

European Master's Degree in Human Rights and Democratisation

Master Thesis

“STRENGTHENING THE HUMAN RIGHTS TREATY BODY
SYSTEM”

Student	Koneva Alexandra
Supervisor	Prof. Dr. Hab. Zdzislaw Kedzia
Second Semester University	University of Adama Mickiewicza (Poznan)

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ABSTRACT

The present thesis takes stock of the ongoing process to enhance the effectiveness of the human rights treaty body system, which has reached a critical juncture when concrete action needs to be taken by the main stakeholders – the States parties and the treaty bodies. The goals of the research are to present a holistic view of the current strengthening process and to make suggestions aimed at the effective functioning of the treaty body system that should ultimately contribute to the enjoyment of human rights by their holders. Making a diagnosis of the present stage of affairs, the author suggests a package of measures to address the overriding challenges of the treaty body system and proposes options to ensure the complementarity of the decision-making processes initiated by the stakeholders for the purpose of provision for the holistic approach to the effective strengthening of the treaty body system that should ultimately contribute to the enjoyment of human rights by their holders.

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INTRODUCTION

In today's world human rights constitute one of the three pillars of the work of the United Nations (UN), alongside peace, security, and development. The past 50 years now, we should speak about more than 60 years "yield a valuable legacy of internationally agreed standards and the creation of a set of institutional arrangements designed to monitor compliance with those standards."¹ The elaboration of these standards has resulted in the adoption of nine core international human rights treaties² and the emergence of ten human rights treaty monitoring bodies.³ Significantly, since the endorsement of the Universal Declaration of Human Rights in 1948, every UN Member State has ratified at minimum one core international human rights treaty, and 80 percent of Member States have ratified four or more.⁴

The creation of the human rights treaty bodies has become a breakthrough in the development of the control-mechanisms in the field of human rights at the international level. Being established to monitor the implementation of the core international human rights treaties, these bodies today play a "fundamental role in promoting and protecting

¹ Alston & Crawford, 2000, p. XV.

² The International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, UNTS vol. 999, p. 171; The International Covenant on Economic, Social and Cultural Rights (ICESCR), 16 December 1966, UNTS vol. 993, p. 3; the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 7 March 1966, UNTS vol. 660, p. 195; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 18 December 1979, UNTS vol. 1249, p. 13; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 10 December 1984, UNTS vol. 1465, p. 85; the Convention on the Rights of the Child (CRC), 20 November 1989, UNTS vol. 1577, p. 3; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPRMW), 18 December 1990, UNTS vol. 2220, p. 3; the Convention on the Rights of Persons with Disabilities (CRPD), 13 December 2006, UN GA Resolution A/61/611; the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED), 20 December 2006, C.N.1040.2008.TREATIES-20.

³ Committee on the Elimination of Racial Discrimination (CERD), Human Rights Committee (HRC), Committee on Economic, Social and Cultural Rights (CESCR), Committee on the Elimination of Discrimination against Women (CEDAW); Committee Against Torture (CAT); Subcommittee on Prevention of Torture (SPT), Committee on the Rights of the Child (CRC), Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), Committee on the Rights of Persons with Disabilities (CRPD), Committee on Enforced Disappearances (CED).

⁴ Official web-site of the Office of the UN High Commissioner for human rights (OHCHR) - <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx> (consulted on 7 June 2013).

human rights due to the legal nature of their mandates.”⁵ The treaty bodies provide an authoritative guidance on human rights standards, advise on how treaties should be applied in specific cases, inform the States parties on the activities that in a best way would ensure that all people enjoy their human rights as well as “generate advocacy platforms” for national human rights institutions (NHRIs) and civil society actors.⁶ The major function of the treaty bodies is to review periodic reports submitted by States. Most treaty bodies issue general comments or recommendations regarding the provisions of the respective treaties, many are empowered to consider individual communications as well as to undertake inquiries, while one treaty body is working largely through field missions. Notably, the interrelationship between the different functions of the treaty bodies is regarded as one of their distinct strengths.⁷

Although largely funded through the UN regular budget and being required to submit reports to the UN General Assembly (GA), the treaty bodies should not be considered as the UN bodies established under the UN Charter. They are created by the international instruments⁸ adopted within the United Nations and their legal force emanates from the acceptance of legally-binding multilateral treaties by states parties.⁹ The independence of these bodies is their distinctive feature that guarantees objectivity and a non-selective approach to all human rights removes them from political context.¹⁰

Over decades, as different treaties came into force and their monitoring bodies assumed their specific functions, the treaty bodies have developed into an interlinked system. Nevertheless, the issue of ensuring the effectiveness of these mechanisms has already been on the international agenda for some time. It “has long been recognised

⁵ Marrakech Statement on strengthening the relationship between NHRIs and the human rights treaty bodies system, June 2010, para. 5 available at <http://www.ohchr.org/EN/HRBodies/HRTD/Pages/Documents.aspx> (consulted on 11 June 2013) (hereinafter Marrakesh Statement).

⁶ Dublin II Meeting on the Strengthening of the United Nations Human Rights Treaty Body System, Outcome document, November 2011, p. para. 2 at http://www2.ohchr.org/english/bodies/HRTD/docs/DublinII_Outcome_Document.pdf (consulted on 7 June 2013) (hereinafter Dublin II Outcome Document).

⁷ *Ibid.*, para. 3.

⁸ The exception is the CESCR, which was created by the ECOSOC resolution.

⁹ OHCHR, Human Rights Treaty Bodies and Election of Treaty Body Members, A Guide for United Nations Delegates Based in New York, January 2013, p. 5 at <http://www.ohchr.org/Lists/MeetingsNY/Attachments/38/treaty-body-elections-guide.pdf> (consulted on 7 July 2013).

¹⁰ A/66/344, 7 September 2011, para. 5.

that the treaty body system would benefit from institutional and other forms of strengthening in order to render it more efficient and effective.”¹¹ A great number of proposals have been developed since 1990s. Meanwhile, the major UN initiatives to strengthen the treaty body system took place with the launch of the process to reform the UN by the then Secretary-General Kofi Annan in the early 2000s. Certain initiatives were launched by the treaty bodies themselves as well as the Office of the UN High Commissioner for Human Rights (OHCHR). In 2006 the UN High Commissioner for Human Rights elaborated a “concept paper” where she suggested the creation of a unified treaty monitoring body. However, the proposals did not receive great support.

At present, the treaty body system is confronted by a number of overriding challenges. The increase in the number of international instruments and the addition of new monitoring bodies have put the system at risk of failing to perform their tasks efficiently and effectively, which, in turn, may adversely affect the human rights protection at domestic level. The treaty bodies workload has significantly increased which resulted in the huge backlogs in the consideration of reports and individual communications. There are high levels of non-compliance by States with their reporting obligations. These challenges are accompanied by the lack of resources and some other overriding problems. The fact that the system is, nevertheless, surviving is due to the dedication of the experts, who are unpaid volunteers, the support of staff in OHCHR and States’ non-compliance with reporting obligations.¹²

Concerned by the described situation, the High Commissioner Navanethem Pillay decided to launch the process of the strengthening of the human rights treaty body system in 2009. The initiative of the High Commissioner became a starting point for an “open and demanding marathon” among all the stakeholders aimed at improving “the impact of treaty bodies on States parties and individuals or groups of individuals at the national level by strengthening their work while fully respecting their

¹¹ The Dublin Statement on the Process of Strengthening of the United Nations Human Rights Treaty Body System,, November 2009, para. 4 available at <http://www.ohchr.org/EN/HRBodies/HRTD/Pages/Documents.aspx> (consulted on 8 June 2013) (hereinafter Dublin Statement).

¹² A/66/86, 26 June 2012, p. 9.

independence.”¹³ More than twenty consultations among the treaty bodies, the States Parties, civil society organisations and NHRIs, UN entities and academics have taken place. Significantly, the ideas emerged during these consultations are reflected in the High Commissioner’s Report submitted to the GA mid-2012, which contains specific recommendations addressed to various stakeholders on how to enhance the treaty body system. In the meantime, the General Assembly has launched an open-ended intergovernmental process that builds on the High Commissioner’s initiative. This process evolved into a series of consultations held between the States parties with the participation of other stakeholders. At present, Member States are negotiating in New York and there are chances that the process may come to final point in a few weeks which means that the General Assembly may take specific decisions on the measures to strengthen and enhance the treaty body system still in 2013. On their part, the treaty bodies examine the proposals put forward by the High Commissioner with a view to implementing them.

This situation demonstrates that the strengthening process has reached a momentum when concrete steps may be undertaken by the main stakeholders – the States parties and the treaty bodies. It is to be underlined, however, that the process of strengthening the treaty body system will have an evolving nature and may develop in an unpredictable way. Taking this into consideration, this thesis will contain the analysis of a work in progress, combining the diagnosis of the present stage of affairs and outlook based on it.

The main goals of this thesis are the following:

- 1) To present a holistic view of the current process on the strengthening of the human rights treaty body system;
- 2) To make suggestions aimed at the effective functioning of the treaty body system that should ultimately contribute to the enjoyment of human rights by their holders.

In order to achieve these goals the following **tasks** should be implemented:

¹³ See OHCHR, Human Rights Treaties Division Newsletter, No. 19 - 20/January - June 2013, p. 1 at <http://www2.ohchr.org/english/bodies/treaty/Newsletters/HRTDNewsletterNo19-20.pdf> (consulted on 11 June 2013) (hereinafter HRTD Newsletter, 2013) and A/66/86, 26 June 2012, p. 9.

1) To give an overview of the current work of the treaty body system through examining the legal status of the treaty bodies and their actual standing, as well as through analysis of relevant data;

2) To reveal and analyse the challenges facing the system;

3) To examine the previous initiatives to improve the work of the treaty bodies;

4) To analyse the progress of the High Commissioner's consultations on strengthening the human rights treaty body system and to determine the principles governing it;

5) To analyse the progress of the intergovernmental process and to determine its principles;

6) To determine a package of measures to address the challenges confronting the system;

7) To reveal the factors influencing the potential of these measures to be implemented;

8) To make suggestions on how to ensure coherence between the actions of the stakeholders to enhance the effective work of the system.

Methodology

Systemic approach appears to be the major approach of this work. The choice of this particular approach is governed by the fact that the object of this research is the interaction between the stakeholders of the human rights treaty body system with a view to improving its effective functioning. The human rights treaties form an integral system and the treaty bodies themselves represent its essential elements as far as their implementation is concerned. The other elements of the system are the States parties, OHCHR, UN as well as NHRIs and civil society actors (external elements). These elements "determine together whether the system as a whole works and how effectively it does so."¹⁴ Furthermore, this approach needs to be applied when determining the measures to address the challenges to the system. A systemic examination of the possibilities to strengthen the system assumes the examination of the consistent patterns

¹⁴ Alston & Crawford, 2000, p. 523.

of interactions between the elements of the system with a view to determine their positions and roles with respect to the measures that should strengthen the system.

The author will use the historical analysis in order to trace the stages of development of the human rights treaty body system and to examine the previous initiatives to strengthen the system. The comparative analysis will be applied when examining the progress of the two phases of the ongoing strengthening process and scrutinizing the positions on the proposals of the various stakeholders.

It should be further highlighted that the author of the thesis has attended the 50th session of the Committee on Economic, Social and Cultural Rights as an assistant to the Committee member (Prof. Kedzia) in the framework of her study trip to Geneva. During the session of the Committee the author has conducted a series of interviews on the topic of the research with different categories of interlocutors, including: OHCHR officials who are servicing the work of the committees and the selected members of the Committee. A number of interviewees wished not to be quoted in this work, which facilitated a frank discussion. Some interviewees gave their authorisation to be quoted. The author will use the responses given in the course of the interview according to the wishes of the interviewed persons. In order to ensure the transparency of the conducted interviews the author attaches the Interview questionnaire as annex to the work. The research interviews make a great contribution to this study since these persons have a great experience in the work of treaty bodies and are engaged in the ongoing strengthening process. This method has full potential to endow this work with a practical value.

The structure of the work is determined by the goals, tasks and the logics of the research and contains of introduction, four chapters, conclusion, list of sources and annex.

CHAPTER I. THE CURRENT STATE OF THE HUMAN RIGHTS TREATY BODY SYSTEM

1. THE LEGAL STATUS OF THE TREATY BODIES

1.1. FUNCTIONS OF THE TREATY BODIES

Before discussing the functions performed by the treaty bodies, it seems appropriate to give a brief overview of the history of creation of these bodies. There are currently ten human rights treaty bodies (also referred to as “committees”) composed of independent experts of recognized competence in the field of human rights:

- CERD mandated to monitor the implementation of the ICERD was established in 1970;
- HRC as the monitoring body of the ICCPR began its activity in 1976;
- CESCR mandated to monitor the implementation of the ICESCR was established in 1985 by the resolution of the Economic and Social Council (ECOSOC);¹⁵
- CEDAW was established in 1982 as the monitoring body of the CEDAW Convention;
- CAT was created to monitor the implementation of the CAT Convention in 1988;
- SPT established under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)¹⁶ and started its activity in 2007;
- CRC is monitoring the implementation of the CRC Convention and began to function in 1990;
- CMW as the body monitoring the implementation of the ICPRMW started its activity in 2004;
- CRPD mandated to monitor the implementation of the CRPD began to function in 2009;
- CED entrusted to monitor the implementation of the ICPEP started its functioning in 2011.

¹⁵ E/RES/1985/17, 28 May 1985.

¹⁶ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 18 December 2002, UNTS vol. 2375, p. 237.

Interestingly, there exist some views that new legal instruments with international monitoring may be adopted in the future, for example on the protection of human rights of older persons.¹⁷

Treaty bodies carry out a set of functions aimed at fulfilling their major task - monitoring compliance of the States parties to the core international human rights treaties with their human rights obligations under these treaties. More than forty years on, the activities of the treaty bodies have developed in many ways, and “the working methods and procedures of the committees have been improved and refined through practice.”¹⁸ Among the wide range of the activities performed by the committees it is necessary to determine their main functions: 1) consideration of States parties’ reports on the implementation of their human rights obligations under the relevant treaty; 2) the consideration of the individual communications; 3) preparing the general comments or recommendations; 4) conducting inquiries.¹⁹ It is worth mentioning that some treaty bodies perform all the mentioned functions while the others fulfill only several of them. All core international human rights treaties, and, in the case of the ICESCR, the ECOSOC resolution 1985/17, empower the treaty bodies to formulate their own rules of procedure.²⁰

The major aspect of the activities of the treaty bodies is the regular consideration of the reports of the States parties on the implementation of the relevant treaty provisions²¹ and in the implementation of its optional protocols.²² Each treaty requires States to submit reports on concrete measures adopted by them to give effect to the rights recognized in the treaties. All committees have adopted “broadly the same approach towards the consideration of States parties’ reports”²³, which is organised in

¹⁷ See Keller & Ulfstein, 2012, p. 9.

¹⁸ Lucerne Academic Consultation on Strengthening the United Nations Treaty Body System, October 2011, p. 3 available at <http://www.ohchr.org/EN/HRBodies/HRTD/Pages/Documents.aspx> (consulted on 5 June 2013) (hereinafter Lucerne Consultation).

¹⁹ See Bayefsky, 2001, p. 3; Abashidze, 2012, p. 195; and Keller & Ulfstein, 2012, p. 3.

²⁰ HRI/MC/2013/2, 12 April 2013, para. 9.

²¹ With the exception of SPT which monitors the places of detention in the States parties to OPCAT.

²² CRC monitors the implementation of its two optional protocols - Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 25 May 2000, UNTS vol. 2171, p. 227; and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 25 May 2000, UNTS vol. 2173, p. 222.

²³ HRI/MC/2006, 17 May 2006, para. 16.

the form of the constructive dialogue.²⁴ Nevertheless, each treaty body has developed its own model of the interactive dialogue with the States parties.

All committees adopted and implemented in their working methods “Harmonised guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents,”²⁵ addressed to all States parties. Meanwhile, three treaty bodies (CAT, HRC and CMW) have adopted an alternative reporting procedure - a new simplified optional reporting procedure which includes the preparation of a List of issues prior to reporting (LOIPR) to be transmitted to States parties before the consideration of the report.

With the exception of the ICPED²⁶ and the OPCAT, all core human rights treaties provide for scheduling of reporting by the States parties. Despite the fixed reporting periodicities, the most committees have adopted a flexible approach to reporting, due to the practice of late submission of reports by States and the time gap between the submission and the examination of reports. Some treaty bodies allow for the submission of the combined reports. States parties sometimes make a request for the postponement of the consideration of their report. In such cases, all committees may reschedule the consideration of the report or may proceed with the consideration in the absence of the State party’s representation.²⁷ Furthermore, all treaty bodies have may proceed with the examination of the situation on the implementation of the relevant treaty by a State even in the absence of the report.²⁸

All the treaty bodies forward lists of issues to the State parties after the submission of their reports in order to provide an opportunity for States “to supplement the information contained in their reports and may also indicate to States parties the

²⁴ All committees invite the delegations of the States parties to come to the session of the treaty body to present their report. The purpose of such a process is the engagement with the State party in a constructive manner with the aim of offering assistance to the Government to fulfill the treaty in the most effective way.

²⁵ Report of the Inter-Committee Technical Working Group, ‘Harmonised guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents,’ UN Doc HRI/MC/2006/3, 10 May 2006, (hereinafter Harmonised guidelines on reporting).

²⁶ Although the ICPED does not establish any requirement for periodic reports, under art. 29, para. 4 of the Convention, CED may request States to provide additional information on the implementation of the Convention.

²⁷ HRI/MC/2013/2, 12 April 2013, para. 8.

²⁸ Ibid., para. 70.

questions they are likely to face when their report is formally considered.”²⁹ Most treaty bodies require States to reply to the lists of issues in writing.

The constructive dialogue in all of the treaty bodies follows the same structure:

1) During the meeting with the committee the head of the delegation introduces the report and talks on the developments since its submission in a brief opening statement;

3) The members of the committee, usually led by the country rapporteur(s) or country report task force, address their questions on specific aspects of the report and the replies to the lists of issues;

4) The State party provides answers to the questions posed by the committee;

5) The committee adopts concluding observations.

The committees have adopted the practice of issuing concluding observations which constitute the assessment of the performance of the State party delegation.

In order to improve the compliance with their concluding observations the treaty bodies ask States parties “to provide information on the implementation of the recommendations contained in previous concluding observations in their periodic reports or during the constructive dialogue.”³⁰ It should be noted that five treaty bodies (HRC, CAT, CERD, CEDAW and CED) have introduced follow-up procedures to monitor more closely the implementation of their recommendations.³¹

The second main activity of the treaty bodies is the consideration of individual communications. Today, under the provisions of the core human rights treaties and the optional protocols to them, the individuals may file a complaint alleging violations of rights enshrined in the relevant treaties by the States parties who recognised the relevant competence of the committees. The treaty bodies consider the communications and may enter into the dialogue with the State party concerned for the purpose of eliminating the violation and the restoration of rights of the victim. The dialogue is generally held

²⁹ Ibid., para. 42.

³⁰ HRI/MC/2013/3, 22 April 2013, para. 1.

³¹ These treaty bodies appoint a rapporteur on follow-up among their members who is responsible for presenting report on the results of the follow-up activities to the respective committee. Moreover, CRPD has determined up to two recommendations for follow-up since 2012 and appoints a rapporteur for follow-up. CESCR may request the State party to accept a technical assistance mission which consists of one or two members of the committee (this has been applied only to two States parties).

confidentially.³² After the consideration of the communication the committees adopt their recommendations (also referred to as “findings,” “views” or “decisions”). In addition to the consideration of individual complaints, the committees may receive and consider inter-state communications. However this procedure has not yet been practiced.

The third major aspect of the functioning of the treaty bodies is the preparation and adoption of the general comments considered as “indispensable” sources of interpretation of the provisions of the treaties.³³ All committees have adopted the practice of elaborating general comments in accordance with the relevant treaty provisions or committee’s rules of procedure.³⁴ Although being the source of “soft law” general comments are taken into consideration by the States and UN bodies. Furthermore, the treaty bodies themselves are guided by these documents when adopting their recommendations.³⁵

Some treaty bodies (CAT, CEDAW, CRPD, CED and CESCR) are empowered with the competence of undertaking inquiries. The inquiry procedure provides for missions to the States parties on the basis of the receipt of reliable information about systemic or grave violations of treaty rights by the concerned State party. The CAT, the CEDAW, the CRPD, the CED and the CESCR are empowered with this competence.

It is necessary to refer further to the activity of the SPT, since its functions differ from the activities of other treaty bodies. The SPT has unrestricted access to “all places of detention, their installations and facilities, and to all relevant information relating to the treatment and conditions of detention of persons deprived of their liberty”³⁶ in the States parties to the OPCAT. The Subcommittee issues a confidential report with recommendations to the relevant State party after its visit. The reports form a part of the dialogue between the treaty body and the authorities of the State party concerned, aimed at preventing torture. Furthermore, the Subcommittee is mandated to advise and assist

³² See Abashidze, 2012, pp. 195-196.

³³ Nowak, 2005, p. 749.

³⁴ HRI/MC/2013/3, 22 April 2013, paras. 13.

³⁵ Abashidze, 2012, p. 196.

³⁶ Art. 14 of the OPCAT.

States in the establishment of national preventive mechanisms. While some commentators do not attribute the SPT to the treaty bodies due to its distinctive functions, the fact that the SPT was established by the international instrument and is mandated to monitor the States parties' compliance with its provisions gives sufficient ground to relate it to the treaty bodies.³⁷

In addition to their main functions, the treaty bodies have adopted the practice of holding discussions that are variously referred to as “thematic debates”, “thematic discussions” or “days of general discussion” in order to consider issues of general concern in relation to the implementation of their respective treaties.³⁸

1.2. HUMAN RIGHTS TREATY BODIES AS A SYSTEM

It is clear that “to do justice to the specific interests, needs and circumstances of particular groups of rights-holders, it has been decided over the years to conclude different treaties”³⁹ devoted to specific areas of human rights (on racial discrimination, discrimination against women, the rights of children, rights of migrant workers, persons with disabilities etc.). This fact leads to the conclusion that the treaty bodies were not created as a system. Over decades of years “treaty body after treaty body was created without a relationship to each other.”⁴⁰ Nonetheless, the committees “without substantial coordination, over some 40 years, as the various treaties came into force and their separate monitoring bodies assumed their various specific functions, have developed into a system”.⁴¹ This observation may be supported by the fact that the treaty bodies carry out similar activities and there are tendencies of convergence and harmonization in their methods of work.

Firstly, a number of common principles may be identified in the reporting procedure. Almost all committees elaborate general comments on substantive issues. Meanwhile, more treaty bodies are receiving competences to consider individual communications and conduct inquiries and it appears possible to identify certain commonalities between their practices.

³⁷ Abashidze, 2012, pp. 242-243.

³⁸ HRI/MC/2013/3, 22 April 2013, paras. 19-20.

³⁹ Adviesraad Internationale Vraagstukken (Netherlands), 2007, p.17.

⁴⁰ Bayefsky, 2001, p. 3.

⁴¹ Dublin Statement.

Furthermore, as long as the new instruments were coming into force, “to a certain extent, the procedures of subsequent treaties have been modeled one after another.”⁴² Moreover, the readiness and “willingness of treaty bodies to learn from each other and to follow and copy best practices”⁴³ should be taken into consideration. Finally, the Meetings of Chairpersons of the treaty bodies and the Inter-Committee Meetings constitute a platform for “the strongest streamlining and harmonization”⁴⁴ of their working methods.

1.3. THE INDEPENDENCE OF THE HUMAN RIGHTS TREATY BODIES

The independence of human rights treaty bodies constitutes one of the pillars of their activity. The independent character of treaty bodies is “crucial in discharging their mandates” and constitutes the guarantee of “objectivity and a non-selective approach to all human rights.”⁴⁵

For the better understanding of the independent status of the treaty bodies it seems appropriate to refer to the main actors involved in the work of the treaty bodies and their role in the treaty body activities.

Along the treaty bodies themselves, the major stakeholders of the treaty body system are States. The treaties are adopted by States, therefore States are the creators of this system. They are empowered to bring amendments to the treaties and to adopt new international instruments. Furthermore, States are responsible for nomination and election of the members of the treaty bodies. Each treaty establishes a plenary organ – the meeting of the States parties, which constitutes a forum with a task of electing the members of the treaty body that monitors the compliance with the relevant treaty.⁴⁶

The treaties establishing the committees do not provide for the appointment of the secretariat for the treaty bodies. The work of the treaty bodies is serviced by the Secretariat of the UN, namely the OHCHR. The staff of the OHCHR, in particular the

⁴² Ibid., p. 314.

⁴³ Ibid., p. 15.

⁴⁴ Wouter Vandenhoele, 2004, p. 317.

⁴⁵ Dublin II Outcome Document, para. 2.

⁴⁶ The members of CESCR are elected by the ECOSOC. The States parties to ICESCR nominate their candidates to be elected as the members of the treaty body and present their candidates for further election to the ECOSOC.

Human Rights Treaty Division (HRTD), is supporting all ten treaty bodies in a way that the fixed number of professionals is servicing the work of each treaty body. One professional is attached to each committee as a secretary of the respective treaty body. The Division of Conference Management (DCM) of the United Nations Office at Geneva (UNOG) provides conference services to the treaty bodies.⁴⁷

The UN GA also plays its role in the functioning of the treaty bodies. The treaty bodies submit annual reports on their activities to the GA. Moreover, the GA decides on the budget of the treaty body system, the meeting time and the number of the staff provided to each of the treaty bodies.⁴⁸

A significant role in the activities of the treaty bodies is played by the civil society actors and national human rights institutions (NHRIs). Civil societies as well as NHRIs make a contribution to the consideration of reports of the State parties “by submitting their own reports and briefing the treaty bodies on the situation with human rights protection in the State party whose report is under review.”⁴⁹

The stakeholders of the human rights treaty body system play a crucial role in providing the sources of information to the treaty bodies.⁵⁰ Apart from the reports of the non-governmental organizations (NGOs) and NHRIs, the materials are provided by the UN entities, intergovernmental organizations (regional and international) and academic institutions.

Considering the relationship of treaty bodies with other actors of the human rights treaty body system it is possible to determine the following forms of the independence of the treaty bodies: institutional independence and personal independence.

Institutional independence means that treaty bodies are free to develop their own methods of work within their legal mandates and neither the individual States, nor the UN Secretariat and the UN GA as well as other stakeholders may affect this aspect of their activity.

⁴⁷ See A/66/860, 26 June 2012, para. 2.1.

⁴⁸ See Gaer, 2007, p. 118.

⁴⁹ The UN Human Rights Treaty System, Fact Sheet No. 30/Rev.1, 2012, p. 43 at <http://www.ohchr.org/Documents/Publications/FactSheet30Rev1.pdf> (consulted on 7 June 2013).

⁵⁰ Bayefsky, p. 41.

Personal independence implies that the members of the committees perform their duties in their personal capacity and do not represent anyone's interests.

The guarantees of the independence and impartiality of the members of the committees are provided in the treaties and the rules of procedures of the committees.

The guarantees of the independence are established in the treaties as a condition of the membership or in a form of undertakings in the declaration that is made by the committee member when taking up the duties.

Only the rules of procedure of two committees (CAT and CED) have explicit provisions on the independence. Members are performing their duties in their personal capacity and "shall neither seek nor accept instructions from anyone concerning the performance of their duties."⁵¹ Furthermore, the experts "shall maintain the highest standards of impartiality and integrity, and apply the standards of the Convention equally to all States and all individuals, without fear or favour and without discrimination of any kind."⁵² This assumes that the members of the committees shall treat all States equally and their work shall not be influenced by any actors either in the form of intimidation or provision of benefits.

2. ACTUAL STANDING OF THE TREATY BODIES

The actual standing of the treaty bodies depends on the perception of the stakeholders of the authority of the treaty bodies to perform their functions, which may be defined by the term "legitimacy." The States parties may question the authority of the committees to define the scope of the treaty obligations for the reason that the treaty body went beyond its legal mandate, and therefore put more obligations on States than it has been done by the treaty themselves.⁵³ The legitimacy of the system is also associated with the perception of States regarding the legal weight of the recommendations of the treaty bodies. Notably, the legal status of the work of the treaty bodies and the basis for according their decisions legal weight have been disputed in the scientific circles for a long time.⁵⁴ In legal terms, the States parties are not bound by the decisions of the treaty bodies, as they are of a non-binding character. At the same time,

⁵¹ CAT/C/3/Rev.5, 21 February 2011, Rule 15 (1).

⁵² *Ibid.*, Rule 15 (2).

⁵³ See Keller & Ulfstein, 2012, p. 8; Bodansky, 1999, p. 61.

⁵⁴ See Keller & Ulfstein, 2012, p. 4; Morijn, 2011, p. 311; see also Scheinin, 2009, pp. 23-37.

when ratifying the treaties, they accept the obligations to implement their provisions, which are interpreted by the treaty bodies. Significantly, the International Court of Justice has recently ascribed great weight to the interpretations given by the HRC in its decision,⁵⁵ and it is hard to simply neglect this authoritative opinion. Meanwhile, when ratifying the treaties, States accept the obligations to implement their provisions which may be interpreted by the treaty bodies. Notwithstanding these nuances, it seems that the status of treaty bodies under international law appears to be the one that perfectly fits into their main goal of providing authoritative guidance to States and other actors on how to ensure protection of human rights under the given treaty at national level. In this situation, the States parties may better implement their obligations under the treaties, if they treat the work of the treaty bodies in a more positive way and respect their authority to perform the mandate given to them by the treaties. Bearing in mind the non-binding character of their output, the treaty bodies may increase the level of credibility given to them by the stakeholders through enhancing the quality of the monitoring process, improving its decision-making and ensuring the clarity of their recommendations.⁵⁶ These aspects should be taken into consideration when analysing the challenges confronting the treaty body system and developing suggestions to strengthen its effectiveness.

3. FACTS AND FIGURES

The basic fact that determines the current state of the system today is its unprecedented growth. Through the past decade an immense step forward has been made by States in the protection of human rights by joining “the wide array of UN human rights treaties.”⁵⁷

Comparing to 2004 the human rights treaty body system has doubled in size with the establishment of four treaty bodies (CMW, CPRD, SPT and CED) and three protocols to the CPRD, ICESCR and CRC providing for individual complaints procedures of the respective treaty bodies.⁵⁸ When the Optional Protocol to the CRC on

⁵⁵ ICJ, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, I.C.J. Reports, 2010, p. 664.

⁵⁶ Nollkaemper & Van Alebeek, 2011, p. 81

⁵⁷ Alston, 1994, p. 388.

⁵⁸ UN Doc A/66/860, 26 June 2012, p. 17.

the communications procedure of 2011⁵⁹ and Art. 77 to the ICRMW enter into force, all the treaty bodies will be able to receive and consider individual communications. This significant step may be followed by the adoption of new international human rights instruments.

The number of ratifications of all core international human rights treaties has significantly grown in the past decade. By 2000 six core international human rights treaties had received 927 ratifications. In 2012 this number has increased by over 50% to 1,586 ratifications (including ratifications under two Optional protocols to CRC and OPCAT).⁶⁰ Interestingly, the High Commissioner in her report emphasizes that by 2020 the universal ratification would have reached 2,123 ratifications (nine core international human rights treaties and three optional protocols).⁶¹

The meeting time of the treaty bodies has also expanded. Comparing to 51 weeks in 2000 the committees meet for 74 weeks in 2012. Furthermore, the treaty bodies make requests to the GA in order to increase the duration of their sessions.⁶²

The number of treaty body experts has also significantly increased. At present moment there are in total 172 experts involved in the work of the treaty bodies, in comparison to 97 experts in 2000.

The human rights treaty body system requires substantial resources to support its expanding activities. The total estimated cost of the treaty body system in 2012 amounted to \$ 49,16 million.⁶³ The largest part of the amount (\$ 29,72 million) was taken by conference services consisting of meetings support and documentation. The expenses on staff support (OHCHR) amounted to \$ 12,92 million. The travelling of experts to the sessions of their committees and the cost of their accommodation amounted to \$ 6,34 million. The OHCHR deals with the staff and travel and DSA costs.

⁵⁹ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, 10 December 2008 (entered into force on 5 May 2013), C.N.869.2009.TREATIES-34.

⁶⁰ If we count all nine core international human rights treaties and their optional protocols, the number of ratifications is 1,953 (as of 8 May 2012).

⁶¹ UN Doc A/66/860, 26 June 2012, p. 17.

⁶² Since 2009 the GA has addressed requests from the committees on additional meeting time on a temporary or permanent basis.

⁶³ See Background note prepared by the OHCHR, the DCM and the UNIS, "Comprehensive cost review of the human rights treaty body system," April 2013, p. 4 at <http://www.ohchr.org/Documents/HRBodies/TB/HRTD/ComprehensiveCostReview.pdf> (consulted on 5 July 2013) (hereinafter Comprehensive cost review).

The support of the OHCHR is drawn not only from the UN regular budget but also from voluntary contributions.⁶⁴

⁶⁴ In 2010-2011 the voluntary contributions amounted to \$ 9, 6 million with the total cost of the system equal to \$ 39, 3 million.

CHAPTER II. CHALLENGES FACING THE HUMAN RIGHTS TREATY BODY SYSTEM

The human rights treaty body system is experiencing positive developments today. The unprecedented growth of the system constitutes its greatest achievement and demonstrates that the treaty bodies have an immense potential. However, despite these positive aspects, the system is facing a number of difficulties that impede its effective functioning. The human rights treaty body system has become a victim of its own success as its growth has adversely affected the work of treaty bodies.

For the deeper understanding of the challenges confronting the activity of the treaty bodies and in order to stress their systemic character, it seems appropriate to determine the categories of challenges and identify the problems that stem from them. The expansion of the system, has led to the increase in the workload of all treaty bodies and significantly weakened the capacity of the committees. Therefore, the first challenge lies in the lack of capacity of treaty bodies. This challenge, in turn, has caused a problem of backlogs in the consideration of States parties' reports and individual complaints. The issue of resource constraints is closely related to the lack of capacity of the treaty bodies. The volume of the treaty body documentation has also increased greatly which affects the capacity of the treaty bodies to perform their functions effectively.

The other challenge of the treaty body system lies in the lack of capacity of States, which has become a result of the unprecedented growth of the system, since the rise in the ratifications under the treaties and thus the increase in the reporting obligations of States has negatively affected their capacity to implement these obligations.

The question of coherence between the treaty bodies also merits a consideration when talking about the challenges confronting the system. The inconsistency among the treaty bodies is closely related to the increase of the treaty body system and seriously affects the effectiveness of their activities.

While the challenges revealed are strongly connected to the fact of significant expansion of the human rights treaty body system, it is necessary to identify the

challenges that do not explicitly flow from this phenomenon but have serious implications on the effective functioning of the system.

The independence and expertise of the members of the treaty bodies is “central to the quality and sound functioning of the treaty body system.”⁶⁵ However, the quality of the treaty body membership has become a subject of serious concerns today. Considering the importance of the independence and expertise, it seems clear this issue constitutes a challenge to the effectiveness of the whole system.

Finally, such issues as the level of awareness and visibility of the treaty body system should be given due account as the lack of awareness and visibility seriously undermines the positive effects of their work.

1. CAPACITY OF THE TREATY BODIES

1.1. THE BACKLOGS IN THE CONSIDERATION OF STATES PARTIES’ REPORTS AND INDIVIDUAL COMMUNICATIONS

The first problem confronting the treaty bodies is the significant backlog in the consideration of the reports and the individual communications. The backlogs take a form of delay between the date of the submission of the report or communication and the date of its examination.

It was estimated that “the average time lag between submission of a State report to the CRPD and its consideration is currently between six to seven years, three to four years for the CESCR and the CRC, while the average time-lag for other treaty bodies is two to three years.”⁶⁶ As per December 2012, the treaty bodies were facing backlogs amounting to cumulative 307 State party reports⁶⁷ due under various treaties.

For those treaty bodies empowered to consider individual communications the increased number of complaints⁶⁸ has led to a huge time lag in this relation (from one to three years). This situation adversely affects the protection of the rights of petitioners

⁶⁵ Informal Technical Consultation with States parties on treaty body strengthening, Sion, Switzerland, May 2011, p. 17-18 at http://www2.ohchr.org/english/bodies/HRTD/docs/Sion_report_final.pdf (consulted on 9 June 2013) (hereinafter Sion Statement).

⁶⁶ Egan, 2013, p. 5.

⁶⁷ Comprehensive cost review, p. 23.

⁶⁸ As was estimated, 214 petitions were pending consideration in 2000, 480 – in 2011, 488 in 2012 (as of December 2012). See A/66/860, 26 June 2012, p. 19.

since they are confronted with a long wait before their case will be decided by the respective committee.

It needs to be noted that these backlogs are taking place at a time of high-level of non-compliance by the States that will be discussed after. Thus, if all the States parties start to report on time the system may be put under the risk of collapse. In this situation, it has to be stated with a great regret that “the system, established to oversee the compliance, depends for its continued functioning on a high level of State default.”⁶⁹

1.2. RESOURCE CONSTRAINTS

The lack of capacity to monitor the compliance resulting in the huge backlogs in processing reports and communications reflects that “resources for the system lag behind the expansion and increasing workload.”⁷⁰ The increasing requests of the committees’ for the additional meeting time clearly show that they lack sufficient time for the consideration of reports and communications and other matters of their work.

There has been a significant growth in the resources to cover conference services, the travel of experts and the staff support in 2012, comparing to 2010-2011. Meanwhile, the High Commissioner stressed that considering the growth in the number of experts, the actual costs of the members’ travelling and accommodation “have outpaced this increase in the approved budget leading to revised appropriations.”⁷¹

Furthermore, there is a significant gap (30 %) between the number of professionals needed and the number in place who support the sessions of treaty bodies. The High Commissioner mentions that the reason for this lies in the fact that there is not enough adequate resources received from voluntary contributions.⁷²

There is a prevailing view that “States do not fully take into account the actual cost of the system considering the dynamic increase in the number of States parties and procedures under new Optional protocols to the treaties and that the system is becoming more and more under-resourced, therefore.”⁷³

1.3. THE VOLUME OF TREATY BODY DOCUMENTATION

⁶⁹ Alston & Crawford, 2000, p. 6.

⁷⁰ A/66/860, 26 June 2012, p. 26.

⁷¹ Ibid.

⁷² Ibid., p. 27.

⁷³ Interview with Mr. Paulo David, Chief of Capacity Building and Harmonisation Section, Human Rights Treaties Division, OHCHR, 15 May 2013.

The expansion of the system has had significant financial implications in terms of documentation. The volume of documentation has tripled over the last decade.⁷⁴ The expenses for the translation of treaty body documentation constitute 87 % of the documentation cost. The documentation includes mostly the periodic reports submitted by States.

2. CAPACITY OF STATES

2.1. NON-COMPLIANCE WITH REPORTING OBLIGATIONS

While the number of ratifications of the treaties represents a 59 % growth in treaty ratification over the last decade, the level of reporting has not raised. The slight increase in the number of reports received by the treaty bodies reveals a relative decrease in the reporting compliance. Thus, in 2000 there were 102 reports submitted (with 927 States parties), in 2008 only 117 reports received while the number of ratifications was 1, 325 and in 2011 there were 136 reports submitted (1,508 States parties).⁷⁵ The States that are the parties to multiple treaties are confronted with a challenge of the increase in their implementation and reporting obligations.

The average reporting periodicity under nine core international human rights treaties is estimated to be between four and five years. If a State becomes a party to all core international treaties and two optional protocols establishing reporting procedure, it is obliged to submit approximately 20 reports in a period of 10 years, which means two reports per year and two constructive dialogues with treaty bodies per year.⁷⁶

Taking into account the flexibility established by the committees with regard to the submission of reports, only 16 % of the reports due in 2010 and 2011 were received by the treaty bodies in conformity with the due dates for the submission of the reports. When counted with a one-year grace period after the due date, “still only one third of reports were submitted on time.”⁷⁷

The ad-hoc nature of the schedule for the consideration of reports based on the factual submission of reports by States is a subject of a great critique since it “generates

⁷⁴ A/66/860, 26 June 2012, p. 24.

⁷⁵ Ibid.

⁷⁶ Ibid., p. 21.

⁷⁷ Ibid..

differential treatment among States.”⁷⁸ States that comply with their reporting obligations on time become a subject of a more frequent review by the relevant treaty body, whereas other countries fall under the lower level of scrutiny.

The major reason of the non-compliance of States with their reporting obligations is the lack of capacity as the preparation of the report requires substantial resources. The question of resources becomes one of the biggest concerns when States have multiple reporting obligations in various spheres of work of the UN (Universal Periodic Review, environment, disarmament) and at the regional level. This argument becomes particularly valid for “Least Developed Countries, Landlocked Developing Countries, Small Island Developing States and States affected by natural disasters or armed conflicts.”⁷⁹

States generally establish mechanisms for preparing their reports on an ad-hoc basis. This approach hinders the development of institutional memory among the drafters of the reports. Furthermore, the capacity gaps become more exacerbated due to the huge time lag between the submission of the report and its consideration.

The OHCHR provides support to the Governments for the purpose of strengthening capacity building in the area of treaty reporting and in some cases individual communications procedures. Interestingly, on one or two occasions, some States parties have received technical cooperation to assist with reporting but they have not yet produced a report.⁸⁰ This leads to the question of the willingness of States to cooperate with the treaty bodies.

Despite the lack of capacity to submit a timely report, in some cases the failure to submit a report may denote “a lack of political will on the part of the State to fulfil its reporting obligations.”⁸¹ This issue was identified by the former High Commissioner Louise Arbur who stressed that while States join the human rights treaty body system on a formal level, they superficially engage with it due to insufficient capacity or lack of political will.⁸²

⁷⁸ Ibid., p. 22.

⁷⁹ Ibid., p. 25.

⁸⁰ Interview with Mr. Simon Walker, Chief of Civil, Political, Economic, Social and Cultural Rights Section, Human Rights Treaties Division, OHCHR, 6 May 2013.

⁸¹ Dublin II Outcome Document, para. 63.

⁸² See HRI/MC/2006/2, 14 March 2006, paras. 16-26.

The level of the submission of initial reports by the States parties reveals that under some treaties (ICESCR, CAT and the ICCPR) it is equal to 80 %. Therefore, 20 % of States did not submit their initial reports. At the same time CRC and CEDAW (the most widely ratified treaties) “have succeeded in receiving almost all initial reports due from their 193 and 187 States parties, respectively.”⁸³

Therefore, it seems that the majority of States are willing to comply with their reporting obligations with a number of States having insufficient capacity to deal with their numerous regional and international reporting duties.⁸⁴ However, certain States still do not cooperate in a sufficient way with human rights treaty bodies.

3. LACK OF COHERENCE BETWEEN THE TREATY BODIES

The High Commissioner considers the problem of lack of coherence in the work of treaty bodies as one of the two major challenges confronting the system (the first was related to resources). She stated that “in fact, the impressive growth of the treaty body system, although very positive in absolute terms, has also adversely affected the coherence of the system and its ability to coordinate work. The treaty body end product, that is its sets of recommendations, at times can also appear unmanageable for States and other stakeholders.”⁸⁵

While the core international human rights treaties are specific and each has its own scope, these instruments “share similar provisions and cover identical issues from different angles, such as non-discrimination; domestic legislation and domestic application of the treaties, policies, institutions and the national machinery for human rights; and gender equality, to name a few.”⁸⁶

Meanwhile historical and political developments that motivate the adoption of international human rights treaty may beyond doubt influence the interpretation of certain rights given in the related treaty. Therefore, there might be “discrepancies,

⁸³ A/66/860, 26 June 2012, p. 22.

⁸⁴ Interview with Mr. Paulo David, Chief of Capacity Building and Harmonisation Section, Human Rights Treaties Division, OHCHR, 15 May 2013.

⁸⁵ Statement by Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights, Dublin Statement on the process of strengthening the United Nations Human Rights Treaty Body System, Dublin, 19 November 2009 <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9642&LangID=E> (consulted on 9 June 2013).

⁸⁶ A/66/860, 26 June 2012, p. 25.

explicit or implicit, between related provisions in different instruments adopted at different times.”⁸⁷

The opinions expressed and the interpretations given to rights or practices vary from one committee to another and at times even contradict each other. The main reason of this divergence may arise from “the unavoidable tendency” of treaty bodies “to encompass in their consideration of States’ reports all explicit or implicit issues that may arise in the implementation of the relevant treaty.”⁸⁸

Furthermore, treaty bodies often echo the recommendations given by other committees which results in an overlap and duplication of requests. Some commentators express a critique in this relation, others consider “the cross-cutting nature of the committees’ work”⁸⁹ a great value since this may bring more attention of States to the human rights concerns raised by the committees.

It seems clear that the discrepancies and duplication in the interpretation of similar provisions by the treaty bodies may have repercussions on the reporting obligations of States parties, especially when they engage in discussions with different treaty bodies with regard to similar issues. Thus, the duplication of reporting obligations of States may arise as well as the confusion on the part of States with regard to the measures that should be introduced to address the divergent recommendations that were pointed out by various committees.

While there are certain tendencies of convergence between treaty bodies in relation to their procedures and harmonization of their working methods is on the committees’ agenda, there are some aspects of their work that demonstrate divergence. Divergences in the reporting procedures (the organisation of the constructive dialogues, the preparation of the lists of issues or the LOIPR etc.) as well as in follow-up procedures may lead to the fact that States may “become too preoccupied with questions of process, and not focus their attention sufficiently on issues of substance.”⁹⁰

Therefore, there are two aspects that should be emphasised within this challenge. The first one is the divergence in the interpretation given by the committees of certain

⁸⁷ Tistounet, 2000, p. 385.

⁸⁸ Ibid., p. 394.

⁸⁹ McCosker, 2011, p. 510.

⁹⁰ Ibid., p. 512.

related issues. The second aspect represents some divergence in the working methods of the committees. This situation makes it challenging for States and the rights-holders to benefit from the system.⁹¹

4. INDEPENDENCE AND EXPERTISE OF THE TREATY BODIES

While the human rights treaties provide certain guidance on the attributes for treaty body membership and guarantee the independence of the members, a variety of concerns have been raised with regard to the composition of the committees. The High Commissioner Louise Arbour stated that the composition of treaty bodies is “uneven in terms of expertise and independence as well as of geographical distribution, representation of the principal legal systems and gender balance.”⁹² These observations are guided by the current statistics indicating that the most under-represented regions in the committees are the African region and the Asia and Pacific region (considering proportionate geographic representation), whereas European region, the Middle East and North Africa region are “almost as overrepresented.”⁹³ The majority of the members are men (women are almost twice less represented).⁹⁴

When considering the issue of independence, the two major aspects need to be addressed - the election process and the exercise of their respective mandate by the treaty body experts. During the consultation process on the strengthening of the human rights treaty body system it was mentioned that “the means by which candidates for election to treaty bodies are selected at the national level and elected by States parties could be improved greatly.”⁹⁵

Concerning the exercise of the mandate, it should be stressed that the concern on the independence of the expert may arise in certain situations signaling that the member’s independence might be put under the question. These situations may indicate

⁹¹ Dublin Statement on the Process of Strengthening the United Nations Human Rights Treaty Body System: Response by non-governmental organizations, November 2010, para. 1 at <http://www2.ohchr.org/english/bodies/HRTD/docs/FinalDublinStatResponseNGOs.pdf> (consulted on 9 June 2013) (hereinafter NGO Response to Dublin Statement).

⁹² HRI/MC/2006/2, 14 March 2006, para. 22.

⁹³ Truscan, 2012, p. 28.

⁹⁴ A/66/860, 26 June 2012, p. 76.

⁹⁵ O’Flaherty, 2010, p. 326; The Poznan Statement on the Reforms of the UN Human Rights Treaty Body System, September 2010, para. 19 at <http://www2.ohchr.org/english/bodies/HRTD/docs/PoznanStatement.pdf> (consulted on 9 June 2013) (hereinafter Poznan Statement).

the conflict of interest. The following circumstances may define the conflict of interest: 1) when the treaty body member has the nationality of a State under review; 2) the member is employed by the State party concerned; 3) a personal interest of the concerned member in the issue under the consideration and any other conflict of interest.⁹⁶ The approach shared by the most committees to the potential conflicts of interest is that the member under the suspicion of conflict of interest is excluded from the examination of relevant periodic reports and all the activities related to it as well as the consideration of communications.⁹⁷ The members of the treaty bodies are accountable only to their committee and to “their own conscience.”⁹⁸

It should be noted that the independence of the member of the treaty body may be questioned more likely when the member is holding a government position.⁹⁹ At present, a sufficient number of experts of treaty bodies are combining their appointment in treaty bodies with serving their Governments. Meanwhile, “the personality factor is equally important.”¹⁰⁰ When implementing their mandate the members of the committee may show no sign indicating that their position has been influenced by a third party.

5. LACK OF AWARENESS AND VISIBILITY OF THE TREATY BODY SYSTEM

The low levels of public awareness of the treaty body system “outside academic circles, Government departments and officials directly interacting with the system, and specialized lawyers and NGOs”¹⁰¹ have been indicated during the previous efforts to strengthen the treaty body system. Significantly, HRC was closely examining this issue and its members agreed that “the work of the Committee in promoting respect for human rights is little known outside a small circle of academic and government lawyers, who specialize in human rights law, and the international human rights NGO community. The general public, and especially those in countries most affected by violations of human rights, remain largely in ignorance of the Covenant and of the work of the Committee. This ignorance extends even to the judiciary in a number of

⁹⁶ Truscan, 2012, p. 13.

⁹⁷ See *Ibid.*, pp. 13-15.

⁹⁸ *Ibid.*, p. 13.

⁹⁹ Sion Statement.

¹⁰⁰ Obsahl, 2002, p. 376.

¹⁰¹ HRI/MC/2006/2, 14 March 2006, para. 21.

countries.”¹⁰² While all the materials related to the activity of treaty bodies are available on internet, many people, including people with disabilities, are still denied from access to internet.¹⁰³

The low level of awareness of the work of treaty bodies leads to the lack of the visibility of the treaty bodies. The visibility of the system is linked to the overall legitimacy of treaty bodies, since the support from the general public strengthens their credibility. Thus, there is a need in the wide dissemination of information on the activities of treaty bodies and their output at the national level.

The visibility of the system may also be dependent on the perception of its effectiveness on the side of people and stakeholders. The human rights treaty body system is not always seen as “an accessible and effective mechanism to bring about change.”¹⁰⁴ This situation is again associated with the fact that the rights-holders and the civil society are “unfamiliar with the system’s complex procedures or are unaware of its potential.”¹⁰⁵ The other factor that may lead to the doubts on the effectiveness of the system is that the system receives less political and media attention in comparison to other UN human rights monitoring mechanisms such as the UPR.

¹⁰² CCPR/C/94/CRP.2/Rev.1, 23 October 2008, para. 5.

¹⁰³ Ibid., para. 8.

¹⁰⁴ HRI/MC/2006/2, 14 March 2006, para. 21.

¹⁰⁵ Ibid.

CHAPTER III. MEASURES ON STRENGTHENING OF THE EFFECTIVE FUNCTIONING OF THE HUMAN RIGHTS TREATY BODY SYSTEM

1. THE CURRENT PROCESS ON STRENGTHENING OF THE HUMAN RIGHTS TREATY BODY SYSTEM

1.1. PREVIOUS INITIATIVES TO IMPROVE THE WORK OF THE TREATY BODIES

The difficulties facing the human rights treaty body system have been evident for a long time. A significant contribution in this regard was made by an independent Expert Philip Alston appointed by the UN Secretary-General. Mr. Alston served in this position from 1989 to 1996 and produced his Final Report on enhancing the long-term effectiveness of the UN human rights treaty system in 1997.¹⁰⁶ Some further studies commissioned by the UN were conducted by A.F. Bayefsky,¹⁰⁷ Heyns and Viljoen,¹⁰⁸ who mainly focused on “factors and barriers determining treaty bodies’ role in the effective domestic implementation of international human rights.”¹⁰⁹

In the early 2000s the UN Secretary-General Kofi Annan launched the initiative on the reform of the UN. In his report on the strengthening of the United Nations, he emphasized the need for “greater cross-committee coordination, involving standardisation of reporting requirements and procedures, with a view to an eventual transition to a single state report.”¹¹⁰ However, this idea was rejected by the majority of members of the treaty bodies, States, NGOs and other stakeholders.¹¹¹

In 2005 the former High Commissioner for Human Rights, Louise Arbour, indicated that she would elaborate proposals for measures to reform the treaty body system in response to an invitation from the Secretary-General.¹¹² She developed a

¹⁰⁶ E/CN.4/1997/74, 27 March 1996.

¹⁰⁷ Bayefsky, 2001.

¹⁰⁸ Heyns & Viljoen, 2001.

¹⁰⁹ Morijn, 2011, p. 306.

¹¹⁰ A/57/387, 9 September 2002.

¹¹¹ A/58/123, 8 July 2003.

¹¹² See UN High Commissioner for Human Rights, The OHCHR Plan of Action: Protection and Empowerment, May 2005 at <http://www2.ohchr.org/english/planaction.pdf> (consulted on 1 July 2013); and UN Doc A/59/2005, 21 March 2005.

proposal for a unified standing treaty body.¹¹³ However, the idea of a unified treaty body was not accepted.

The proposal for a world human rights court also deserves attention in frames of this discussion. This idea stems from the proposal of the CERD for the unification of all individual communication procedures into one treaty body “with a view towards concentrating expertise, encouraging jurisprudential coherence and facilitating access.”¹¹⁴ This suggestion was elaborated in the works of Manfred Nowak, where he stated that “gradually the World Court would take over from the treaty bodies the jurisdiction to decide on individual and inter-state complaints.”¹¹⁵

Therefore, the idea of strengthening the treaty body system has a long history marked by a number of ambitious proposals which have formed the background for the current initiative to enhance the system. It is clear that the ideas emerging during the current strengthening process “should learn from the experience of previous treaty body reform efforts.”¹¹⁶

1.2. HIGH COMMISSIONER’S CONSULTATIONS ON STRENGTHENING THE HUMAN RIGHTS TREATY BODY SYSTEM

In light of the growing pressure put on the treaty body system by systemic challenges, identified earlier, the UN High Commissioner Navi Pillay in September 2009 decided to launch the initiative to strengthen the human rights treaty body system. In her speeches to the Human Rights Council (HRC)¹¹⁷ and the GA¹¹⁸ the High Commissioner “called on States parties as well as on other stakeholders to initiate a process of reflection on how to streamline and strengthen” the treaty bodies in order to

¹¹³ HRI/MC/2006/2, 14 March 2006.

¹¹⁴ O’Flaherty, 2010, p. 327.

¹¹⁵ Nowak, 2007, p. 251.

¹¹⁶ Dublin Statement, para. 13.

¹¹⁷ Address by Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights on the Introduction of the Annual Report, Geneva, 5 March 2009 at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9333&LangID=E> (consulted on 10 June 2013).

¹¹⁸ Statement by Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights to the General Assembly Third Committee, New York, 21 October 2009 at <http://www.unhchr.ch/hurricane/hurricane.nsf/0/7A1B6AD3FE539289C125765D00408E74?opendocument> (consulted on 10 June 2013).

achieve better coordination among them and “in their interaction with special procedures and the universal periodic review.”¹¹⁹

Notably, when initiating this process, the High Commissioner was acting in accordance with the GA Resolution 48/141, that establishes the mandate of the UN High Commissioner.¹²⁰ The Resolution provides that one of the High Commissioner’s responsibilities is “to rationalize, adapt, strengthen and streamline the United Nations machinery in the field of human rights with a view to improving its efficiency and effectiveness.”¹²¹

Acting in response to the call of the High Commissioner, the OHCHR has encouraged and facilitated a dialogue among various stakeholders to develop ideas for strengthening the treaty body system. The consultation process held from 2009 to 2012 included: 1) formal meetings (Inter-Committee meetings and Meetings of Chairpersons); 2) consultations within and among treaty bodies (the consultations in Avenières and Bossey for different committees during their sessions in Geneva); 3) informal meetings organized around the world among States-parties,¹²² treaty body members,¹²³ national human rights institutions,¹²⁴ civil society organizations,¹²⁵ academics,¹²⁶ UN entities and specialized agencies¹²⁷ and multi-stakeholder consultations.¹²⁸

¹¹⁹ Sion Statement, p. 2.

¹²⁰ A/RES/48/141, 20 December 1993.

¹²¹ Ibid., para. 4 (j).

¹²² Sion Statement; Report of the Second Consultation with States Parties, Geneva, February 2012 (hereinafter Geneva Consultation with States parties); Report of the Third Consultation with States Parties, New York, April 2012 (hereinafter New York Consultation with States parties) each available at <http://www.ohchr.org/EN/HRBodies/HRTD/Pages/Documents.aspx> (consulted on 11 June 2013).

¹²³ Dublin Statement; Poznan Statement; and Report of the Expert Meeting on Petitions, Geneva, October 2011 each available at <http://www.ohchr.org/EN/HRBodies/HRTD/Pages/Documents.aspx> (consulted on 11 June 2013) (hereinafter Expert Meeting on Petitions).

¹²⁴ Marrakech Statement.

¹²⁵ NGO Response to Dublin Statement; Seoul Statement; Pretoria Statement on the Strengthening and Reform of the UN Human Rights Treaty Body System, Pretoria, June 2011 (hereinafter Pretoria Statement); NGO Statement: Strengthening the Treaty Body Individual Communications Procedure each available at <http://www.ohchr.org/EN/HRBodies/HRTD/Pages/Documents.aspx> (consulted on 11 June 2013).

¹²⁶ Lucerne Consultation.

¹²⁷ Consultation on Treaty Body Strengthening with UN Entities and Specialized Agencies, New York, November 2011 available at <http://www.ohchr.org/EN/HRBodies/HRTD/Pages/Documents.aspx> (consulted on 11 June 2013) (hereinafter Consultation with UN entities).

¹²⁸ Report of the Seminar on Implementation of UN Treaty Body Concluding Observations: The Role of National and Regional Mechanisms in Europe, Bristol, September 2011 (hereinafter Bristol seminar);

It seems necessary to refer further to the purposes and principles of the described process.

The primary objective of the launched process was “to take stock of the challenges” and enhance protection of human rights at country level, namely strengthen “the capacity of rights-holders to enjoy their human rights and support States to carry out their obligations to implement fully these rights.”¹²⁹ The other goals, such as the strengthened efficiency of treaty bodies, have a subsidiary character and should serve this purpose.

One of the major principles of the strengthening process initiated by the High Commissioner was its consultative character as it was aiming at generating the ideas of different stakeholders. Some commentators consider the consultative approach “a novel feature of the ‘strengthening process’ which then ensued and which distinguishes it from previous reform initiatives.”¹³⁰ Furthermore, the process should respect the human rights treaties (do not bring changes to the existing treaties) and observe the principle of independence of the treaty bodies. In addition, the strengthening initiative had to respect “the universality, indivisibility and the equal significance of all human rights.”¹³¹ This means that the process should not by any means undermine the specific character of protection provided to various groups of rights-holders. In this relation it is necessary to refer to the principle of respecting the autonomy and the specificity of each treaty body.¹³²

Taking account of the outcome of the consultation process, the High Commissioner issued a report in June 2012 representing a compilation of proposals on measures to strengthen the treaty body system.¹³³ The objective of this compilation was “to identify synergies, linkages and areas for mutual reinforcements, and potential for future common ground that began to emerge through the consultation process.”¹³⁴

Dublin II Outcome Document; Report of the Maastricht Seminar on the UPR and treaty bodies: Constructive Cooperation or Deepening Divisions?, Maastricht, November 2011 each available at <http://www.ohchr.org/EN/HRBodies/HRTD/Pages/Documents.aspx> (consulted on 11 June 2013).

¹²⁹ Ibid.

¹³⁰ Egan, 2013, p. 5.

¹³¹ Ibid., para. 12.

¹³² Poznan Statement, para. 17.

¹³³ A/66/860, 26 June 2012.

¹³⁴ High Commissioner’s report, p. 10.

During the annual Meeting of Chairpersons of the treaty bodies in 2012 the Chairpersons have expressed their support for the consultation process held by the High Commissioner and “affirmed their commitment to promote the recommendations contained in the High Commissioner’s report.”¹³⁵ They also “have recommended that each committee should carefully review those recommendations addressed to the treaty bodies with a view to potentially implementing them in coordination with other treaty bodies.”¹³⁶

1.3. THE INTERGOVERNMENTAL PROCESS ON STRENGTHENING AND ENHANCING THE EFFECTIVE FUNCTIONING OF THE HUMAN RIGHTS TREATY BODY SYSTEM

In February 2012 the GA adopted Resolution 66/254¹³⁷ that addressed the President of the GA with a request “to launch, within the framework of the Assembly, an open-ended intergovernmental process, no earlier than in April 2012” and to appoint two co-facilitators to assist him. Following this decision, the President of the GA launched the new phase of the process on strengthening the human rights treaty body system and appointed the Ambassadors of Iceland and Indonesia as Co-facilitators.

It seems necessary to discuss the nature of this process. It is clear that the leading role in the launched process is given to States. Since the intergovernmental process was initiated within the framework of the GA, it is necessary to scrutinise the competence of the GA to discuss the issues related to the functioning of the treaty bodies. Under art. 10 of the UN Charter, the GA “may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter and may make recommendations to the Members of the United Nations.” Therefore, the GA may request its subsidiary bodies, particularly OHCHR, and UN entities to undertake certain measures within their mandate in order to strengthen the functioning of the treaty body system. Secondly, the GA may recommend the States parties to adopt concrete measures to improve the efficiency of the treaty bodies within their respective role in the system. Moreover, the GA is empowered to decide on the funding of the treaty body system.

¹³⁵ A/67/222, 2 August 2012, para. 12.

¹³⁶ Ibid.

¹³⁷ A/RES/66/254, 23 February 2012.

At the same time, the GA may “initiate studies and make recommendations for the purpose of assisting in the realization of human rights.”¹³⁸ This entails that the GA is competent to make recommendations to the treaty bodies as well. During the interview with the member of the CESCR it was mentioned that the GA is the only UN body that may guide the treaty bodies in the questions related to their functioning and even their mandate. However, the treaty bodies are independent to decide on the matters of their work. Therefore, the treaty bodies may consider the recommendations put forward by the GA in the course of the intergovernmental process with a view to their possible implementation, but the final decision regarding the methods of work is only in the hands of the treaty bodies.

The intergovernmental process was set up with a view “to conduct open, transparent and inclusive negotiations on how to strengthen and enhance the effective functioning of the human rights treaty body system.”¹³⁹ It is important that the process should take into account the relevant proposals on improving the effective functioning of the human rights treaty body system, including the measures contained in the reports of the Secretary-General¹⁴⁰ and the High Commissioner’s report.¹⁴¹ The inclusive character of the process means that it should “benefit from the inputs and expertise of the human rights treaty bodies, national human rights institutions and relevant non-governmental organizations.”¹⁴² Remarkably, the process should build upon efforts to improve the effectiveness of the working methods of the human rights treaty body system that were already undertaken by the treaty bodies.

Within their respective mandate the Co-facilitators held a number of consultations with various stakeholders, particularly, Member States, Chairpersons of the treaty bodies; the members of the treaty bodies, representatives of national human rights institutions and civil society as resource persons.¹⁴³

¹³⁸ Charter of the UN, 24 October 1945, 1 UNTS XVI, art. 13 (1).

¹³⁹ Ibid.

¹⁴⁰ See A/66/344, 7 September 2011 and UN Doc A/HRC/19/28, 14 December 2011.

¹⁴¹ The ideas generated in the report of the High Commissioner have formed the basis for the discussion in the consultations held in frames of the intergovernmental process.

¹⁴² A/RES/66/254, 23 February 2012, para. 6.

¹⁴³ See Report on the Inter-Governmental Process of the General Assembly on Strengthening and Enhancing the Effective Functioning of the Human Rights Treaty Body System, 11 September 2012 at

Following the request of the Co-facilitators, the GA decided to extend the intergovernmental process until its 67th session “to build upon the discussions held thus far with a view to identifying in the upcoming session of the Assembly concrete and sustainable measures needed to strengthen and enhance the effective functioning of the human rights treaty body system.”¹⁴⁴

After the extension of the intergovernmental process the Co-facilitators engaged with the stakeholders and held the following consultations: 1) thematic discussions and informal-informals in February 2013; 2) a set of informal-informals, thematic discussions and bilateral and regional consultations in April 2012; 3) informal-informal meetings in May 2013; 4) two-day consultations with CED, CMW and CRPD during their sessions and with 3 members from CEDAW and one from CAT as well as meetings with civil society organizations in Geneva in April 2013; 5) video-conferences with CAT, CESCR and CRC during their sessions in May 2013; 5) the meeting with the Chairpersons of all treaty bodies in New York during the holding of 25th session of the Meeting of Chairpersons of the treaty bodies in New York (20-24 May 2013).

Significantly, during the 25th session of the Meeting of Chairpersons the ten Chairpersons have adopted a set of recommendations that included five key principles addressed to Member States in finalizing the outcome of the intergovernmental process, in particular: 1) “the outcome should strengthen the human rights protection that the treaty body system offers; 2) “the independence of treaty body members is the source of the credibility and integrity of the system and the Addis Ababa Guidelines enshrine and operationalise these principles;”¹⁴⁵ 3) the outcome tackle the challenges of the treaty body system in a comprehensive and sustainable way; 4) “through additional resources, treaty bodies should be equipped with the proper material and human resources from the regular budget to adequately carry out their responsibilities under the respective treaties;” 5) “the work of the treaty bodies should be modernized by fully benefitting from the opportunities created by technological development, while at the same time

<http://www.ohchr.org/Documents/HRBodies/TB/HRTD/ReportCoFacilitatorsGA.pdf> (consulted on 11 June 2013) (hereinafter Report on the Inter-Governmental Process of the General Assembly).

¹⁴⁴ A/RES/66/295, 17 September 2012.

¹⁴⁵ During their 24th Meeting the chairpersons endorsed the Guidelines on the independence and impartiality of members of the human rights treaty bodies, UN Doc HRI/MC/2012, 25-29 June 2012 (hereinafter Addis Ababa guidelines).

making it universally accessible for persons with disabilities, and honor the principle of reasonable accommodation.”¹⁴⁶

It should be further mentioned that a comprehensive sustainable agreement on the issues being discussed during the consultations needs to be achieved between the States parties.¹⁴⁷ In any case, there is a hope that “some positive results can get out of the ongoing intergovernmental process.”¹⁴⁸ The negotiation process “facilitates the bringing of the attention of the General Assembly sitting in New York and the whole international community to the work of the treaty bodies.”¹⁴⁹

Therefore, the current initiative on the strengthening of the human rights treaty body system represents an ongoing process which is marked by two series of consultations launched by the High Commissioner and the GA. The key feature of the current process on the strengthening of the treaty body system is its inclusive nature which distinguishes it from the previous initiatives. Since each group of stakeholders has its own competences and responsibilities within the treaty body system, the recommendations on the effective functioning of the human rights treaty body system may begin to work through informed “decision making by the relevant stakeholders in their respective areas of responsibility.”¹⁵⁰ In this sense, the ongoing open-ended intergovernmental process initiated by the GA constitutes a platform for decision-making for the States Parties, since the GA is comprised of all Member States of the UN who are the States parties to the human rights treaties. What comes for the treaty bodies, it is to be underlined that they are currently paving their way towards improving their functioning, namely strengthening their working methods, following the initiative of the

¹⁴⁶ See Decisions and recommendations of the twenty-fifth Meeting of Chairpersons, May 2013 available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/SessionDetails1.aspx?SessionID=787&Lang=en (consulted on 11 June 2013).

¹⁴⁷ The Co-facilitators have elaborated the non-exhaustive lists of issues that are discussed in the course of the process and are trying to reveal what issues may receive general agreement on action, general agreement on no further action and what issues require further discussion-proposals from the co-facilitators. See Report on the Inter-Governmental Process of the General Assembly; and Co-facilitators, The way forward, Overview of issues, June 2013 available at <http://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx> (consulted on 11 June 2013) (hereinafter *The Way Forward, Overview of issues*).

¹⁴⁸ Interview with Mr. Paulo David, Chief of Capacity Building and Harmonisation Section, Human Rights Treaties Division, OHCHR, 15 May 2013.

¹⁴⁹ *Ibid.*

¹⁵⁰ A/66/860, 26 June 2012, p. 11.

Meeting of Chairpersons to review the recommendations put forward in the High Commissioner's report by each treaty body.

2. MEASURES ON STRENGTHENING THE EFFICIENCY OF THE HUMAN RIGHTS TREATY BODY SYSTEM

In this section there will be made an attempt to find the responses to the challenges facing the treaty body system. For this purpose a number of suggestions to enhance the efficiency of the system will be put forward. As discussed earlier, a great variety of ideas were developed during the consultation process with some of them generated in the High Commissioner's report and put on the agenda of the consultations held within the intergovernmental process. Taking due account of these ideas, a selected number of measures will be proposed in this work on the basis of their potential to address the challenges confronting the treaty body system and their feasibility in the current political environment. In order to fulfil this task, various documents elaborated during the High Commissioner's consultations, including her report, as well as the materials of the intergovernmental process will be analysed.

2.1. THE COMPREHENSIVE REPORTING CALENDAR

The idea of the Comprehensive reporting calendar¹⁵¹ envisages the organisation of the reporting deadlines into a single reporting calendar for all treaty bodies empowered to consider reports of the States parties, based on a five-year cycle. Within this period, the State that has ratified all the nine international human rights treaties will have to submit two reports per year and engage in two constructive dialogues. Thus, over a five-year period a State is supposed to submit all reports due under all the ratified treaties. The proposal is based on the one hundred compliance with reporting obligations since it considers the number of reports due and not the actual level of compliance as currently practiced by the committees.¹⁵²

The dates for the submission of the reports will be synchronized with the deadlines for the UPR reports.¹⁵³ Furthermore, the High Commissioner suggested to

¹⁵¹ Also referred to as "Master calendar."

¹⁵² See A/66/860, 26 June 2012, p. 37-38.

¹⁵³ The idea of introducing a reporting periodicity synchronized with the UPR reporting cycle was expressed by some countries during the consultations in Sion and New York. See Sion Statement, p. 8 and New York Consultation with States Parties, para. 43.

group the treaties on a thematic basis in the calendar. These combinations should be beneficial to States if they ensured “maximum commonality” between the two reports submitted due in one year.¹⁵⁴

The value of the idea for the Comprehensive reporting calendar is that it is based on treaty law and eliminates “the unequal treatment of States parties by operating on the basis of universal compliance with reporting obligations.”¹⁵⁵ The calendar’s adherence to the legal provisions and the equal treatment of each State party is said to offer “a global vision for the treaty bodies”¹⁵⁶ and to draw a clear picture of “how the treaty body system should look if all States reported.”¹⁵⁷

The other added value of the proposal consists in the fact that its fixed nature is capable to tackle the problem of large backlogs of reports and prevent the accumulation of significant time gaps in future. If the States parties are following the reporting periodicity, all the reports will be considered in time and there will be clearly no place for backlogs. Meanwhile, if the calendar is adopted, a solution for clearing up the existing backlogs will need to be found. The High Commissioner proposed that “reports already received and awaiting consideration would be subsumed within the Calendar to be examined according to the schedule set out in the Calendar.”¹⁵⁸

While the assumption of the one hundred periodicity by States may be considered as an advantage, it is clear that there may be situations of the non-submission of reports by the States parties. The calendar provides for the possibility to make a review in the absence of the report. In case “despite all efforts and reminders, a written report is not forthcoming, States parties may present a report orally during the constructive dialogue that will take place as planned in the calendar between the

¹⁵⁴ A/66/860, 26 June 2012, p. 38. It was suggested to group ICCPR and ICESCR (first year), CRC and the CRC Ops (second year), CAT and CED (third year), ICERD and CEDAW (fourth year) and ICRMW and CRPD (fifth year).

¹⁵⁵ *Ibid.*, p. 40.

¹⁵⁶ Interview with Mr. Paulo David, Chief of Capacity Building and Harmonisation Section, Human Rights Treaties Division, OHCHR, 15 May 2013.

¹⁵⁷ Interview with Mr. Simon Walker, Chief of Civil, Political, Economic, Social and Cultural Rights Section, Human Rights Treaties Division, OHCHR, 6 May 2013.

¹⁵⁸ Questions and answers on the Comprehensive Reporting Calendar, p. 12 in Agenda and Background Documentation on Thematic discussion and Informal Consultations, 19-20 February 2013, New York available at <http://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx> (consulted on 17 June 2013) (hereinafter Questions and answers on the Comprehensive reporting calendar).

committee and a delegation of the State party.”¹⁵⁹ Some States see that this solution contradicts the main goal of the reporting which is the establishment of constructive cooperation for the purpose of implementing the treaties in a most efficient way.¹⁶⁰ During the discussion with the official of the OHCHR there was raised an argument that the calendar puts more pressure on the States parties and may act in the form of punishment since States do not have a chance to re-establish the dialogue with the treaty body and to submit a report.

The new calendar provides for predictability and stability in reporting which in turn allows “for planning far in advance by all stakeholders at a reasonable pace of work.”¹⁶¹ The calendar would help the States parties to start the preparation of reports well in advance with predictable timelines. The civil society and national human rights institutions may also benefit from this since the calendar provides the time frames for the receipt of the information from the stakeholders.¹⁶²

Some States considered that the predictability of the calendar may be viewed “as a mean to assist States parties in complying with their reporting obligation.”¹⁶³ This means that the pace of reporting may be expected to lead to an accumulation of expertise which is hardly possible when the reports are prepared on an ad hoc basis. Furthermore, “over time, States parties might see the value in establishing a standing national reporting and coordination mechanism, if they have not already established one, as proposed by the High Commissioner.”¹⁶⁴

Meanwhile, some States expressed certain concerns about their capacity to adhere to the schedule and even claimed that the calendar does not take into account “the lack of capacity of a majority of States to submit two reports per year, as would be

¹⁵⁹ A/66/860, 26 June 2012, p. 39.

¹⁶⁰ Compilation of excerpts from the written submissions by States parties to the call of the UN High Commissioner to strengthen the treaty bodies, Consultation for States parties on treaty body strengthening, New York, 2 and 3 April 2012, p. 10 at <http://www2.ohchr.org/english/bodies/HRTD/docs/CompilationSPsubmissions.pdf> (consulted on 11 June 2013) (hereinafter *Compilation of Submissions by States parties*).

¹⁶¹ A/66/860, 26 June 2012, p. 40.

¹⁶² NGO Response to Dublin Statement, para. 8.

¹⁶³ Geneva Consultation with States parties, para. 48.

¹⁶⁴ Questions and answers on the Comprehensive Reporting Calendar, p. 8.

required.”¹⁶⁵ In this regard, the High Commissioner stated that the OHCHR can provide assistance to States upon request.¹⁶⁶ However, some States posed a question concerning “the level of funding available for capacity building activities undertaken by the office.”¹⁶⁷

The Comprehensive reporting calendar will eliminate the need for ad hoc requests from the treaty bodies to the GA for more meeting time.¹⁶⁸ Significantly, the meeting time of the treaty bodies to consider the reports and individual communications would increase from 73 weeks to 124 weeks with 108 weeks allocated for State party reports (for the review of 263 reports) and 16 weeks for individual communications (for the consideration of 160 individual communications).

Alongside the increase in the meeting time, the travel of experts and the cost of conference services as well as the need for more staff support will require significant financial support. The overall cost of the proposal amounts to \$ 52 million (in addition to the overall cost of the treaty body system).¹⁶⁹ However, there exists a possibility to reduce this figure by undertaking a number of cost reduction measures.¹⁷⁰ These measures may reduce the overall cost of the proposal “by as much as \$39.5 million from the additional \$52 million, resulting in an additional cost in the order of \$12.5 million.”¹⁷¹

The question of resources to support the proposal has become a point of significant contention in the consultation process. A number of States have raised concerns about “the large amount of resources required to service such a calendar.”¹⁷² This issue was also raised by the treaty bodies.¹⁷³

¹⁶⁵ See New York Consultation with States parties, para. 17 and Geneva Consultation with States parties, para. 18.

¹⁶⁶ A/66/860, 26 June 2012, p. 40.

¹⁶⁷ Geneva Consultation with States parties, para. 18.

¹⁶⁸ A/66/860, 26 June 2012, p. 41.

¹⁶⁹ *Ibid.*, p. 42.

¹⁷⁰ The measures will be discussed further.

¹⁷¹ Questions and answers on the Comprehensive Reporting Calendar, p. 10.

¹⁷² Co-facilitators, *The way forward, Draft elements*, June 2013, p. 4 available at <http://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx> (consulted on 11 June) (hereinafter *The way forward, Draft elements*); see also New York Consultation with States parties, para. 17.

¹⁷³ HRI/MC/2013/4, 17 May 2013, para. 5, 13 and 22; Statement of the CEDAW on the Report of the High Commissioner for Human Rights on the Strengthening of the United Nations Human Rights Treaty Bodies, Fifty-fourth session 11 February-1 March 2013, para. 7 at

The Co-facilitators of the intergovernmental process included the question of the Master calendar in the list of issues to be discussed during the consultation process. Interestingly, a number of States suggested an alternative to the calendar. In April 2013 the African Group, headed by Egypt, had proposed a “Nimble biennium meeting calendar”.¹⁷⁴ The suggested calendar provides for the biennial request for the resources by the treaty bodies through the OHCHR. The request is based on the 2-year programmes of work prepared by each committee (based on the need to clear the current backlog) and the total of current 74 weeks of meeting time is allocated between the committees depending on the needs of each treaty body. The slots that would become available through the non-submission of reports would be filled with backlog reports and communications.

Following the broad discussion of the idea of the Comprehensive reporting calendar, the Co-facilitators included the comprehensive reporting calendar to the category of “issues requiring further discussion-proposals forthcoming from the co-facilitators.”¹⁷⁵ Shortly after this, the Co-facilitators adopted a document containing their recommendations on the Master calendar where they suggested to adopt an alternative “fixed national calendar.” This option offers those States parties, who would like to have a fixed reporting periodicity, the opportunity to do so “while still maintaining the ability of the treaty bodies to review those State Parties that would not like to be a part of such a Calendar.”¹⁷⁶ In order to implement this idea “a ratification-based funding model,” that sufficiently supports the treaty body system, should be set up.

The reports, already submitted by the States parties who joined the calendar, would be subsumed in the schedule which would make a year of opting a “year zero” for the reporting obligations of these States. Such a measure would free the slots currently allocated to the reports of the countries opted for the calendar for the review of

http://www2.ohchr.org/english/bodies/cedaw/docs/statements/StatementOnTheReportOfHC_TBsS_As%20Adopted.pdf (consulted on 11 June 2013).

¹⁷⁴ See CESCR opens fiftieth session, 29 April 2013 at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13273&LangID=E> (consulted on 11 June 2013).

¹⁷⁵ See *The Way Forward, Overview of Issues*.

¹⁷⁶ *The Way Forward, Draft elements*, p. 4.

the reports of other countries. The States parties, not opting in, will have more incentives to report since the treaty bodies will be able to review the reports once they are submitted.

With regard to resourcing of the treaty body system the Co-facilitators expressed a view that there is a need to endorse a “nimble” system that would address the changes in the system – the fluctuations in reporting compliance, increase in the ratifications and possible elaboration of new treaties and protocols.¹⁷⁷ This could be implemented through a “single comprehensive biennium request.”¹⁷⁸ Each treaty body should make a request for meeting time on the basis of the number of ratifications and “the number of reports expected to be submitted by State Parties in the national calendar and the number of reports that should be reasonably expected by other State Parties, supported through technical assistance.”¹⁷⁹ The OHCHR “should, after consultation with the treaty bodies, present to the General Assembly a report on the current status of the treaty body system containing individual requests by treaty bodies.”¹⁸⁰

The Co-facilitators stated that this system may offer predictability with some time due to the increasing number of States joining the national calendar. In order to address possible increased reporting comparing to the expected level in the biennial request of the treaty bodies, the budget should include a “contingency fund”¹⁸¹ for the accommodation of additional resources. Moreover, the OHCHR should make a list of States, who submitted reports due and who are ready to prepare for the interactive dialogue at short notice (min. 3 months in advance) in case of the non-submission of the scheduled report.¹⁸²

It should be noted that a number of other options for the better allocation of meeting time and resources were put forward during the treaty body strengthening process. The Secretary General in his report to the GA suggested “an interim biennial calendar to tackle the current backlogs in reports pending consideration.”¹⁸³ While this

¹⁷⁷ Ibid, p. 6.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid., p. 7.

¹⁸⁰ Ibid., p. 6.

¹⁸¹ Ibid., p. 8.

¹⁸² Ibid.

¹⁸³ A/66/344, 7 September 2011, para. 23.

measure would “ease the pressures on the system today,” it “would allow a continuation of the unequal compliance by and treatment of States parties.”¹⁸⁴ Moreover, after some time the new backlogs will appear and the treaty bodies will require another injection of resources to tackle it.

Another proposal that deserves further attention is the calendar with an alternative reporting cycles (for example, 7 years), which is relaxed from the 5-year cycle. The cost of the 7-year cycle is amounting to additional \$ 21 million per year.¹⁸⁵

Therefore, the proposal for the Comprehensive reporting calendar offers an effective solution to the problem of lack of capacity of the treaty bodies, in particular the problem of significant backlogs in the consideration of States’ parties reports and individual communications. This calendar would be able to eliminate the unequal treatment of States parties and the need for ad hoc requests from the treaty bodies to the GA for more meeting time. The proposal provides for predictability and stability in reporting for the treaty bodies, the States parties and other stakeholders. However, while the proposal is deemed to help States to comply with their reporting obligations, it is not clear whether States would be able to submit their reports timely and send the delegations for the dialogue according to the schedule, considering the high level of non-submission of reports due by States today. Therefore, despite the value of the calendar lying in the possibility of planning far in advance with predictable timelines, certain capacity-building measures should be undertaken in order to make the calendar work properly.

The other key issue in the realization of the proposal is the question of resources to support the servicing of the calendar. In the existing situation the Calendar is more likely to be adopted under the condition that a series of cost-saving measures to reduce the cost of the proposal are undertaken.

If compared to the alternatives of the Master calendar, the proposal seems to be more effective since it offers a long-standing solution to a bigger number of problems (clears the backlog, eliminates the unequal treatment of States as well as synchronizes the reporting periodicity with the UPR cycle). Significantly, it was stated that the

¹⁸⁴ A/66/860, 26 June 2012, p. 43.

¹⁸⁵ Ibid., 26 June 2012, p. 44.

proposal for a Comprehensive reporting calendar was “positively received and endorsed in principle” by the Meeting of Chairpersons in New York.¹⁸⁶ However, the issue that might undermine the positive impact of the calendar is that it provides for the examination in the absence of the report. While this measure is an exception, the concerns about it are still being expressed. This may become a problem for States that lack resources to implement their reporting obligations on time but are willing to do so. While there is a hope that the measures to raise the capacity of States will contribute largely to this problem, it seems questionable whether the non-reporting may remain only an exception. If not, there is a risk that the constructive nature of the cooperation between the committees and the States parties may be at stake which would inevitably undermine the legitimacy of the whole system.

2.2. IMPROVED REPORTING PROCEDURE

The reporting procedure, the only one that is envisioned by all nine core international human rights treaties, is at heart of the human rights treaty body system. It continues “to be central to the achievement of the purposes of the treaties.”¹⁸⁷ The reporting process includes the following closely interrelated phases – “the preparation and submission of the report by the State, a face-to-face dialogue with the treaty body considering the report and a follow-up to implement recommendations adopted by the treaty bodies both inter-sessionally and through the periodicity of reports.”¹⁸⁸ This is a continuous process and “each cycle should build on the one that preceded it.”¹⁸⁹ The reporting procedure is also enriched with participation of various stakeholders, namely UN entities, civil society organizations and national human rights institutions.

While “the specificities of each treaty and the mandate established for each treaty body” should be taken into consideration, “there might be ways in which the treaty bodies could work together more closely and flexibly to form an integrated system.”¹⁹⁰ The sharing of best practices adopted by the committees in performing their functions and the harmonization of their working methods constitute a prerequisite to

¹⁸⁶ Interview with Mr. Claudio Grossman, OHCHR, HRTD Newsletter, 2013, p. 8.

¹⁸⁷ Lucerne Consultation, p. 5.

¹⁸⁸ A/66/860, 26 June 2012, p. 47.

¹⁸⁹ Dublin II Outcome Document, para. 62.

¹⁹⁰ Lucerne Consultation, p. 8.

the improvement of the reporting procedure. The streamlined reporting process across the treaty bodies may offer an effective solution to the challenges related to the capacity of treaty bodies and the States parties as well as the lack of coherence between the treaty bodies.

2.2.1. LIST OF ISSUES PRIOR TO REPORTING AND THE SIMPLIFIED REPORTING PROCEDURE

In May 2007 CAT adopted a new optional reporting procedure – LOIPR.¹⁹¹ This new procedure provides for the preparation of a list of issues that is transmitted to the States parties before the submission of their periodic report. After the State party submits the replies to the LOIPR, the committee does not need to request this State party for additional information. This approach differs from the current practice of the committees under which list of issues is forwarded to the State party after the submission of the report and the State party has to prepare the written responses for the committee. After the adoption of the new procedure CAT decided to proceed with it on a regular basis due to the high level of its acceptance by States (75 %) and their positive reaction.

The other two committees (HRC and CMW) have also adopted the LOIPR. There is also 75 % acceptance rate among the first States parties to which CMW has offered this optional procedure.¹⁹²

The LOIPR assists States in the preparation of their reports in way that they may focus on the issues that the committee considers to be a priority for examination in a concrete country. Thus, the LOIPR may provide a “detailed guidance on the expected content of reports”¹⁹³ which makes the reports more focused.¹⁹⁴ Furthermore, the interactive dialogue becomes more structured and results in more focused concluding observations.¹⁹⁵ In this relation, it should be noted that since CAT adopted the optional

¹⁹¹ See A/62/44, 6-24 November 2006, 30 April-18 May, para. 23-24.

¹⁹² Agenda and Background Documentation on Thematic discussion and Informal Consultations of the Intergovernmental Process, 19-20 February 2013, p. 5 at <http://www.ohchr.org/Documents/HRBodies/TB/HRTD/AgendaThematicDiscussionFeb2013.pdf> (consulted on 17 June 2013) (hereinafter Informal Consultations of the Intergovernmental Process, February 2013).

¹⁹³ Sion Consultation, p.5.

¹⁹⁴ A/66/860, 26 June 2012, p. 48.

¹⁹⁵ New York Consultation with States Parties, para. 41.

reporting procedure, the compliance rate between 2010 and 2011 has raised from 13 % to 31 % (the reports submitted on time) which means that it has more than doubled.

In the High Commissioner's report it was proposed to adopt an optional Simplified Reporting Procedure (SRP) which further refines the LOIPR.

The States parties, who decided to join the procedure, would submit to the committees the replies to the Simplified Reporting Procedure questionnaire. These replies would form the report and the State party would not need to submit any written information before the dialogue with the treaty body.¹⁹⁶ However, the States parties would still need to submit the initial report and the common core document (CCD).

The Co-facilitators of the intergovernmental process recommended "that the measure should be offered on an optional basis to States Parties and all the human rights treaty bodies should be encouraged to offer the simplified reporting procedure to State Parties."¹⁹⁷

In the meantime, HRC found the proposal "worthy of serious consideration"¹⁹⁸ and CAT and CMW supported the recommendation for the SRP. However, none of the committees indicated that it intends to adopt the new procedure. CMW stated that it had adopted the LOIPR "in order to enable a simplified reporting procedure."¹⁹⁹ Furthermore, there is a concern on the possibility of adopting the procedure by all the treaty bodies due to the specific nature of the mandate of each treaty body. For instance, there is a certain doubt that the SRP may be introduced by CESCR since that it would be highly challenging for the committee to make an assessment of the implementation of the rights protected by the Covenant. The committee need to examine the report first and only after this try to prioritise the issues for the consideration of a given State.²⁰⁰

It should be further mentioned, that the LOIPR and the SRP may bring benefit if there is a short time lap between the submission of the replies to the questions and the interactive dialogue. Therefore, it seems fair that the committees' capacity to review the reports in timely fashion needs be strengthened. While there surely would be a

¹⁹⁶ A/66/860, 26 June 2012, p.48.

¹⁹⁷ The Way Forward, Overview of Issues, p. 4.

¹⁹⁸ HRI/MC/2013/4, 17 May 2013, para. 7.

¹⁹⁹ Ibid., para. 29.

²⁰⁰ Interview with a member of CESCR.

possibility for the cost saving due to the reduction in the documentation and therefore less cost for the processing and translation, the treaty bodies and the Secretariat would still require sufficient resources in order to prepare the LOIPR or SRP questionnaire.

At the meantime, the proposal for the SRP would benefit from its full potential if the Comprehensive reporting calendar is adopted, since it suggests the brief delay between the submission of the report and its consideration, which, in turn, would eliminate the need to request traditional Lists of issues.

Therefore, the current state of affairs demonstrates that the committees are only considering the proposal for the SRP and the LOIPR with only three of them already practicing the LOIPR. It is questionable whether the remaining committees are ready to adopt this proposal at the present moment. The committees may be encouraged to revise their working methods so as not to require for the submission of written replies by the States parties. In this respect, the committees may accept the less innovative idea of the LOIPR comparing to the SRP, but only together with the following measures: 1) the provision of the qualitative assessment of the new procedures by the committees already practicing them and the States accepted them; and 2) undertaking of concrete measures on strengthening the capacity of the committees; and/or 3) the adoption of the Comprehensive reporting calendar. The other option could be the treaty-specific guidelines and the list of themes that would “guide States on the critical issues to be raised.”²⁰¹

2.2.2. ALIGNED METHODOLOGY FOR THE CONSTRUCTIVE DIALOGUE BETWEEN THE STATES PARTIES AND THE TREATY BODIES

During the consultations organised under the initiative of the High Commissioner the issue of harmonising the methodology for the constructive dialogue was widely discussed. The stakeholders pointed out the need for the dialogue to be more structured and focused due to the variations in the methodology applied by the committees in the conduct of the constructive dialogue.²⁰²

²⁰¹ A/66/860, 26 June 2012, p. 40.

²⁰² See Dublin II Outcome Document, paras. 62-87; New York Consultation with States parties, para. 48; Geneva Consultation with States parties, para. 51; Seoul Statement, para. 6 (a).

High Commissioner recommended that the treaty bodies adopt an aligned methodology in the form of written guidelines for the interactive dialogue “to maximize the use of the time available and allow for a more interactive and productive dialogue with State parties in the context of the reporting process.”²⁰³ These guidelines aim at increasing the discipline, balancing the use of time by the both sides and coordination of the interventions of experts.

The suggestion of the High Commissioner was included in the list of issues to be discussed during the intergovernmental process and the Co-facilitators concluded that this issue enjoyed the general agreement of action for further refinement.²⁰⁴ The Co-facilitators recommended that the aforementioned guidelines should be adopted by the treaty bodies.

The guidelines provide for “the establishment of country task forces (taking geographical and gender balance into account) for the examination of State Party reports which would prepare the dialogue with a State Party, including through prior consultation among Committee members.”²⁰⁵ The guidelines envisage that questions raised during the dialogue should be clustered by themes. Furthermore, the guidelines provide for “the clustered list of questions to be shared with the State Party just prior or a few days before the dialogue.”²⁰⁶ Additionally, the guidelines should establish strict limitation on the number and length of interventions by using a speech timer.

The other element that is included in the guidelines is that “the dialogue for periodic reports could focus only on the most significant human rights issues and the follow-up given by State Parties to the previous concluding observations.”²⁰⁷ Finally, the role of the Chairpersons should be to lead the dialogue effectively in order to ensure a balanced exchange of views between the members and the delegation. While the realisation of the proposal lies mostly in the hands of the treaty bodies,²⁰⁸ States should

²⁰³ Ibid., p. 55.

²⁰⁴ The Way Forward, Overview of Issues, p. 6.

²⁰⁵ A/66/860, 26 June 2012, p. 57.

²⁰⁶ The Way Forward, Overview of Issues, para. 9.

²⁰⁷ A/66/860, 26 June 2012, p. 57.

²⁰⁸ The next Meeting the Chairpersons of the treaty bodies will discuss the issue of aligning their working methods, including the methodology for the interactive dialogue.

also be better prepared for the dialogue in order to provide sufficient answers and interact with the treaty body in a constructive way.

Therefore, if implemented, the streamlined interactive dialogue would facilitate the engagement of States and enhance the understanding of the situation with human rights in the respective State party by the committees that would in turn facilitate the continuity in the reporting and allow tracing the progress in the implementation of human rights set in the treaties. Significantly, some treaty bodies expressed their support for this recommendation with several committees already included many of the aspects of the proposal in their methodology for the constructive dialogue.²⁰⁹

2.2.3. SUBMISSION OF COMMON CORE DOCUMENTS AND THEIR REGULAR UPDATES

In the course of the treaty body strengthening process various stakeholders highlighted that the use of the CCDs²¹⁰ and their regular update simplifies the preparation of the reports, reduces their length and streamlines their presentation.²¹¹ However, since 2006 only 58 States have submitted a CCD (as for February 2013). Furthermore, “the treaty bodies have not yet evaluated the contents and use of the Common Core Document and treaty-specific documents.”²¹²

It was proposed to replace the traditional system of the submission of reports consisting of the CCD and the treaty-specific documents “with the optional submission of a common base report that is common to all the treaties, accompanied by the SRP.”²¹³ The submission of the CCDs and their regular updates would make the reports more targeted which would in turn lead to more focused concluding observations. This proposal has a potential to ease the reporting burden of States and help the treaty bodies to take stock of the human rights protection at the national level

State Parties are encouraged to prepare their reports submit updates to their CCDs at least every five years in line with the cycle of the Comprehensive reporting

²⁰⁹ CERD and CESR introduced some elements of the proposal into their methods such as the clustering of the questions, stricter allocation of time for the interventions etc.

²¹⁰ Harmonised guidelines on reporting envisage that States should be encouraged to submit CCD, which contains general information on the general framework for the protection of human rights at the national level, and the treaty-specific reports. See UN Doc HRI/MC/2006/3, 10 May 2006.

²¹¹ See Dublin II Outcome Document, para. 87; New York Consultation with States parties, para. 42.

²¹² A/66/860, 26 June 2012, p. 51.

²¹³ Informal Consultations of the Intergovernmental Process, February 2013, para. 2.

calendar.²¹⁴ If the CCDs were produced according to the page limit of 60-80 pages²¹⁵ and the updates are produced in the form of a brief addendum to the original version of the CCD, significant cost savings amounting to \$2.6 million per year may take place.²¹⁶

2.2.4. FOCUSED CONCLUDING OBSERVATIONS

The main purpose of concluding observations consists in the determination of problems that confronting States in the protection of human rights and provision of authoritative advice on how to address these challenges.

States need to inform the relevant committee on the steps undertaken to implement its recommendations in the previous concluding observations. Therefore, it is highly important to maximize the quality of these recommendations for the States parties to effectively apply them.

In the course of the strengthening process different actors at the national level criticized concluding observations for being “too many, too complex and insufficiently focused.”²¹⁷

In her report High Commissioner put forward a recommendation for the treaty bodies to adopt “a common format for the drafting of concluding observations.”²¹⁸ It was proposed to reduce the length of their concluding observations and use the word limit as guidance when adopting them. Secondly, it was suggested to ensure the country-specific and targeted character of concluding observations and to consider them as “the point of departure of each new reporting cycle.”²¹⁹ Furthermore, it was recommended to reflect the questions, raised by the treaty body concerned during the interactive dialogue, in the concluding observations. The treaty bodies were also encouraged to avoid formulating recommendations of general character and instead to give concrete advices on the measures to be taken. Moreover, the treaty bodies were encouraged to identify immediate and longer term priority issues “based on a balance between urgency and the feasibility of addressing the different issues within any given

²¹⁴ If the State party considers that no update is necessary, this should be provided in the treaty-specific document.

²¹⁵ As recommended by the Harmonised guidelines on reporting.

²¹⁶ Informal Consultations of the Intergovernmental Process, February 2013, para. 2.

²¹⁷ Bristol Seminar, p. 2; Consultation for States parties, para. 48 and Compilation of Submissions of States, p. 30-34/

²¹⁸ A/66/860, 26 June 2012, p. 61.

²¹⁹ Ibid.

reporting cycle.”²²⁰ Finally, it was recommended to use “the cross-referencing and reinforcement of the recommendations of other treaty bodies, the UPR and special procedures mandate holders.”²²¹

It needs be highlighted that the proposal was welcomed by the majority of the treaty bodies.²²² Some committees have already introduced measures to improve the format of their concluding observations.

Therefore, the proposal for the focused concluding observations constitutes an effective measure that streamlines the reporting procedure and assists States in the effective implementation of their human rights obligations. This measure has a high potential to be implemented since it receives a significant support by the treaty bodies and provides for cost savings since the reduction in the number of pages saves the costs for translation. Moreover, the improved format of recommendations of the treaty bodies strengthens their legitimacy and builds more credibility on the side of national actors, including general public.

2.2.5. COST REDUCTION MEASURES

In the previous chapter it was indicated that the treaty body system is currently facing the problem of under-resourcing. Serious measures should be undertaken to fight this challenges, and they may require sufficient funding. In these terms, it is necessary to examine the options for saving costs in order to reinvest in the proposals to the maximum extent possible. However, the initiative to “cut costs without reinvesting in the system” would not appear helpful as it would “obscure the structural and other challenges the system faces and only slightly delay the inevitable decline of the system.”²²³

Cost saving measures in the context of treaty body strengthening process offer measures which “utilize modern technologies and distribution systems with current trends of greening the UN in an effort to minimize additional costs” necessary to implement measures to improve the effectiveness of the system.²²⁴

²²⁰ Ibid., p. 62.

²²¹ Ibid.

²²² HRC, CERD, CEDAW, CAT, CMW, CRPD, CED and SPT. See HRI/MC/2013/4, 17 May 2013.

²²³ Comprehensive cost review, p. 13.

²²⁴ Ibid.

The documentation constitutes the key area where the cost reduction is most possible.

1. Strict page limitations

The High Commissioner in her report recommended all stakeholders, in particular States, to strictly adhere to page limitations established by the Harmonised guidelines on reporting.²²⁵ It should be noted that all UN human rights documentation, including at the General Assembly, HRC and for the treaty bodies are subject to strict page limitations, with the exception of the reports of the States parties. The UPR has established strict page limitations (20 pages) in relation to the reports submitted by States.²²⁶

Reduction of the length of the reports is proved to be effective due to the high notional cost of translation and text processing per page in six official UN languages (USD 1,266 as for 2013).²²⁷ In 2011 64% of periodic reports exceeded 40 pages limit and 33% of initial reports exceeded 60 pages limit.²²⁸ If these page limits were respected, it would be possible to save an estimated \$ 5.5 million.²²⁹

The High Commissioner recommended that the treaty bodies should remind the States parties to follow the page limits and return the reports that exceed the limit. It should be noted that “a defined flexibility in the implementation of these guidelines may be applied with respect to Federal States or States with Overseas Territories which may be granted an extension of 20 additional pages.”²³⁰

In the course of the intergovernmental process it was decided the proposed measure requires further discussion-proposal from the Co-facilitators. While recommending that the established page limits should be respected, the Co-facilitators pointed out that this requirement could not be strictly enforced with regard to the reports

²²⁵ The CCD should be 60-80 pages, initial treaty-specific documents do not exceed 60 pages, and following periodic reports should include 40 pages. UN Doc HRI/MC/2006/3, 10 May 2006, para. 19.

²²⁶ A/HRC/RES/5/1, 18/06/2007, para. 15 (a).

²²⁷ Comprehensive cost review, p. 14.

²²⁸ Ibid., p. 7.

²²⁹ See A/66/860, 26 June 2012, p. 54.

²³⁰ Ibid., p. 55.

of States due to the differences between them. Some States parties consider that the requirement may lead to “substantial loss of quality” of their reports.²³¹

Nevertheless, the issue of adherence to page limitations constitutes an effective cost-saving measure. This idea may benefit from its full potential when implemented together with the recommendations for the LOIPR/SRP and focused concluding observations, as these measures would facilitate the adherence by States to the page limits when preparing their replies and reports. States should be encouraged to respect the page limitations and the role of the treaty bodies appears to be crucial. It also seems reasonable to introduce the measure on an optional basis.

2. Reducing translation of summary records and the possibility of replacing them

Summary records are “the official records of meetings compiled by precis writers dispatched by conference management. Summary records are not verbatim records but a condensed version of meeting proceedings.”²³² Treaty bodies have adopted slightly different approaches with regard to the use summary records. Some require summary records for all their meetings (public and private) while others do so only for selected meetings. Summary records are consulted by the treaty bodies in particular cases for clarity and certain committees use them routinely.²³³

While there is a rule for the translation of summary records in all six official UN languages, the limited resources has lead to significant backlogs in translation. CEDAW decided in 2007 that its summary records are to be issued in English only.²³⁴

There are possibilities for alternatives to summary records that may be offered by the new technologies: 1) webcasting with or without captioning (recorded webcasts with or without real-timed typed transcription of the spoken word); 2) digital recording (“authentic audio recording immediately available unlike summary records or verbatim records”²³⁵). These options may be cost-effective and they are currently considered and even applied by certain UN entities.

²³¹ Compilation of submissions by States parties, p. 7; See also Sion Consultation, p. 9

²³² A/66/860, 26 June 2012, p. 58.

²³³ Ibid. Summary records are also read by other stakeholders and for scholarly research.

²³⁴ A/66/860, 26 June 2012, p. 59.

²³⁵ Comprehensive cost review, p. 15.

The treaty bodies should be encouraged to review their entitlements towards summary records on the question of the reduction of the number of languages for the translation. It is also important that the possibility of introducing aforementioned alternatives could be considered, taking due account of the fact that “replacing summary records with maximum savings captioned webcasting, the annual cost reduction from the comprehensive reporting calendar proposal as contained in the High Commissioner’s report would be \$13.1 million.”²³⁶

2.2.6. ALIGNED MODELS OF INTERACTION BETWEEN THE TREATY BODIES, CIVIL SOCIETY ORGANISATIONS AND NATIONAL HUMAN RIGHTS INSTITUTIONS

Civil society organisations and NHRIs play a crucial role in the activities of the treaty bodies, especially in reporting procedures, “through providing information, creating awareness and follow-up on the implementation of recommendations.”²³⁷ The participation of NGOs in the treaty body system has increased alongside the significant expansion of the system itself. Meanwhile, it is stated that there are numerous obstacles that prevent the engagement of civil society organizations and NHRIs from being effective, namely “limited awareness, capacity and resources, the multiplicity of models of interactions with the treaty bodies, and in some cases alleged reprisals from the State party.”²³⁸

Guided by this concern, the High Commissioner, has proposed one model for interaction with civil society organisations and NHRIs for all treaty bodies. Under this model, the treaty bodies organize formal briefings with these actors on the first day of the week when the interactive dialogue with the concerned State party should be held. The interaction should take place during public meetings for three hours in the following way: two hours for the meeting with civil society organisations and one hour for NHRIs. Additionally, civil society actors may organize one-hour briefings in lunchtime on the day prior to the examination of the report.

Furthermore, the High Commissioner recommended that the treaty bodies should request civil society organizations and NHRIs to “provide coordinated and more

²³⁶ Informal Consultations of the Intergovernmental Process, February 2013, p. 3.

²³⁷ A/66/860, 26 June 2012, p. 65.

²³⁸ Ibid., p. 65.

focused submissions to the treaty bodies of a maximum of 10 pages for single reports and 30 pages for joint submissions in a timely fashion, and to organize their interventions in a coordinated manner, with the understanding that these submissions will not be translated.”²³⁹

The Co-facilitators of the intergovernmental process recommended that the proposed “unified engagement should however not preclude additional efforts by individual committees.”²⁴⁰ For instance, they referred to CRC and its well-established mechanism on consulting stakeholders, including through the UN Children’s Fund (UNICEF). Notably, several committees (CERD, CAT and CED) welcomed this recommendation, with some of them already institutionalized the engagement with the concerned actors in their rules of procedures.²⁴¹

In relation to reprisals, it should be noted that the High Commissioner made a recommendation that the treaty bodies should ensure the mechanisms for action and appoint focal points in each committee as well as engage with other human rights mechanisms such as relevant Special Procedures and the OHCHR and take measures to raise the issue in the Secretary-General’s report on reprisals. States were recommended to take appropriate actions to prevent reprisals, investigate them, punish perpetrators and offer redress to the victims of these actions.²⁴² Remarkably, Member States have come to the agreement that “any claim of reprisals should be brought to the immediate attention of State Parties.”²⁴³

Therefore, the proposal for the aligned model of interaction between the treaty bodies, civil society organisations and national human rights institutions constitutes an efficient measure to make the treaty body accessible and user-friendly. This measure is crucial to enhancing the legitimacy of the whole system as it increases the credibility given to the system by these stakeholders. Furthermore, this proposal may be complementary to the proposals on the Comprehensive reporting calendar and the LOIPR/SRP, since the engagement with these actors, in particular the provision of coordinated and focused submissions, contributes to the process of preparing the LOIPR

²³⁹ Ibid., p. 66.

²⁴⁰ The Way Forward, Overview of Issues, p. 10.

²⁴¹ See HRI/MC/2013/4, 17 May 2013.

²⁴² A/66/860, 26 June 2012, p. 67.

²⁴³ The Way Forward, Overview of Issues, p. 8.

and the SRP questionnaire. Meanwhile, when implementing this proposal the treaty bodies should take into consideration the views of NHRIs and civil society actors. The idea of an aligned model of interaction may be most beneficial, if implemented alongside the recommendations on reprisals.

2.3. ENHANCING THE CAPACITIES OF TREATY BODIES TO HANDLE COMMUNICATIONS AND CARRY OUT INQUIRIES

Alongside the consideration of reports of the States parties, the treaty bodies perform a number of other functions, such as consideration of individual communications and the conduct of inquiries. The effectiveness of these procedures should be granted a proper attention in frames of the initiative to strengthen the work of the treaty bodies. The High Commissioner in her report has put forward a proposal for the review of best practices regarding the application of rules of procedure and methods of work and adoption of common guidelines. It seems necessary for the treaty bodies to “keep its working methods under review with a view to explore ways to make them as coherent as possible to facilitate State Parties reporting and response to individual communications.”²⁴⁴ The High Commissioner proposed that the review should also cover inquiry procedures.²⁴⁵ A common approach to communications and inquiry procedures “could greatly assist treaty bodies, States Parties and other actors in effectively dealing with the issues arising from them as well as to provide consistency and legal certainty in the handling by treaty bodies of procedural issues related to individual communications and inquiries.”²⁴⁶

The High Commissioner also elaborated other proposals that deal with the establishment of a treaty body jurisprudence database on individual cases including information on their follow-up and a joint treaty body working group on communications. During the consultation process held by the Co-facilitators, it was stressed that the process of the elaboration or revising the working methods in respect of individual communications should benefit from the consultation with the States parties since under the provisions of the treaties and protocols the communication procedure provides for the participation of the treaty bodies, the States parties and the authors of

²⁴⁴ Ibid., p. 8.

²⁴⁵ A/66/860, 26 June 2012, p. 70.

²⁴⁶ The Way Forward, Overview of Issues, p. 8.

the complaint.²⁴⁷ Furthermore, some States pointed to the fact that the proposal for the jurisprudence database and the joint working group may violate the confidential nature of the communications procedure – a principle that is enshrined in the relevant treaties.²⁴⁸ Thus, the Co-facilitators stated that Member states did not manage to achieve a general agreement on these issues.²⁴⁹ Subsequently, it was decided that the issues did not require further discussion within the intergovernmental process.

Significantly, the suggested measures did not find overall support among the committees. HRC expressed its “unease” in relation to the recommendation on the joint working group and CRPD did not merit the proposal.²⁵⁰ Other committees have not yet expressed their positions.

Therefore, the recommendations for the establishment of a treaty body jurisprudence database on individual cases including information on their follow-up and a joint treaty body working group on communications do not seem to be feasible in the present situation. It would be appropriate to make a further study with the view of preserving the confidential nature of the procedure and possible reduction of costs.

2.4 STRENGTHENING THE CAPACITY OF THE SUBCOMMITTEE ON PREVENTION OF TORTURE

The increase in the number of ratifications to the international treaties, including the OPCAT, has adversely affected to capacity of the SPT to perform its core function – visiting places of detention in the States parties. In the situation of a low pace of visits by the SPT, it seems crucial to encourage States to allocate sufficient resources to the treaty body in line with the increased membership and ratification of the OPCAT.²⁵¹

2.5. STRENGTHENING THE NATIONAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS

The significant expansion of the treaty body system, particularly the increase in the ratifications, has led to the fact that many States found themselves in a challenging situation due to the growth of their reporting obligations. The major problem lies in the

²⁴⁷ See Sion Consultation, p. 14, Compilation of submissions by States parties, p. 57.

²⁴⁸ Ibid., p. 53-55, 56.

²⁴⁹ The Way Forward, Overview of Issues, p. 8, 9.

²⁵⁰ See HRI/MC/2013/4, 17 May 2013.

²⁵¹ A/66/860, 26 June 2012, p. 73; The Way Forward, Draft Elements, p. 1.

lack of capacity on the side of States to meet with their reporting obligations. Therefore, the clue to the solution of the problem of the non-submission of reports due by the States parties lies in the strengthening of their capacity to implement their obligations under the human rights treaties.

2.5.1. STRENGTHENING HUMAN RIGHTS CAPACITY-BUILDING ACTIVITIES

When a State party needs assistance in the preparation of the report as well as implementation of the treaty body recommendations, the OHCHR is able to offer capacity-building activities upon the request of the concerned State party. Headquarters are responding positively to over 20 requests for reporting capacity-building assistance per year.²⁵² The support is often provided in collaboration with OHCHR and certain UN field presences or entities.

The High Commissioner identified that technical support has become “increasingly complex due to the specificities of each of the nine core international human rights treaties and their optional protocols,”²⁵³ which requires the development and strengthening of specialized capacities in different spheres of work of national actors and UN agencies and presences. In this respect, the High Commissioner suggested to refine its capacity-building strategy “with a view to assisting States parties in a sustainable and effective manner in meeting their reporting obligations.”²⁵⁴

At the same time, the High Commissioner proposed to give priority to “Least Developed Countries, Landlocked Developing Countries, Small Island Developing States and States made fragile by natural disasters or armed conflicts.”²⁵⁵

The issue of capacity-building was largely discussed during the intergovernmental process and it was agreed that it deserves further discussion-proposals. The Co-facilitators have developed the proposal for a comprehensive capacity building strategy which would be elaborated by the OHCHR and the relevant UN agencies on a biennial basis. The strategy could be operationalised through the organisation of workshops for government entities responsible to prepare report,

²⁵² See A/66/860, 26 June 2012, p. 84.

²⁵³ Ibid., p. 83.

²⁵⁴ Ibid.

²⁵⁵ Ibid.

disseminating best practices with regard to the preparation of reports, increasing the engagement of OHCHR in trilateral cooperation in capacity building, strengthening the partnership with the UN entities and field presences.²⁵⁶

The Co-facilitators also recommended introducing a dedicated technical assistance to least reporting States. This support may entail assistance for the participation in the constructive dialogue in a situation of an absence of report and allow presenting consolidating report by countries with small population or affected by natural disasters.

What comes for resource implications, it is clear that the proposed measures require varying costs depending on the format and location of the capacity-building activities. It is important to ensure that the technical assistance programmes are integrated into OHCHR's working plans at headquarters and field presences and sufficient funds are provided for these activities. Furthermore, the OHCHR should be adequately staffed to service capacity-building activities and the core staff should manage these activities "in a consistent and sustainable way."²⁵⁷ Therefore, States should continue to support the efforts to provide technical assistance by the OHCHR and the UN entities. They should be aware of the fact that the necessity to ensure a sustainable and effective support for the State parties becomes even more compelling in a situation when the fixed reporting calendar is adopted.

2.5.2. STANDING NATIONAL REPORTING AND COORDINATION MECHANISM AND ITS ALTERNATIVES

In order to address the significant increase in the number of reports to be submitted and of recommendations to be implemented, some States have established certain permanent "national frameworks"²⁵⁸ coordinating and monitoring the preparation of reports and the implementation of recommendations from treaty bodies. Some States have even provided these mechanisms with a legal basis. However, many countries continue to create ad hoc committees "that are disbanded after the submission of the reports that they were established to prepare."²⁵⁹

²⁵⁶ The Way Forward, Draft Elements, p. 2.

²⁵⁷ Ibid., p. 3.

²⁵⁸ Dublin II Outcome Document, paras. 79-80

²⁵⁹ The Way Forward, Overview of Issues, p. 11.

The High Commissioner in her report put forward an idea of the national reporting mechanism that would significantly enhance the capacity of States to implement their human rights obligations by “facilitating both timely reporting and improved coordination in follow-up to treaty bodies’ recommendations and decisions.”²⁶⁰

The national reporting mechanism should be empowered with 1) analyzing and clustering recommendations from human rights mechanisms; 2) identifying the concerned actors engaged in the process of implementation of recommendations and guiding them throughout the process; 3) leading consultations with NHRIs and civil society organisations; 4) raising awareness on treaty bodies’ recommendations among the members of the judiciary and collecting and disseminating judicial decisions relevant to international human rights law.²⁶¹

While the benefit of the coordinated approach to reporting was recognized by some States during the consultation process, they also stressed that this decision constitutes the prerogative of States.²⁶²

Therefore, it is important to bear in mind that States are “sovereign to establish whatever mechanism they wish to ensure reporting to treaty bodies,” however “the bottom line is that State have an efficient system or machinery that achieves the legal obligations of reporting and implementation.”²⁶³ It seems that States should be encouraged to establish the proposed coordination model or any other mechanisms for better coordination and monitoring of related efforts. It is necessary to ensure the provision of technical assistance to those States Parties that request such assistance in the establishment of the relevant mechanisms.

2.6. STRENGTHENING THE IMPACT OF TREATY BODIES ON THE IMPLEMENTATION OF HUMAN RIGHTS AT THE COUNTRY LEVEL

2.6.1. ALIGNED FOLLOW-UP PROCEDURES

²⁶⁰ A/66/860, 26 June 2012, p. 85.

²⁶¹ Ibid., p. 85.

²⁶² Sion Consultation, p. 7.

²⁶³ Interview with Mr. Paulo David, Chief of Capacity Building and Harmonisation Section, Human Rights Treaties Division, OHCHR, 15 May 2013.

It is important to remember that the engagement of States with the treaty body system should be a continuous process and each cycle of reporting should be based on the experience of the previous engagement.²⁶⁴ For this purpose, it is crucial to strengthen the follow-up procedures of the treaty bodies which would assist States in implementing the concluding observations addressed to them by the treaty bodies as well as other recommendations of the treaty bodies.

Guided by a vast range of ideas on the ways to enhance follow-up strategies by the treaty bodies themselves,²⁶⁵ the High Commissioner has put forward a recommendation for the alignment of the follow-up procedures for both concluding observations and individual communications procedures. The treaty bodies were encouraged to adopt common guidelines for these procedures. Meanwhile, the High Commissioner highlighted that the need for the follow-up procedures would be diminished, if the Comprehensive reporting calendar was adopted.

The Co-facilitators pointed to the need for “a comprehensive, long term solution to diminish the need for treaty body follow-up by including it as a part of the regular review of States.”²⁶⁶ The aligned approach for more simplified follow-up procedures should be undertaken in case the solution did not diminish the need for the follow-up activities of the treaty bodies.

Notably, follow-up procedures experience problem of under-resourcing, which was also recognized by the High Commissioner.²⁶⁷ Furthermore, some States oppose the follow-up procedures due to their belief that these procedures go beyond the scope of the treaties and further increase the burden placed on them.²⁶⁸

Some commentators expressed disappointment with the minimalist approach taken by the High Commissioner with regard to strengthening the follow-up activities of the treaty bodies and the limited attention given to the variety of other initiatives to

²⁶⁴ See A/66/175, 22 July 2011, para. 25.

²⁶⁵ See Dublin II Outcome Document, paras. 105-111; Lucerne Consultation, p. 10; NGO Response to Dublin Statement, para. 25.

²⁶⁶ The Way Forward, Overview of Issues, p. 16.

²⁶⁷ See A/66/175, 22 July 2011, p. 81.

²⁶⁸ See Compilation of Submissions by States parties, p. 35-36; and Geneva Consultation with States parties, paras. 21, 56.

improve the implementation of recommendations of the treaty bodies.²⁶⁹ While the High Commissioner briefly touched upon the synergies with UN Country Teams (UNCTs) and Special procedures mandate holders,²⁷⁰ the role of other stakeholders should not be ignored. Significantly, NHRIs and NGOs may play a significant role in this endeavour “by raising awareness of treaty body outputs, dialoguing with government departments and liaising with treaty bodies in the matter of implementation.”²⁷¹ NHRIs and civil society organisations are willing to publicise and disseminate recommendations of the treaty bodies and organise training activities.²⁷²

Therefore, the committees should seek ways of simplifying their follow-up procedures and aligning them through the adoption of common guidelines. Furthermore, the treaty bodies should increasingly invite States to provide the information on the implementation of concluding observations in their lists of issues/LOIPR. Meanwhile, the activities of other stakeholders should not be overlooked.

2.6.2 ALIGNED CONSULTATION PROCESS FOR THE ELABORATION OF GENERAL COMMENTS AND THE ADOPTION OF JOINT GENERAL COMMENTS

It has been recognised that the adoption of general comments facilitates the understanding of the obligations of the States parties under the treaties.²⁷³ Therefore, the better understanding of the scope and objectives of the human rights treaties may assist States in implementing their human rights obligations. High Commissioner in her report encouraged the treaty bodies to make the process of adoption of general comments more inclusive by developing aligned process of interaction with States, UN entities, NHRIs and civil society organisations. The recommendation provided for the possibility of submitting written contributions by the stakeholders and their participation in the days of general discussions as well as putting these submissions on the web-site.

Meanwhile, the report of the High Commissioner does not contain any proposal for the adoption of joint general comments and/or statements by the committees. It

²⁶⁹ Egan, 2013, pp. 28-29.

²⁷⁰ A/66/860, 26 June 2012, p. 81.

²⁷¹ Ibid., p. 29.

²⁷² See Marrakesh Statement, paras. 25-28.

²⁷³ A/66/860, 26 June 2012, p. 82.

seems that this proposal, elaborated at the Inter –Committee Meeting²⁷⁴ and supported during the consultation process,²⁷⁵ deserves attention and should be increasingly considered by the treaty bodies. Notably, the first meeting of a joint CRC/CEDAW working group was held on 23 January 2010 and both committees have been discussing a joint general comment/recommendation on the issue of harmful practices. This measure has a potential to ensure consistency on common issues between the treaty bodies and improve their efforts to address pressing human rights issues as well as provide coherent advice to the States parties and other national actors.

2.6.3. STRENGTHENING THE INTERACTION WITH OTHER UN HUMAN RIGHTS MECHANISMS AND UN ENTITIES

During the consultation process various stakeholders emphasised the importance of coordination of the treaty bodies with UN entities and UN human rights mechanisms in strengthening formulation and interpretation of treaty body outputs.²⁷⁶ The interaction with the UN entities represents a great value in terms of supporting national actors in the participation in the treaty body process: preparation, review and follow-up to concluding observations and other recommendations of the treaty bodies.²⁷⁷ Thus, the treaty bodies should be encouraged to align their divergent models of interaction as far as possible and adopt “jointly agreed generic guidelines for country-specific written submissions, including templates for joint submissions and oral briefings.”²⁷⁸

The support of the UN entities should be based on each entity’s advantage in frames of its specific mandate, expertise and geographic presence. Thus, UN Resident coordinators, UNCTs and UN agencies should further develop their support strategies through the cyclical engagement with the treaty bodies and in terms of “Delivering as One” approach,²⁷⁹ including the integration of recommendations of the treaty bodies into their work and planning as well as integrating them into the implementation

²⁷⁴ HRI/MC/2013/3, 22 April 2013, para. 18.

²⁷⁵ See Dublin II Outcome Document, para. 134 and Lucerne Consultation, p. 9.

²⁷⁶ See for example Dublin II Statement, para. 7 and Consultation with UN entities, p. 3.

²⁷⁷ A/66/860, 26 June 2012, p. 62.

²⁷⁸ Ibid., p. 63.

²⁷⁹ Secretary-General’s High-level Panel on UN System-wide Coherence in the Areas of Development, Humanitarian Assistance, and the Environment Report of the Secretary-General’s High-Level Panel, Delivering as One, 9 November 2006 at <http://www.un.org/events/panel/resources/pdfs/HLP-SWC-FinalReport.pdf> (consulted on 27 June 2013).

process,²⁸⁰ organising awareness-raising campaigns on the work of the activities of the treaty bodies and the treaty body recommendations.

The interaction of the treaty bodies with the human rights mechanisms of the HR Council²⁸¹ deserves further consideration. It is beyond doubt that the treaty body system and these mechanisms are “highly complementary means of promoting accountability for compliance with human rights norms.”²⁸² These systems are engaged in a mutual exchange of information and build on each others work. It seems necessary to explore the ways how these mechanisms may further reinforce each other. Thus, the UPR should focus more on the implementation of recommendations of the treaty bodies.²⁸³ For instance, States may be encouraged to increasingly refer (implicitly or explicitly)²⁸⁴ to the recommendations of the treaty bodies during the review, “but not necessarily to advertise the source of their inspiration.”²⁸⁵ Additionally, it would be helpful to encourage the special procedures mandate holders to pay more attention to the recommendations of the treaty bodies, and when undertaking their country visits, to the maximum extent possible request States to provide information on their implementation.²⁸⁶

Therefore, the synergies among the treaty bodies, the UPR and the special procedures of the HR Council offer a great potential to strengthen the visibility and awareness²⁸⁷ of the activities of the treaty bodies and improve the implementation of their recommendations. Taking note of the differences in the mandates of these monitoring mechanisms, it seems nevertheless crucial to explore ways to enhance the coordination of their work and elaborate concrete measures in this regard within the ongoing process to strengthen the effective functioning of the treaty body system.

²⁸⁰ See Homyoun, 2011, pp. 847-848; A/66/175, 22 July 2011, p. 64.

²⁸¹ The UPR and the special procedures.

²⁸² Rodley, 2012, p. 355.

²⁸³ Some commentators suggest to limit the consideration of the UPR to review of the implementation of recommendations of the treaty bodies and special procedures. See Salama, 2011, p. 519.

²⁸⁴ See Rodley, 2011, p. 515 and Rodley, 2012, p. 330.

²⁸⁵ Rodley, 2011, p. 515.

²⁸⁶ Pretoria Statement, para. 10.3; Expert Meeting on Petitions, p. 2; and A/66/860, 26 June 2012, p. 81.

2.4.7. STRENGTHENING COOPERATION BETWEEN TREATY BODIES AND REGIONAL HUMAN RIGHTS MECHANISMS

The importance of enhancing cooperation between the treaty bodies and regional human rights mechanisms was underlined during the consultation process on strengthening the human rights treaty body system.²⁸⁷ Significantly, the importance of cooperation between the universal and regional human rights mechanisms has been recognised in the Vienna Declaration and Programme of Action in 1993.²⁸⁸ A great role in this regard is performed by the international workshops held by the OHCHR where the representatives of these systems share information and develop concrete proposals on strengthening the interaction between them.²⁸⁹ It was suggested that the treaty bodies should exchange information with regional mechanisms, including information on the recommendations and their implementation, mutual cross-referencing and mutual follow-up on the implementation of country-based recommendations. Furthermore, a number of meetings devoted to issues on substantive rights were organised between various treaty bodies and regional mechanisms,²⁹⁰ including a dialogue between the Chairpersons of the treaty bodies and African human rights mechanisms with regard to the State party reporting process and individual communications.²⁹¹ It should be further stressed that many of the challenges of the treaty body system are common to regional mechanisms, including lack of capacity of States in meeting their reporting obligations, and backlogs in the consideration of reports. Therefore, the cooperation between them and regional human rights mechanisms is beneficial for developing measures to improve the work of both systems.²⁹²

Therefore, strengthening of the cooperation among the treaty body system and the regional human rights systems may be considered as an effective tool to promote the development of consistent standards of human rights and the coherence and

²⁸⁷ See Pretoria Statement, para. 8.3; Bristol seminar, p. 3; Expert meeting on petitions, p. 3-4.

²⁸⁸ A/CONF.157/23, 14-25 June 1993.

²⁸⁹ The OHCHR held workshops in 2008, 2010 and 2012. For recommendations adopted in the 2012 workshop see A/HRC/23/18, 8 April 2013.

²⁹⁰ See A/HRC/23/18, 8 April 2013, para. 17.

²⁹¹ A/67/222, 2 August 2012, Annex II.

²⁹² During the joint working group meeting of the African Committee of Experts on the Rights and Welfare of the Child and CRC held in 2010 it was decided to create a task force to identify modalities of reducing the reporting burden of the States parties to the two treaties as well as to strengthen the sharing of information between them.

harmonisation of the jurisprudence which improves the understanding of the human rights obligations by States, rights-holders and other stakeholders and thus makes the systems more accessible. Finally, the increased cooperation may help the systems to find effective solution to the challenges confronting them. Taking note of these possibilities it seems clear that the cooperation between the treaty bodies and the regional human rights mechanisms should be put on the agenda of the process on strengthening the treaty body system.

2.7. STRENGTHENING THE INDEPENDENCE AND EXPERTISE OF THE MEMBERS OF THE TREATY BODIES

The quality of the membership of the treaty bodies impacts the efficiency of the procedures of the treaty bodies and is closely related to the degree of authority and respect given to the treaty bodies by the stakeholders. As was envisaged earlier, certain guarantees of the independence of the members of the treaty bodies are provided in the treaties as well as in the committees' rules of procedure. Prompted by the ideas on the value of having guidelines on the independence that emerged during the consultation process,²⁹³ the Chairpersons of the treaty bodies adopted the Addis Ababa guidelines on the independence and impartiality of the human rights treaty bodies at their annual Meeting in June 2012. These guidelines stress the guarantees already provided in the respective provisions of the treaties and “promote a consistent understanding and approach for all treaty bodies on the issue of membership, including on potential cases of conflict of interest affecting the engagement of experts in the exercise of their functions.”²⁹⁴

The High Commissioner welcomed the initiative of the Chairpersons in her report and stressed that the guidelines constitute a strong tool for ensuring “the highest attainable level of expertise of the human rights treaty body system.”²⁹⁵ The High Commissioner recommended that all treaty bodies should enforce the document by including them in their respective rules of procedures. Significantly, the treaty bodies have demonstrated a high level of support for the Addis Ababa guidelines. At present

²⁹³ Poznan Statement, para. 19.

²⁹⁴ The Way Forward, Draft Elements, p. 8.

²⁹⁵ A/66/860, 26 June 2012, p. 74.

already six treaty bodies (CEDAW, CMW, CAT, CED, CRC and SPT) have integrated the guidelines into their working methods.²⁹⁶

The issue of independence and impartiality of members of the human rights treaty bodies, particularly the guidelines on the independence, was the subject of large discussion during the intergovernmental process. Notably, Member States have not yet reached an agreement on “how this independence and impartiality could be secured through a set of guidelines” and whether the intergovernmental process has the competence “to enact such guidelines for the treaty bodies”²⁹⁷ It should be mentioned that some States questioned the mandate of the Chairpersons of the treaty bodies to adopt the guidelines and highlighted the need to preserve the prerogative of States to elect the members of the treaty bodies.²⁹⁸

During the consultation process the cross-regional group of States proposed the adoption of the Code of conduct for members of the human rights treaty bodies. The main difference of the proposal with the Addis Ababa guidelines lies in the broader definition of the term “independence” offered in the Code of conduct, which covers the independence not only from the States parties, but from the UN Secretariat and civil society. Moreover, the proposal provides for the establishment of the Ethics Council – an accountability mechanism comprised of the representatives of the States parties, which is empowered to receive complaints of the violations of the Code.²⁹⁹ However, this proposal was argued to prejudice the independence of treaty body members and affect their competence to decide on their own working methods.³⁰⁰

²⁹⁶ See HRI/MC/2013/4, 17 May 2013, para. 18, 30; UN Doc CAT/C/49/3, 17 April 2013, para. 5; CED, Decision of the Committee on Enforced Disappearances on the Guidelines on the independence and impartiality of members of the human rights treaty bodies (Addis Ababa guidelines), 7 November 2012 available at <http://www.ohchr.org/EN/HRBodies/CED/Pages/CEDIndex.aspx> (consulted on 17 June 2013); CRC/C/4/Rev.3, 16 April 2013; CAT/OP/3, 8 January 2013.

²⁹⁷ The Way Forward, Draft Elements, p. 9.

²⁹⁸ See Truscan, 2012, p. 32-33.

²⁹⁹ See OHCHR, HRTD Newsletter No. 16 – 17, April – September 2012, p. 16 at <http://www2.ohchr.org/english/bodies/treaty/Newsletters/HRTDNewsletterNo16-17.pdf> (consulted on 11 June 2013) (hereinafter HRTD Newsletter, 2012); Statement by the United Nations High Commissioner for Human Rights at the opening of the fiftieth session of the Committee against Torture, 6 May 2013 at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13296&LangID=E> (consulted on 9 June).

³⁰⁰ See Truscan, 2012, p. 32 and Egan, 2013, p. 34.

Therefore, the Addis Ababa guidelines constitute an effective tool of self-regulation of treaty bodies and appropriate means to ensure their independence and impartiality. While States are undoubtedly the key actors in the election and nomination of the members of the treaty bodies, the guidelines seem to deal more with the conduct of the members of the treaty bodies during their tenure and not with the election process as such. The treaty bodies are competent to decide on their working methods and therefore free to incorporate the guidelines on the independence and impartiality in their rules of procedure. The committees should be further encouraged to enforce the guidelines and follow them. In the meantime, the idea of widening the scope of the notion of independence, as provided in the Code of conduct, seems to be valid and the General Assembly may recommend the treaty bodies to review the Addis Ababa guidelines on this matter and hold inclusive and transparent consultations with the States parties to exchange the views.

The nomination and the election process constitute “a determining factor of paramount importance to the expertise and efficiency of each treaty body.”³⁰¹ The High Commissioner generated in her report put forward the following proposals with the regard to this issue. Firstly, the States parties are encouraged to adopt “national policies and processes with respect to the nomination of experts as candidates for treaty body members.”³⁰² This idea provides for the open and transparent selection process among candidates having “a proven record of expertise in the relevant area.”³⁰³ Additionally, the States parties should avoid nominating and electing persons holding governmental positions or other positions leading to the conflict of interest. It was also proposed to limit the terms of service to a reasonable number of terms. The other proposal of the High Commissioner entailed the elaboration of the handbook containing “established facts and information on the elections process, conditions and other relevant requirements pertaining to membership of treaty bodies.”³⁰⁴ This information note should be put on the OHCHR treaty body elections webpage and thus be available to all stakeholders. Significantly, the handbook should include the information on the “current

³⁰¹ A/66/860, 26 June 2012, p. 74.

³⁰² Ibid., p. 75.

³⁰³ Ibid.

³⁰⁴ Ibid., p. 77.

distribution of experts according to the regions, gender and professional background.”

³⁰⁵ Additionally, it should provide information on the nature and quantity of duties of a treaty body member and the term of service. This is of a particular importance since the initiatives to strengthen the effective functioning of the treaty bodies provide for the increase in the workload of the committees, especially in the meeting time. Each candidate should be aware of this fact and should consider it when applying for the membership in the respective treaty body.

Finally, there was recommended to create an open public space for the States parties to present their potential candidates for nomination. This process should be moderated by five former treaty body members elected by the Chairpersons at their Meetings and operated through the use of modern technologies. The Co-facilitators proposed to refine the idea of the open space in a way to allow the participation of the committees, the OHCHR and the States parties. This suggestions seems to be reasonable as it mediates the aspirations of different stakeholders.

Therefore, it seems that in order to ensure the independence of the members of the treaty bodies the following measures should be undertaken: the adoption of the Addis Ababa guidelines by the treaty bodies and the possible review of these guidelines on the subject of widening the notion of independence in a consultation with the States parties; the improvement of the national nomination and election processes, in particular conducting them in an open, transparent and inclusive way; the elaboration of the handbook on practical issues associated with the election and the duties of the members of the treaty bodies and the public platform for the presentation of candidates. The measures would strengthen the independence of the members, ensure a transparent election process with the participation of greater number of qualified candidates and therefore improve the quality of the membership. Furthermore, it would be appropriate to develop concrete measures to align the geographic and gender representation in the committees. The proposal for setting “geographical, gender and background quotas for members, similar to UN models that allocate seats to the five regional groups”³⁰⁶ deserves proper attention in this relation.

³⁰⁵ The Way Forward, Overview of Issues, p. 20.

³⁰⁶ Ibid., p. 13.

2.8. IMPROVING THE LEVEL OF AWARENESS AND VISIBILITY OF THE TREATY BODIES

As was discussed earlier, the work of the treaty bodies remains relatively unknown among the national actors and the general public. The use of modern information technologies and other initiatives to disseminate the outputs of the treaty bodies may offer an effective solution to this problem.

Webcasting

The treaty bodies guided by the positive experience of the Human Right Council have requested the UN to webcast all their public meetings³⁰⁷ (about 301 official meetings equal to 903 hours per year) as well as provide videoconferencing technologies to promote their work and reinforce their impact. Webcasting involves the “live streaming of the conference proceedings through the Internet to UN Headquarters,” and “each video clip is added into a Content Management System for archiving and retrieval.”³⁰⁸

Webcasting offers great opportunities to enhance the accessibility and the visibility of the constructive dialogue between the States parties and the committees and to from a sense of ownership among all stakeholders. Furthermore, this measure may increase the impact of the activities performed by the treaty bodies in terms of simplifying the follow-up procedures and enhanced implementation of concluding observations and other recommendations of the treaty bodies. Webcasting is extremely helpful to raise awareness of the work of the treaty bodies at the national level, particularly general public, and to educate and build capacity of the rights-holders.³⁰⁹

The proposal for webcasting requires the installation of appropriate equipment (cameras, cabling, computer equipment and software as well as equipment for archiving). The establishment of a standing webcasting capacity was estimated in 2008 to entail USD 700,000 in infrastructure/equipment costs and around USD 900,000 in annual recurring costs.³¹⁰ Meanwhile, once provided webcasting may offer savings

³⁰⁷ The consideration of States parties’ reports, days of general discussion and discussions on elaboration of general comments.

³⁰⁸ Informal Consultations of the Intergovernmental Process, February 2013, p. 2.

³⁰⁹ See A/66/860, 26 June 2012, p. 89.

³¹⁰ Ibid., p. 90.

opportunity since it may replace summary records. Interestingly, while the webcasting is generally operated in the language of the speaker and English, the webcasting in all languages is being tested in New York and once tested it may be implemented for the treaty bodies in Geneva. There is also an opportunity to use close captioning as has been successfully practiced in CRPD and there are “new systems being tested that have the possibility of automated captioning in more languages than English.”³¹¹ The captioning in more languages may offer a sustainable solution to replace summary records.

Videoconferencing

The value of providing video-conferencing of the meetings of the treaty bodies lies in the opportunity for States Parties’ delegations to reduce travel and additional costs and involve more representatives from their capitals to engage with the treaty bodies. This has a great potential to improve the quality of the dialogue. Moreover, this measure promotes the engagement of the treaty bodies with all stakeholders during the reporting process, in particular national human rights institutions and civil society actors. Thus, videoconferencing would increase the capacity of the stakeholders to cooperate with the treaty bodies.

The equipment installed for webcasting could be used for videoconferencing and the only equipment need are the monitors to be put in the rooms. With regard to the screening of the treaty body sessions at the national level, it may be suggested that the UN field offices provide access to their video-conferencing facilities.

Apart from the webcasting and videoconferencing, a number of effective measures could be undertaken by the stakeholders at the national level (NHRIs and civil society actors). Furthermore, the interaction between the treaty bodies and other UN human rights mechanisms, UN agencies and programs as well as regional human rights mechanisms may contribute greatly to these efforts.

Therefore, the measures to enhance the accessibility and visibility of the treaty bodies create a sense of ownership among all stakeholders and strengthen the level of credibility and support to their work and thus constitute a strong tool for improving their impact on the protection of human rights at the national level.

³¹¹ The Way Forward, Overview of Issues, p. 2.

CHAPTER IV. CONCLUDING FINDINGS

The previous chapter was devoted to the task of examining and proposing solutions to a number of systemic challenges that undermine the work of the treaty bodies. It is to be noted that the consultation process initiated by the High Commissioner and followed by the GA generated a wide range of ideas that have a potential to heal the wounds on the body of the human rights treaty monitoring system. However, no matter how aspirational they are, it is necessary to reconcile them with the realities of the world. In terms of existing state of affairs it is crucial to prioritise the issues. The basis for this prioritization relies on a number of factors that influence the implementation of the proposed ideas – their feasibility. The feasibility is contingent on the potential for achieving the agreement on further action among the relevant stakeholders and on the possibility of allocation of adequate resources for the realization of the proposals. This observation is based on the fact that the human rights treaty body system involves various stakeholders, each of them playing concrete role, and that the functioning of the system is built on the balance of interests of different actors. The other aspect that should be taken into consideration is related to the fact that the UN and Member States are facing financial challenges and this certainly impacts the strengthening efforts since a major enhancement of the system would inevitably require additional financial support.

Taking this into consideration, it seems necessary to give an overview of the measures that have a real potential to strengthen the efficiency of the treaty body system.

1. The first measure that is proposed is the Comprehensive reporting calendar which offers the most comprehensive solution to the number of compelling challenges. The adoption of the Calendar may address the lack of monitoring capacity of the treaty bodies as it is capable to clear the backlogs in the consideration of reports. Furthermore, the Master calendar has a potential to fight the problem of non-submission of reports due to its predictability and thus enhance the capacity of States to implement the treaties. Additionally, the Calendar offers a sustainable solution to the issue of the allocation of resources. Meanwhile, the successful operationalisation of the Calendar relies on the implementation of effective measures to offer sufficient capacity-building

support to the States parties and the establishment of efficient reporting mechanisms at the national level.

2. A large set of measures aims at improving the reporting procedure and thus facilitates the strengthening of the capacity of the States parties and the treaty bodies.

- The use of the LOIPR or the treaty-specific guidelines and the list of themes is undoubtedly beneficial for States and might ease the workload of the treaty bodies. Meanwhile, the successful implementation of this measure depends on the capacity of the treaty bodies to consider the increased number of reports and the ability to shorten the time lag between their submission and the examination. Therefore, measures to enhance the capacity of the treaty bodies and support for them from the OHCHR need to be undertaken alongside the LOIPR or the list of themes.

- Aligned methodology for the constructive dialogue between the States parties and the treaty bodies has a potential to increase the capacity of States and the treaty bodies. Submission of CCDs and their regular updates may ease the reporting burden of the States parties and facilitate the effective work of the treaty bodies. Focused concluding observations streamline the reporting procedure and assist States in the effective implementation of their human rights obligations.

- Cost reduction measures undertaken with the reporting procedure may strongly contribute to the solution of the problem of resource constraints. These measures may be implemented in a most effective way in the area of the documentation and include: strict page limitations, reducing translation of summary records and the possibility of replacing them. These steps are most essential to the implementation of the Comprehensive calendar as they may reduce its costs by more than a half. Furthermore, the use of focused concluding observations and the submission of CCDs also offer a real opportunity to save resources.

- Another measure that may streamline the reporting procedure is the adoption of aligned models of interaction between the treaty bodies, civil society organisations and national human rights institutions.

3. Alongside the proposals related to the reporting procedure, it seems necessary to determine the measures to enhance the capacities of treaty bodies to handle communications and carry out inquiries. The proposal for the review of best practices

regarding the application of rules of procedure and methods of work and the adoption of common guidelines constitutes a valid solution in this regard. Furthermore, the capacity of the SPT also needs to be strengthened through the allocation of resources in line with the increasing workload of the Subcommittee.

4. A number of measures to strengthen the national framework for the protection of human rights at the national level include:

- strengthening human rights capacity-building at the national level that may enable State parties to implement treaty body recommendations;
- establishing a standing national reporting and implementation mechanism or its alternatives to better coordinate and monitor related efforts.

5. The author also made suggestions on the strengthening the impact of treaty bodies on the implementation of human rights at the country level, namely:

- establishing structured treaty bodies' follow-up procedures;
- aligned consultation process for the elaboration of general comments and the adoption of joint general comments;
- strengthening the interaction between the treaty bodies and other UN human rights mechanisms, as well UN agencies and programs;
- strengthening cooperation between treaty bodies and regional human rights mechanisms.

6. A number of measures were suggested to strengthen the independence and expertise of treaty bodies members. They include:

- guidelines on the independence and impartiality of the members of the human rights treaty bodies;
- the improvement of the national nomination and election processes;
- the elaboration of a handbook on practical issues associated with the election and duties of members of the treaty bodies;
- the public platform for the presentation of candidates.

7. Finally, the solution to the issue of the lack of awareness and visibility of the treaty bodies needs to be found. It seems that the provision of webcasting services and videoconferencing has a potential to enhance the dissemination of information about treaty bodies' proceedings and enable interaction of these bodies with various actors,

including those active at the country level, such as national human rights institutions, civil society organizations or UN agencies and programs. entities. Webcasting and videoconferencing can also help saving costs and improve the overall quality of work of treaty bodies.

The package of suggestions put forward in this research may offer a comprehensive solution of the indicated challenges confronting the treaty body system. The validity of this observation is supported by the fact that the proposed measures are compatible with each other and are mutually-reinforcing. Some of them are capable to tackle several challenges simultaneously, once implemented. Certain suggestions may be realized separately from each other, however, if taken together they would bring the most effective result possible.

It needs to be further stressed that the question of ensuring harmonisation and coherence among the treaty bodies may be regarded as a cross-cutting issue for the measures related to the working methods of the treaty bodies. A substantial number of proposals provides for the alignment of the methodology of the treaty bodies with regard to the reporting procedure, follow-up, communications and inquiry procedures, the elaboration of general comments as well as the independence and impartiality of their members. The proposed measures also aim at developing common understanding and position on certain substantial issues, which, in turn, improves the accessibility of the system and makes it user-friendly as well as promotes the development of human rights standards. However, the important condition is that such coordination should not undermine the specificity and independence of each treaty body.

The analysis of the strengthening process reveals that the action mostly depends on the initiative of two main groups of stakeholders – the treaty bodies and the States parties. It is clear that the majority of measures to streamline the procedures of the treaty bodies should be taken by the treaty bodies themselves. The main area of action of the States parties lies in the enhancement of their capacity to fulfill human rights obligations, the nomination and election of the members of the treaty bodies as well as provision of sufficient funding to the system, particularly for the implementation of the proposals on strengthening. Notably, there might be some situations when both groups of stakeholders consider the same issue to be their sole prerogative. The potential

conflict of interests may be demonstrated by the current course of discussion around the guidelines on the independence and impartiality. The treaty bodies consider themselves competent in this issue and are in the process of integrating the Addis Ababa guidelines in their rules of procedure. However, the the States parties disagree whether the adoption of the guidelines on the independence and impartiality constitutes their prerogative or the prerogative of the treaty bodies.

The implementation of some other measures, in particular the Comprehensive reporting calendar as well as webcasting and videoconferencing, requires joint action among the States parties, the treaty bodies, OHCHR and other actors. The potential of the proposed measures to be implemented is contingent on the possibility of reaching an agreement within each group of stakeholders in line with their respective authority.

The extent of the participation of the relevant stakeholders in the consultation process constitutes the decisive factor for the possibility of achieving the agreement and the formulation of the aligned position by each group of stakeholders.

While the consultation process initiated on the strengthening of the treaty body system may be positively characterised as being inclusive, certain concerns in this regard are being raised. The participation of the stakeholders presumes that they are represented in a sufficient way. Although the intergovernmental process was set up with a view to “benefit from the inputs and expertise of the human rights treaty bodies,”³¹² the GA “had not foreseen any funding for the participation of treaty bodies”³¹³ and some treaty bodies, namely treaty body members, participated in the consultations at their own cost. Some of the interviewed members of the CESCR stressed that the opportunities for broad participation of experts in the consultations were rare.

Nonetheless, the Co-facilitators consulted the Meeting of Chairpersons in the New York and managed to engage with Chairpersons of all ten treaty bodies. This is certainly a positive step, however, it does not preclude the full representativeness of all treaty bodies in the process as the Meetings of Chairpersons lack decision-making powers and Chairpersons are acting in their personal capacity.

³¹² A/RES/66/254, 23 February 2012, para. 6.

³¹³ HRTD Newsletter, 2013, p. 2.

Referring to the positions of States, it seems necessary to underline that the major platform to generate the ideas of States is the intergovernmental process. The Co-facilitators made an attempt to summarise the ideas emerged during the consultations and to determine the issues that have enjoyed general agreement on action, agreement on no further action and the issues that require further discussions-proposals from the Co-facilitators. While this initiative helps to determine what measures are most likely to be supported by the Member States and probably be recommended for action by the GA, it is questionable whether the documents prepared by the Co-facilitators reflect the actual course of the debate as they also contain the personal views and recommendations of the Co-facilitators. Some commentators expressed doubts concerning the full participation of Member States in the negotiations process due to the fact that some countries lack resources to send their representatives to the consultations.³¹⁴

As the 67th session of the General Assembly is on the way, there is a chance that the current intergovernmental process could “well end in the next few weeks.”³¹⁵ The main expectation is related to the possibility of achieving consensus on the allocation of resources for the effective functioning of the system. While “many proposals can be implemented without additional resources,”³¹⁶ some proposals require additional costs, such as the Comprehensive reporting calendar, the LOIPR/the SRP or the list of themes, aligned methodology for the constructive dialogue between the States parties and the treaty bodies, open public platform, capacity-building, webcasting and videoconferencing. Significantly, the consultation process revealed that the Member States recognised the necessity of providing the human rights treaty body system with adequate resources to support its effective functioning. Nevertheless, the issue of resources is still being deliberated by the Member States.

The analysis of the present state of affairs of the strengthening process raises one more question within this chapter: How to ensure consistency between the actions

³¹⁴ See Catholic Family and Human Rights Institute (C-FAM), Fact-Sheet on the inter-governmental process of the United Nations General Assembly to strengthen and enhance the effective functioning of human rights treaty monitoring bodies, 10 May 2013 at <http://www.forumvida.org/sociedad/c-fam-declaracion-sobre-reforma-onu> (consulted on 25 June 2013).

³¹⁵ HRTD Newsletter, 2013, p. 1.

³¹⁶ Ibid.

already undertaken by the treaty bodies and the efforts being made within the intergovernmental process, taking into consideration that the strengthening process is still going on and the GA has not yet adopted the outcome document? There exist certain doubts on the actual benefits of the aforementioned initiatives taken by the treaty bodies prior to the conclusion of the intergovernmental process, since they “may actually increase the workload of the treaty bodies, further burden state parties, and ultimately defeat the purpose of the intergovernmental process.”³¹⁷ Meanwhile, it should be recognised that “many things may still be improved by the treaty bodies themselves at no cost without the involvement of the GA, such as strengthening the working methods of the treaty bodies (the example of the Addis Ababa guidelines).”³¹⁸ The Chairpersons have requested the committees to review the proposals put forward by the High Commissioner and to consider their implementation in coordination with each other.³¹⁹ Since that some treaty bodies have engaged in this process and even adopted decisions/statements in this regard. Others are also increasingly engaging themselves in this initiative.³²⁰ However, the authority of the GA to discuss and express its opinion on issues pertaining to the functioning of the treaty bodies should not be overlooked.

A number of factors may influence the potential to achieve an agreement among the stakeholders. The first aspect relates to the different roles performed by the stakeholders with regard to the implementation of measures, since some are to be realised by the treaty bodies themselves, the others are in the hands of the States parties and the third category requires joint undertakings. There might be situations when the conflict of interests between the stakeholders hinders the possibility to reach an agreement. The second factor is related to the level of the representativeness of relevant actors in the consultation process, which, in turn, may impede the formulation of

³¹⁷ Catholic Family and Human Rights Institute (C-FAM), Fact-Sheet on the inter-governmental process of the United Nations General Assembly to strengthen and enhance the effective functioning of human rights treaty monitoring bodies, 10 May 2013 at <http://www.forumvida.org/sociedad/c-fam-declaracion-sobre-reforma-onu>; See also Stefano Gennarini, J.D., Human rights official riles up UN delegates, fire alarm goes off, October 25 2012 at <http://www.turtlebayandbeyond.org/2012/homosexuality/human-rights-official-riles-up-un-delegates-fire-alarm-goes-off/>(consulted on 25 June 2013).

³¹⁸ Interview with Mr. Paulo David, Chief of Capacity Building and Harmonisation Section, Human Rights Treaties Division, OHCHR, 15 May 2013.

³¹⁹ A/67/222, 2 August 2012, para. 12.

³²⁰ HRTD Newsletter, 2012, p. 1.

aligned positions among them in relation to concrete proposals and hinder the possibility to reach an agreement. Thus, the opportunities for broad participation of members of the treaty bodies in the consultations were rare. While the intergovernmental process constitutes the major platform to generate the ideas of States, not all Member States have an opportunity to participate in the consultation process.

Taking note of these nuances and the fact that the treaty bodies have launched a process of the implementation of the proposals emerged during the consultations, it seems necessary to ensure that all stakeholders interact with each other when taking decisions. In the current situation it seems crucial to guarantee that when negotiating the final document of the intergovernmental process the Member States take into consideration the positions of the treaty bodies and the current initiatives undertaken by them. In this relation, the principles endorsed by the Chairpersons regarding the intergovernmental process should be embraced by the States to ensure that “the outcome of the General Assembly process will truly reinforce the treaty body system and ultimately the protection of human rights in the daily life of all people worldwide.”³²¹ At the same time, the treaty bodies are encouraged to consider the developments in the intergovernmental process, and if the outcome document is adopted, they should scrutinise the recommendations addressed to them with a view to their potential implementation.

³²¹ HRTD Newsletter, 2013, p. 2.

CONCLUSION

The analysis of the progress of the current process on the strengthening of the human rights treaty body system has revealed that this process has developed into two main tracks: the intergovernmental process and the initiative of the treaty bodies, largely guided by the outcome of the consultation process initiated by the High Commissioner for Human Rights. The leading roles in these two tracks are performed by the States parties and the treaty bodies, who share a common responsibility to enhance the effectiveness and efficiency of the treaty body system for the benefit of the rights holders. It is clear that with the GA seized of the matter and the treaty bodies willing to move forward, the momentum for the decision-making has arrived. Meanwhile, the two tracks have their limits and opportunities with respect to concrete actions that may be taken within their scope.

With regard to the intergovernmental process, it should be noted that the decisions of the GA related to the functioning of the treaty body system in any case should respect the legal status of the treaty bodies which is established by the relevant human rights treaties and is determined by their mandate and functions and independent character. This entails that the treaty bodies are independent to decide on their working methods. While the GA may address the treaty bodies with recommendations, the final decision regarding the improvement of their procedures lies solely in the hands of the treaty bodies. Furthermore, the intergovernmental process should build upon the efforts that have already been made by the committees to improve the efficiency of their work.

Nevertheless, the GA is competent to request its subsidiary bodies, particularly the HR Council and OHCHR, to undertake concrete measures within their mandate in order to strengthen the functioning of the treaty body system. Furthermore, the GA may recommend the States parties to adopt concrete measures to improve the efficiency of the treaty bodies within their respective role in the system.

For instance, the GA may recommend the treaty bodies to adopt the LOIPR/SRP procedure. While the treaty bodies would not be legally bound by such a recommendation, there is a potential that they may consider it and may implement the

recommended measure in future. At the same time, the GA may make a decision to encourage the States parties to consider the new optional procedure positively and call them to accept it. Furthermore, the GA may address the OHCHR to make a review of the workload of the committees, provide sufficient staff support and allocate appropriate funding.

What comes for the treaty bodies, it is clear that they should act within the legal status as provided by the treaties, which means that they should not exceed their competence with regard to the organisation of their work and respect the authority of States to decide on the issue of amending the treaties, adoption of new protocols as well as the election of the members of the treaty bodies. Furthermore, the treaty bodies may perform their functions and undertake initiatives to strengthen their work in conformity with their capacities (meeting time, staff support and budget), which are provided by the GA and OHCHR.

It is clear that the aforementioned aspects shape the processes of taking action initiated by the relevant stakeholders. In a situation when the treaty bodies have undertaken to review the proposals made so far by different stakeholders with a view to potentially implementing them, there is a risk that eventually there might appear significant divergences between their activities and the intergovernmental process, which may negatively impact the functioning of the whole treaty body system. What is needed in this situation is the coordinated action within each group of stakeholders and the readiness of all stakeholders to pull their initiatives together towards an agreed direction. To that end, it is of paramount importance to provide for the widest possible participation of the stakeholders in the ongoing process. In order to ensure this, the following proposals may be suggested.

The treaty bodies should be further encouraged to develop their positions on the proposals to enhance the effective functioning of the system. Furthermore, it would be extremely valuable if they endow their Chairpersons with the authority to represent the position of the committees on certain issues related to the strengthening initiative. This could be operated through the adoption of statements containing their positions on the relevant issues prior to the Meeting of Chairpersons. This measure may be a step forward, since the Meetings of Chairpersons have become the focal point for generating

the positions of the treaty bodies on the proposals to strengthen the system. Being authorized to represent the position of their respective committees the Chairpersons may pave the way to the formulation of a coordinated position of all treaty bodies on the measures to strengthen their system.

While the Member States are negotiating in New York now, it is difficult to envisage whether the GA would come to the decision within this session or would further extent the intergovernmental process. In any case, the outcome of the intergovernmental process should not have a character of a quick fix. While the Member States are negotiating to reconcile the diverging views and the treaty bodies are reviewing the recommendations of the High Commissioner, it is highly important to encourage them to engage with each other to the maximum extent possible. This could be reached through organising consultations between the States parties and the Chairpersons of the treaty bodies, provided they are endowed with the authority to represent the position of their committees as proposed earlier. The other option, though a daring one, could be to bring the majority of the members of the treaty bodies to New York in order to engage with the Member States and to reach the overall agreement on the set of measures to address the challenges shaking the treaty body system.

The proposed options for the bringing of all the stakeholders, represented in the most possible way, at the negotiations table may ensure the complementarity of the decision-making processes initiated by the treaty bodies and the States parties and thus provide for the holistic approach to the effective strengthening of the treaty body system that should ultimately contribute to the enjoyment of human rights by their holders.

Therefore, the outlook of this process may be described by a quote of Henry Ford: “If everyone is moving forward together, then success takes care of itself.”

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25. Statement by Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights, Dublin Statement on the process of strengthening the United Nations Human Rights Treaty Body System, Dublin, 19 November 2009 at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9642&LangID=E> (consulted on 9 June 2013).
26. Statement by Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights to the General Assembly Third Committee, New York, 21 October 2009 at <http://www.unhcr.ch/hurricane/hurricane.nsf/0/7A1B6AD3FE539289C125765D00408E74?opendocument> (consulted on 10 June 2013).
27. Statement by the United Nations High Commissioner for Human Rights at the opening of the fiftieth session of the Committee against Torture, 6 May 2013 at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13296&LangID=E> (consulted on 9 June 2013).
28. Statement of the CEDAW on the Report of the High Commissioner for Human Rights on the Strengthening of the United Nations Human Rights Treaty Bodies, Fifty-fourth session 11 February-1 March 2013, para. 7 at http://www2.ohchr.org/english/bodies/cedaw/docs/statements/StatementOnTheReportOfHC_TBsS_As%20Adopted.pdf (consulted on 11 June 2013).
29. The Poznan Statement on the Reforms of the UN Human Rights Treaty Body System, September 2010, at

<http://www2.ohchr.org/english/bodies/HRTD/docs/PoznanStatement.pdf>

(consulted on 9 June 2013).

30. The UN Human Rights Treaty System, Fact Sheet No. 30/Rev.1, 2012, p. 43 at <http://www.ohchr.org/Documents/Publications/FactSheet30Rev1.pdf> (consulted on 9 June 2013).
31. Thematic discussion and Informal consultations of the intergovernmental process, 19-20 February 2013, p. 5 at <http://www.ohchr.org/Documents/HRBodies/TB/HRTD/AgendaThematicDiscussionFeb2013.pdf> (consulted on 17 June 2013).

VIII. Interviews

1. Interview with Mr. Simon Walker, Chief of Civil, Political, Economic, Social and Cultural Rights Section, Human Rights Treaties Division, OHCHR, 6 May 2013.
2. Interview with Mr. Paulo David, Chief of Capacity Building and Harmonisation Section, Human Rights Treaties Division, OHCHR, 15 May 2013.

ANNEX**INTERVIEW QUESTIONNAIRE**

1. What are the main challenges facing the treaty body system?
2. Do you see a need in bringing changes to the working methods of the treaty bodies?
3. What are the perspectives of harmonizing the working methods of the committees and how would you assess the role of the Meeting of the Chairpersons in this regard?
4. What is the perspective of realizing the idea of comprehensive reporting calendar and what advantages it brings?
5. Do you see any signs of unwillingness on the side of State parties to comply with their reporting obligations?
6. How would you comment on the issue of lack of resources to support the system?
7. What are the perspectives of implementing the idea of a standing national reporting and coordination mechanism?
8. What are the advantages of the on-going inter-governmental process on the strengthening of the treaty body system?
9. What efforts have been taken by the co-facilitators of the inter-governmental process to engage with the treaty bodies and other stakeholders in Geneva?