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# Report

## Regional Consultation for Africa

Strathmore University, Nairobi, Kenya,  
20 -21 July 2017

Within the purview of the Academic Platform on Treaty Body Review 2020, this fourth regional consultation brought the Geneva Academy-led Platform to Nairobi, Kenya, on July 20<sup>th</sup> and 21<sup>st</sup>. Hosted by Strathmore University Law School together with the Universities of Nairobi and Pretoria and with the support of the Open Society Justice Initiative, the regional consultation for Africa gathered experts from academia, civil society, UN and persons involved in Treaty Bodies and African human rights mechanisms to discuss their views on the 2020 Treaty Body Review as initiated in 2014 by General Assembly Resolution 68/268 on UN Treaty Body Strengthening.

The aim of this regional consultation was to gain insights from African experts on how to best develop the Treaty Body system as well as to find inspiration from – and complementarity with – African human rights mechanisms. The overall aim of the Academic Platform is to coordinate a global academic effort to develop proposals on how to strengthen the effectivity of the Treaty Body System to reach its purpose of bringing about changes on the ground. Human rights treaties at both the international and regional level ought to be realized and made tangible for rights holders at the grassroots level

The current document summarizes the topics and proposals raised during the regional consultation, whilst highlighting points of general consensus. The discussions present within this report have been clustered thematically and do not reflect the order of the consultation's programme. For the sake of conciseness and clarity, this report is divided in three parts:

- Universal and Regional Complementarity/Synergy;
- The Importance of Accessibility to the UN Treaty Bodies for Human Rights Monitoring and Implementation and
- Maximizing the Effectiveness of Interactions with States.

## UNIVERSAL AND REGIONAL COMPLEMENTARITY/SYNERGY

A substantial amount of interventions during the consultation were dedicated to the relevance of **complementarity** among African human rights mechanisms (notably, the African Commission on Human and Peoples' Rights) and UN systems of Treaty Body strengthening. Reporting fatigue on behalf of African Member States is common to both, largely due to limited resources and capacity. This is notwithstanding the increasing political will African countries are continuously developing under the purview of reporting standards and mechanisms set out under the Treaty Bodies. What follows is a list of suggestions discussed during in plenary:

- It was noted that reporting compliance with the African human rights system is generally lower than with the UN Treaty Body system, partly due to the short periodicity of the African Commission on Human and Peoples' Rights reporting procedure (2 years) and the low understanding by Member States of the procedures/timelines of the African regional system. Higher reporting compliance to Treaty Bodies may also be accounted for in part to the unfortunate perception of a hierarchy between the Geneva-based bodies and the African human rights systems.<sup>1</sup> This is regrettable, and points also to the **need/value of increasing complementarity between the two systems**.
- There was a suggestion that the African system is “unified” whereas the Treaty Body system is fragmented, notwithstanding significant growth in the African system (the African Charter on the Rights and Welfare of the Child, the African Women’s Protocol, etc.). **The comprehensive and substantive reporting mechanisms in place within the African region may prove valuable for the Treaty Body system**. The African Commission’s monitoring and reporting on the Protocol for protection of women and IDPS in State Parties was brought to the floor as a procedural example to take into consideration.
- The use of **in situ visits** which the African Commission has used in the context of its promotional mandate was also highlighted as a very useful template for Treaty Bodies to adopt. Apart from missions of a *fact – finding* nature, such visits allowed for greater sensitization and direct engagement with national stake holders.
- The introduction of **national implementation hearings**, which the African Commission has used on several occasions to follow-up and assess implementation, was also discussed as a possible mechanism to consider for Treaty Body strengthening purposes. In connection to the above, a **link between National Human Rights Action Plans and Treaty Body recommendations** was considered as a way to further strengthen implementation and improve capacity building. The linkage of reporting obligations with Kenya’s Vision 2030 and the Sustainable Development Goals within Kenyan national policy was used as a best practice.

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<sup>1</sup> Article 58, Rules of procedure of the African Commission on Human and Peoples' Rights.

- The **template offered by the Addis Ababa Roadmap**, which focused on increasing cooperation between UN and African Special Procedures, was also considered a useful model for Treaty Bodies amongst each other and vis-à-vis regional human rights systems.<sup>2</sup> The Roadmap, which envisaged joint missions of the African Union and UN special mandate holders has yet to meaningfully advance, however, largely because standards and guidelines to direct such missions need to be clarified. This should not however hamper Treaty Bodies from developing analogous guidelines vis-à-vis African (and indeed other regions') human rights reporting mechanisms.
- The introduction of **joint sessions and missions** amongst Treaty Bodies and African human rights bodies (e.g., CEDAW and CRC; ACHPR and ACRWC have apparently done this once) could play an important role in averting further fragmentation in recommendations.
- The importance of bringing the system closer to its direct beneficiaries was widely discussed. **Treaty Body roving sessions** were deemed to have a potentially fundamental role in allowing the system to be more in touch with local realities, as well as a further tool for the promotion of the system. In this regard, the Treaty Body system can glean encouragement from the experiences of the African – and now also the Inter-American – system. In the case of the African system, the Commission has since its inception met biannually, usually once at its seat in Banjul, Gambia, and once on invitation in another African capital. This has greatly increased the visibility of the Commission. Moreover roving sessions have resulted in the submission of overdue reports from those States in which these meeting were held. An idea could be that of establishing an annual “regional” session for each Treaty Body, so as to enhance regional peer pressure and counter issues of underreporting.
- With regard to **General Comments**, participants highlighted a need for more sustained development of African General Comments. The example used in such discussion was the adoption of the General Comment on the Maputo Protocol on women’s right to life. Efforts by Treaty Bodies towards issuance of General Comments (e.g. Days of General Discussion) should brief and take into consideration regional human rights bodies with similar powers, in an effort to harmonize global human rights policy development. A further recommendation related to **Joint General Comments**: it was noted that joint comments from special rapporteurs/procedures has been impactful and its practice by Treaty Bodies should be encouraged.

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<sup>2</sup> Dialogue between Special Procedures Mandate-Holders of the UN Human Rights Council and the African Commission on Human and Peoples’ Rights, Addis Ababa, 2012.

- With regards to **Communications**, two concrete proposals related to the Communication procedure resulted from the consultation:
  - the introduction of a **Pilot Judgement** similar to that used by the European Court of Human Rights<sup>3</sup>, to be introduced across those Treaty Bodies endowed with an individual complaints function.
  - the creation of a pilot procedure, through which multiple communications alleging mass violations involving multiple human rights violations would see several **Treaty Bodies act collectively**, triggering a joint response.

## THE IMPORTANCE OF ACCESSIBILITY TO THE UN TREATY BODIES FOR HUMAN RIGHTS MONITORING AND IMPLEMENTATION

Throughout recent efforts at consolidating Treaty Body activity, one of the most widely agreed issues to resolve has been the general public's unawareness of the system, including of findings specific to their own countries. The following proposals were discussed during the consultation:

- There is a need for the Treaty Body system to be less centralized. Once again, the idea of Treaty Body **roving sessions** was proposed as a solution to increase accessibility in the African context, ideally once a year per Treaty Body,
- A substantial amount of time was spent on a rather novel concept for the Academic Platform thus far: the importance of **interactive databases of Treaty Body activity**. Existing online databases on human rights mechanisms allow for comprehensive access to otherwise not immediate information (OHCHR website could also be made more user-friendly). Another useful outcome of databases is facilitation for research purposes, which in turn can lead to improved efficiency and harmonization of the system. Examples mentioned as possible templates to use as inspiration were information services developed by HURIDOCs and other partners. Below a list of these databases:

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<sup>3</sup> The pilot judgment procedure was developed as a technique of identifying the structural problems underlying repetitive cases against many countries and imposing an obligation on States to address those problems. Where the Court receives several applications that share a root cause, it can select one or more for priority treatment under the pilot procedure. In a pilot judgment, the Court's task is not only to decide whether a violation of the European Convention on Human Rights occurred in the specific case but also to identify the systemic problem and to give the Government clear indications of the type of remedial measures needed to resolve it. A key feature of the pilot procedure is the possibility of adjourning, or "freezing," related cases for a period of time on the condition that the Government act promptly to adopt the national measures required to satisfy the judgment. The Court can, however, resume examining adjourned cases whenever the interests of justice so require. For more information, see [http://www.echr.coe.int/Documents/FS\\_Pilot\\_judgments\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Pilot_judgments_ENG.pdf).

- African Human Rights Case Law Analyzer (<http://caselaw.ihrda.org/>);
  - Inter-American Human Rights Caselaw Analyzer (<http://jurisprudencia-sidh.cejil.org/en/>);
  - RightsDocs – Human Rights Council resolution and votes (<https://www.right-docs.org/>);
- The possibility of introducing similar databases for Treaty Body mechanisms was recommended, adopting the software and technology available and liaising with already-existing Treaty Body-specific NGOs (CCPR Centre, Children’s Rights Connect, etc.) for content. This sort of activity would entail short-term efforts and would also be procurement friendly, as most elements necessary for such endeavour would already be in place. Mentioned examples of useful software have been:
    - Casebox (<https://www.casebox.org/>)
    - Openevsys (<https://openevsys.org/>)
    - Uwazi (<https://www.uwazi.io/>)
  - One other recommendation related to the potential use of **informational videos** by OHCHR to be sent to national broadcasters as well as animation videos for the youth. Relatable examples from both the ACtHR and ECtHR were used during the discussion to show the value of such material towards increased accessibility of complex regulatory mechanisms. Furthermore, information management capacities in African reporting systems are to be further enhanced by effective database management and information ought to be shared to national broadcasters to penetrate grassroots levels.
  - **Translation** of the Conventions and Treaty Body recommendations in the language (and potentially terms) understandable by local stakeholders was showcased as a required new step. In this manner, the translation of instruments and decisions would likely enhance the implementation and efficiency of the Treaty Bodies and further increase judicial awareness in Treaty Body functioning, so as to apply them within municipal laws. Simplified information from Treaty Body activity for national actors also responds to the peculiarly time-bound nature of politicians’ work.
  - Substantive accessibility to CSOs was also widely discussed during this consultation. The idea of introducing **official collaboration frameworks between CSOs and Treaty Bodies** was raised, including on Follow-up missions and related initiatives. In this regard the role of NHRIs was specifically emphasised. NHRIs have a crucial role in facilitating CSO activity and accessibility to the system, an essential element to their role as bridge between the international and domestic layers of human rights monitoring.

## MAXIMIZING THE EFFECTIVENESS OF INTERACTIONS WITH STATES

A third cluster of discussion related to issues of Treaty Body effectiveness and how to maximize interactions with States. An underlying problem highlighted was that State Reporting is too often regarded by all actors involved as an end in itself. It is fundamental to change this approach and several good practices were identified that should be encouraged and strengthened in the context of UN Treaty Body engagement. The following are the proposals which emerged from the discussions:

- The need to ensure a more **consultative process** with NHRIs, civil society and all interested groups, both international and domestic.
- The role of **UN Country Teams** can be very important in ensuring effective reporting as they have contextually relevant information and methodologies unique to their role (we need to counteract the tendency of UN country teams to work in silos).
- The establishment of **national coordinating mechanisms**, such as *National Mechanisms for Reporting and Follow-up*, which need to include both a follow-up mandate as well as a reporting coordination function.
- **Capacity building** was deemed essential for maximizing Treaty Body effectiveness, particularly directed at training state agents on reporting. Sensitization “in capitals” needs to be more robust to make Treaty Bodies more visible and generate greater interest in the process.
- Given reporting compliance deficits, reporting to regional human rights and/or Treaty Bodies could be adapted where there is significant thematic overlap. **Inter-mechanism dialogue** should be enhanced
- In order to gain greater political traction, Treaty Body recommendations should seek **thematic ties with other issue areas** like development, primarily SDGs.
- Stronger **links between national human rights Action Plans and Treaty Body recommendations** could lead to the latter’s proprietorship and policy streamlining between the international and domestic setting. Links between past/current Treaty Body recommendations to NHRI strategic plans could have similarly positive effects.
- **In-country Follow-up assessments/national consultations**, often arranged by NGOs with participation of current or former Treaty Body members have been quite useful and could also be used to build ground work for next reporting cycles.

Furthermore a series of examples were raised of practical issues that can damage the spirit of a “constructive” dialogue and lead to more hostile/adversarial interactions:

- **Treaty Body Chairs** need to exercise more control over their Treaty Body colleagues, who in turn need to ask evidence-based questions, rooted in fact. It is of fundamental importance that all information that reaches Treaty Body members are fact-checked and that sources of information are substantiated.
- Treaty Body Members have to refrain from exercising **bad judgment**, which can ultimately lead to lack of professionalism in interaction with States. Instances were given of Treaty Body members either being overly friendly (“I vacation in your country”) or too hostile (making unnecessary statements/side comments about States).
- Treaty Body Members should **respect time limits and their role**. Towards increased effectiveness, Treaty Body interventions should end with posing questions and States should be speaking for longer than Treaty Body members. A “constructive” dialogue should not feature comparisons between situations in different countries and should require equal treatment of States, also in terms of speaking time. The importance of protocol was also highlighted in this regard.
- **IQ vs EQ**: reasonable exercise of judgment/discretion could be conducive to better results (an example was given of a State delegation which clearly stated it would draw a “red line” to discuss polygamy practices, but Treaty Body persisted rather than strategically side-stepping the issue during that specific session). An effective dialogue requires a Committee to be active and not “activist”.
- Although there should not be a formal prioritization of specific recommendations, strategic **identification of “urgent issues”** would lead to substantial results: a realistic approach to States’ resources and political willingness can help towards increased effectiveness, step by step.
- **Scheduling** is also important: it is often better to schedule a session that runs from afternoon to the following morning, so as to allow the State delegation to consult with “capital” and prepare comprehensive responses. The size of the delegation (and available resources) can also be affected by the schedule.
- The **Simplified Reporting Procedure (SRP)** has been an area of contention and needs to be looked at closely. It was noted that it raises concerns, for instance, in terms of engagement with thematic based CSOs, but it also holds positive value, especially when it comes to procedural simplification. Research on SRP effectiveness should be undertaken.
- On **membership**: interest on the Treaty Body system has definitely risen in the wake of GA Res. 68/268 and much greater attention has been given to Treaty Bodies in New York, with the number of proposed candidates growing ever since. However vote



swapping is rife and there is little attention to qualifications – votes are being planned as far in advance as 2020/2022. In relation to nominations/elections, there needs to be competence, impartiality, objectivity – but also good judgment and professionalism. The recommendation stemming from this discussion was the establishment of **Guidelines for Treaty Body member nomination**. With the Addis Abeba Guidelines in mind, questions were raised as to the internal or public nature of this document. Crucially, there needs to be more transparency in nomination of qualified persons.

- Underscoring all the above points on maximizing Treaty Body effectiveness is the fact that the different Treaty Bodies do not “talk to each other” enough. Although there used to be inter-Committee meetings officially set, this practice stopped due to lack of resources. A call for the **re-institution of inter-Committee meetings** was proposed.