertise of candidates, among other matters.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_