



SUBMISSION TO THE 30TH MEETING OF CHAIRS OF THE HUMAN RIGHTS TREATY BODIES

28 MAY - 1 JUNE 2018, NEW YORK

INTRODUCTION

1. This paper is presented to the 30th meeting of Chairs of the human rights treaty bodies (Chairpersons meeting) by 23 non-governmental organizations that contribute to many aspects of the work of the treaty bodies, including by encouraging and supporting national partners in their use of the system. We have a strong interest in a treaty body system that aims to ensure individuals can effectively exercise their rights under the treaties and that increases human rights protection in countries and provides effective remedies for victims.
2. When the first treaty bodies were created there was no such thing as a *treaty body system*. Over the years, 10 treaty bodies have been created and while their mandates are unique and independent, they are now very much seen as part of a wider human rights protection system and they are also organized and administered as one.
3. A number of treaty body strengthening discussions are currently on-going. We note the launch of the Geneva Academy's report *Optimizing the UN treaty body system* and the Wilton Park conference report *Towards a 21st century treaty body system*. We consider that all strengthening discussions must bear in mind who the ultimate beneficiaries are, namely the rights holders, and promote genuine engagement by national stakeholders, including governmental and civil society. Such engagement provides a much stronger basis for implementation of treaty body recommendations and decisions.
4. In February 2018, [29 NGOs wrote to the UN Secretary General](#) highlighting a series of principles that we consider key for the future strengthening process. These included a call for an open and transparent and a truly participatory 2020 review process that preserves the integrity and independence of the treaty bodies with a clear commitment to increased human rights protection for rights holders on the ground. We consider that any efforts to review the treaty bodies in 2020, should capitalize on their successes, and that States, OHCHR, NHRIs and NGOs all play a key role in highlighting these.
5. More specifically in relation to the meeting agenda item *Consultation with NGOs*, we would like to dedicate this submission to the discussion around simplification and alignment, where appropriate, of working methods and practices across the different treaty bodies. We believe that there are already a multitude of good practices within the treaty bodies' working methods with the potential to make the system more user-friendly and accessible to victims and civil society actors. In several discussions over the years, it has become apparent that information drawing on good practices and knowledge about existing practices is limited due to the non-existent time and space for broader inter-committee discussions.
6. We encourage the Chairpersons to find ways to discuss how to give effect to the 'Poznan formula' and to increase and improve inter-committee collaboration, in order to exchange good practices between the treaty bodies and adopt common measures in certain areas on working methods and procedural matters. It is key that time is also carved out for essential discussions to take place in the respective treaty bodies before and after the chairpersons meeting. Considering challenges in meeting time, we would like to encourage the Chairs to build on the Wilton Park recommendation to "bring together between one to three members of each treaty body, not

necessarily chairs, to discuss reform issues.” We encourage the Chairs and the treaty body members to also consider holding such meetings between sessions and through web conferencing considering that both time and resources are scarce and to consult with NGOs, taking into account their experiences of working with several treaty bodies and their knowledge of good practices.

7. While we acknowledge the importance of maintaining the treaty bodies’ independence and flexibility with respect to working methods, for procedural matters, aligned practices across the treaty bodies significantly aid civil society, including rights holders’ accessibility to the treaty bodies. Against this backdrop, we would like to take this opportunity to highlight some good practices that already exist in some treaty bodies and that could be appropriate to mainstream. We encourage the Chairpersons to consider these and discuss them among themselves and within the respective treaty bodies.¹ These are not meant to be an exhaustive list of treaty body practices but some examples for discussion.

This submission will focus on good practices in existing treaty body working methods relating to:

- ❖ **NGO engagement**
- ❖ **Common methodology for adoption of general comments and general recommendations**
- ❖ **Interactive dialogue**
- ❖ **Non-reporting States**
- ❖ **Follow-up procedures on concluding observations**

NGO ENGAGEMENT

8. We note that the majority of treaty bodies have varying deadlines for the submission by NGOs of written information in relation to country reviews, lists of issues, lists of issues prior to reporting and follow-up procedures. While some differences may be merited, it would help NGO engagement if these were as aligned as possible. It is important in this respect to take into account the need to ensure that the information received is as accurate and up-to-date as possible, while still giving the treaty body members and the secretariat adequate time to prepare for the review. As a good practice, we note for example that:

- ❖ The CEDAW has taken some steps towards aligning all its deadlines, e.g. three weeks ahead of the beginning of the session for submissions for countries under review and for the list of issues and list of issues prior to reporting to be adopted at the pre-session that follows. It has also adjusted its deadline for follow-up information to four weeks ahead of the start of the session.

We recommend that the treaty bodies discuss with OHCHR to ensure that deadlines are simplified and similar when possible, for example 6-8 weeks before the start of a session, and that the list of countries coming up for list of issues or list of issues prior to reporting is scheduled well ahead, and not at the preceding session.

9. Beyond submitting written information, national NGOs have much to contribute to treaty body meetings regarding both States parties’ evaluations and discussions on human rights standards. NGOs have long asked for the development of common methods for NGO participation across the treaty bodies to ensure adequate opportunities for NGOs to contribute to the formal process through safe channels. All treaty bodies have formalized engagement with NGOs, however the modalities of these vary, both in terms of privacy and formality. A number of treaty bodies listen to a group of NGOs from several countries in public session (e.g. CERD (without webcast) and CEDAW, CESCER and CMW (with webcast), while others hear from a group of NGOs from several countries separately in private session (e.g. CCPR, CED and CRPD). Many will schedule formal meetings with NGOs at the beginning of the week, independently of when the review starts, sometimes requiring NGOs who

¹ This submission uses the following acronyms: Human Rights Committee (CCPR), Committee on Economic, Social and Cultural Rights (CESCR), Committee on the Elimination of Racial Discrimination (CERD), Committee on the Elimination of Discrimination against Women (CEDAW), Committee against Torture (CAT), Committee on the Rights of the Child (CRC), Committee on Migrant Workers (CMW), Committee on the Rights of Persons with Disabilities (CRPD) and Committee on Enforced Disappearances (CED). The Sub-committee on Prevention of Torture has been excluded from this comparison due to the different nature of its mandate and functions.

travel to Geneva to attend to incur additional costs. Many then dedicate additional time between meetings for informal NGOs meetings prior to the review (e.g. CEDAW, CERD, CESC, CCPR, CMW and CED, CRC) and often the NHRIs share the formal and informal sessions with NGOs (e.g. CCPR and CED, CRC). Others meet with NGOs in private during the pre-session as well (e.g. CEDAW, CRC and CESC). While all these efforts to engage with NGOs are welcome, we would suggest that one examples stands out as good practice:

- ❖ The CAT meets with NGOs in formal private session, with full interpretation. It dedicates one hour to a meeting with NGOs from each country under review and meets with NHRIs, as well as National Preventive Mechanisms separately. These meetings are usually held on the day before the review, clustering all interactions with the Committee on a particular country to a maximum of three consecutive days.

We recommend that all treaty bodies consider adopting this practice for formal NGO engagement.

10. Strengthening the means for remote participation would enhance the accessibility and visibility of the treaty bodies, allowing for broader and more diverse civil society engagement. As an example of good practice:

- ❖ The CERD, for example, frequently makes use of remote participation during the NGO session along with NGOs present in the room, with full interpretation. This has also been the practice of the CRPD, both during sessions and pre-sessional working groups. The CRC has also formalized the use of videoconferencing by including it in its working methods on child participation.
- ❖ There have been advancements by treaty bodies and OHCHR in ensuring that UN Web TV provides official webcast of public meetings, in English and in relevant languages for the country (whether in another UN language with interpretation provided by UN, or a non-UN national language provided for by a State). This is key to allowing national civil society and other stakeholders to access and follow the substantive discussions during a review and to facilitate better and more timely dissemination of information at the national level (e.g. CEDAW review of the Republic of Korea, the CRPD review of Slovenia, the CERD reviews of Serbia and Slovakia, the CRC review of Mongolia and the CCPR the review of Hungary were all webcast in English and national languages). There is however serious concern that funds would only be available for webcast until June 2018, with no available information indicating continuation.

We recommend that:

- a) all treaty bodies ensure that remote participation is possible for those who cannot travel to Geneva to participate. We encourage OHCHR to ensure that the necessary technology is available in meetings with NGOs;**
 - b) the treaty bodies and OHCHR ensure that funding is requested and made available to continue with the provision of official UN webcast, in a foreseeable and sustainable manner. Furthermore, the treaty body secretariats should develop clear protocols to institutionalize the practice of providing, when relevant, webcast in alternative UN languages and in non-UN national languages when States provide for interpretation. Prior communication with States (on whether they will provide interpretation in their national language) and UN departments involved (for inclusion of the national language in the options of languages in UN Web TV) is key to also ensure in advance notice to the potential audience at the national level (e.g. in informative notes by the treaty bodies) and proper provision of webcast;**
 - c) that consideration be given to the time when a review takes place in Geneva taking into account, where possible, the time in the country concerned so that interested stakeholders, including national NGOs, can follow the webcast in real time. This would increase the possibility of broadcast and communication strategies concerning a review, not least through social media; and**
 - d) that consideration be given to ensuring accessibility to the treaty bodies for persons with disabilities beyond the CRPD. The challenge regarding accessibility remains in the other treaty bodies.**
11. Meeting with NGOs in private session is key to allow for a full and free exchange of information and preventing acts of intimidation and reprisals against those who cooperate with the treaty bodies. This also included the receiving of confidential reports from NGOs where there is a risk of intimidations or reprisals. We appreciate that all the treaty bodies have assigned a Rapporteur/focal point to report on acts of intimidation and reprisals

against those who engage with the treaty body system. However, even in the case of the CAT, which was the first treaty body with a dedicated webpage on reprisals, information on how to report acts of intimidation or reprisals is not easily accessible. We also note that some treaty bodies have disclosed confidential NGO reports to States upon being requested to do so.

We recommend that:

- a) **clear and accessible information be available on each treaty body webpage (e.g. CAT and CERD), including through the main treaty body website, indicating how an individual can report such cases and what focal points exist in the respective Committees;**
- b) **the treaty bodies should decide on public/private action in respect of cases of intimidation or reprisal, in agreement with the individual concerned in order to ensure that their wishes concerning public exposure are respected; and**
- c) **treaty bodies must respect the confidential nature of NGO reports where there is a risk of intimidation and reprisals.**

COMMON METHODOLOGY FOR ADOPTION OF GENERAL COMMENTS & GENERAL RECOMMENDATIONS

12. At their 27th meeting in 2015, the Chairs adopted common elements (A/70/302; para. 21-25) for the elaboration of and consultation on general comments/recommendations. The guidelines also recommended the generalization across all treaty bodies. We note that in this area the treaty bodies have already gone a long way in aligning their working methods in accordance with good practice and the majority of the treaty bodies that issue general comments/recommendations now follow similar procedures. In this connection we are appreciative of the development of concept notes/lists of issues/scoping documents, which have also been the subject of consultation and a dedicated discussion with civil society and States (e.g. CRC, CEDAW, CCPR, CESCR and CMW) at what is usually a half-day of discussion. We also appreciate that many treaty bodies now invite consultations on the first drafts of the general comment/recommendation and make draft general comments/recommendations available on the respective Committee webpage. So far most practices, e.g. those of the CEDAW, the CCPR, the CRC, the CESCR, the CRPD, the CED and the CMW are very similar. We consider that this process already sets a good practice, however, one important good practice that could be considered for common adoption is:

- ❖ The CCPR conducts the discussions and deliberations on its general comments in public session (unless the circumstances require otherwise). This is key in enabling interested stakeholders to follow the discussions on important issues of law and the nature and scope of treaty obligations. In contrast, other treaty bodies hold these deliberations in private sessions.
- ❖ Another good practice example is the proactive planning and mobilization of rights holders and partners (e.g. CRC engaging children) to ensure their inputs and the explicit recognition of their participation in the final text of the general comment/recommendation.

We recommend that these good practices be adopted by all treaty bodies.

INTERACTIVE DIALOGUE

13. Efforts have also been made by the Chairpersons (HRI/MC/2014/3) to align the methodology for the constructive dialogue with States parties, in order to make it more effective and to encourage a more interactive exchange between the treaty bodies and the States parties. We consider that good practice in this area already exists, in that:

- ❖ The majority of the treaty bodies have established aligned time periods for interactive dialogues, specifying that they are to be conducted during two three-hour meetings, over two consecutive days (all but CEDAW). Conducting the review over two days allows the State party time to consult with capitals and to give more comprehensive responses to the respective Committees. The majority of the treaty bodies also cluster and sequence the content of the constructive dialogue by themes (all but CAT and CERD) among a taskforce or co-rapporteurs, indicating the corresponding articles in the treaty concerned and allow the State representatives to give initial answers a to group of clustered questions. Such clustering is helpful and better enables interested stakeholders to follow the dialogue, including identifying when the replies are evasive or incomplete.

We recommend that all treaty bodies conduct their reviews over two consecutive days, in order to provide States parties time to consult with capitals. We also recommend that all the treaty bodies to sequence the issues to be discussed in the constrictive dialogue by theme, in order to enhance the ability of stakeholders to follow the dialogue and with an opportunity for the state to provide initial answers after a number of questions, ensuring that the dialogue is interactive in nature.

NON-REPORTING STATES

Although there are many differences between the Universal Periodic Review (UPR) and the treaty bodies, the UPR has shown us that States can submit reports on time where there is political will. Treaty bodies should be provided with resources and mechanisms for reviewing States in the absence of a report with clear and predictable parameters for when a treaty body will proceed to review in the absence of a report, while at the same time employing strategies to encourage States to meet their reporting obligations. We consider that many treaty bodies have developed good practices in this area to date, in that:

- ❖ All treaty bodies that review state reports have sought to address chronic or long term underreporting through their rules of procedures, enabling them to consider a state party in the absence of a report through their working methods and rules of procedures (however CEDAW only does so as a measure of last resort). The CRPD Convention established the possibility of a review in the absence of a report in the treaty itself. The CAT has also proceeded to review special reports in the absence of a special report - a welcome practice considering the urgency of the matter that prompted such reports in the first place.
- ❖ The CCPR has started scheduling one non-reporting state per session and, since 2018, this practice is no longer limited to initial reports, but also periodic reports that are more than 10 years overdue.
- ❖ The CAT has also offered non-reporting States the possibility of submitting initial reports under the simplified reporting procedure (e.g. CAT).

We recommend that all treaty bodies proceed to review state parties in the absence of a report (including for periodic reports) and that they do so routinely once 6-8 years have passed since the last review and that the treaty bodies discuss among them, the experiences of those treaty bodies that do offer the simplified reporting procedure for initial reports.

FOLLOW-UP PROCEDURES ON CONCLUDING OBSERVATIONS

14. Taking note of the papers prepared for the Chairpersons' meeting by OHCHR (HRI/MC/2018/4 and HRI/MC/2018/CRP.2) on common elements for an aligned follow-up procedure and the expert seminar report that took place last October, we would like to emphasize just how important the follow-up procedures are in ensuring implementation and effectiveness of treaty body recommendations. The follow-up procedure also

provides an important avenue for States and NGOs to continue the dialogue and not least to promote a national dialogue on follow-up and implementation. However, the variety of existing follow-up procedures, both as to the number of recommendations identified, the timing of follow-up reports and reviews, public or non-public follow-up reports or letters are some aspects that make it difficult for NGOs to engage effectively with the treaty bodies on these procedures.

15. Of the treaty bodies that do have a follow-up procedure in place (all but the CRC), all apply different working methods to assess and grade the implementation of their recommendations and views. Some treaty bodies use a system of grades ranging from A to E (e.g. CCPR), others use several grading scales for three categories of assessment (e.g. CAT), and others use six categories to assess the implementation of follow-up recommendations (e.g. CEDAW). The time periods in which treaty bodies ask States to submit follow-up reports range from 1-2 years from the time of adoption of the concluding observations.
16. The paper prepared by OHCHR for consideration by the Chairpersons sets out a list of possible elements for a common aligned procedure for follow-up to concluding observations. This list merits a proper discussion among the treaty bodies that have follow-up procedures. We would like to endorse the elements proposed for discussion by the Chairs and also suggest a few additional criteria for discussion and consideration:
 - a) All sets of concluding observations should contain a standard paragraph related to follow-up.
 - b) All concluding observations should invite States to inform the treaty bodies about their implementation plans for all recommendations, including those identified for follow-up.
 - c) Treaty bodies should identify and formulate SMART recommendations that give priority to those concerns that are grave and urgent in nature and that may prevent further violations if implemented, or address critical or long persisting issues.
 - d) Treaty bodies should agree on a timeline between one and two years for States to submit follow-up reports and for follow-up review.
 - e) Treaty bodies should elaborate clear and aligned criteria for identification of follow-up recommendations and address a maximum of four recommendations per review under the follow-up procedure.
 - f) Treaty bodies should limit the follow-up procedure to one follow-up cycle, and assess the state's performance whether or not the state has submitted a follow-up report, in order to ensure that this assessment is reflected in the development of the state's next list of issues prior to reporting.
 - g) The qualitative assessment should be carried out through aligned benchmarks. The current proliferation makes effective dissemination and communication at the national level difficult, including to quickly assess the progress, and requires in depth knowledge of various working methods.
 - h) The follow-up assessment outcome should be made public and available on the respective treaty body website, (e.g. on the 'latest news' website and through social media), as an annex to the concluding observations.
 - i) Treaty bodies should urge States to establish National Mechanisms for Reporting and Follow up (NMRFs) where these do not already exist, and to engage with NHRIs with 'A status' to conduct a national debate on the findings and to facilitate the inclusion of treaty body recommendations in national action plans.
 - j) Treaty bodies should make use of technology to hold follow-up conversations with States that need technical assistance in implementing the recommendations.

Although there is still some way to go on the aligning follow-up procedures in accordance with good practice, we see some good practices emerging:

- ❖ We welcome that the CEDAW has started publishing a list of the States that are coming up for review under the follow-up procedure for review on the respective session page. This makes the provision of information by NGOs much more predictable.
- ❖ The CAT showed welcomed flexibility and good use of its follow-up procedure when it amended the recommendations identified for follow-up and set a shorter deadline based on the urgency of the situation in the aftermath of the coup in Turkey just a few months after the review.

We recommend that the treaty bodies take into account these elements when discussing the follow-up procedure at the 30th meeting.

We hope that this submission will provide a basis for an effort by the treaty body Chairpersons to take stock of some of the important changes to working methods that the treaty bodies have undertaken and lead to further discussion on areas where greater alignment of working methods would make a particularly meaningful contribution to NGOs' efforts to engage with the treaty bodies and promote better implementation by States of their human rights obligations. We look forward to continuing this discussion with you.

- Advocates for Human Rights
- Alkarama Foundation
- American Civil Liberties Union (ACLU)
- Amnesty International
- Association for the Prevention of Torture
- Centre for Civil and Political Rights
- Child Rights Connect
- CIVICUS: World Alliance for Citizen Participation
- European Roma Rights Centre
- Global Initiative for Economic, Social and Cultural Rights
- Human Rights in China
- IDHEAS, Litigio Estratégico en Derechos Humanos A-C
- International Commission of Jurists (ICJ)
- International Disability Alliance
- International Federation for Human Rights (FIDH)
- International Movement Against All Forms of Discrimination and Racism (IMADR)
- International Rehabilitation Council for Torture Victims
- International Service for Human Rights
- International Women's Rights Action Watch (IWRAW Asia Pacific)
- MADRE
- Validity Foundation - Mental Disability Advocacy Centre
- Women's Link Worldwide
- World Organization against Torture (OMCT)