

Fundamental challenges of the UN human rights treaty body system

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Since the establishment of the first human rights treaty body in 1970 (Committee for the Elimination of Racial Discrimination), the treaty bodies (TBs), for various reasons, have faced several types of significant and complex challenges. As of the nineties, a number of reform processes were undertaken, with little success so far. This paper identifies the most significant challenges faced today by the ten human rights treaty bodies.

- **The growth challenge.** Challenges due to the doubling in size of the TB system over the last decade and its **continuing growth** (number of treaties / increased ratification / more timely reporting / new petitions, inquiry and follow-up procedures / number of individual petitions and inquiries).
- Substantial reporting requirements for most States under the TB system, the Universal Periodic Review (UPR) and Special Procedures (SPs), in addition to engagement with regional mechanisms, including regional reporting, in Africa, Europe and the Americas. Nine out of ten international human rights treaties have a reporting obligation. This may lead to **late and non-reporting**: only 25 to 30 States have been able to report on time under all treaties they are a party to (the equivalent of approximately 15% of States). Approximately 85% of States parties are unable to comply with their reporting obligations to the TB system.
- Despite poor compliance with TB reporting obligations, several of the nine treaty bodies with a reporting procedure have a **structural backlog of reports, even after having been granted additional meeting time in 2015**. The **backlog of individual communications or petitions** continues to grow, as new procedures and individual communication procedures have recently entered into force. The number of individual communications and urgent actions is expected to grow exponentially, in particular to the Committee on the Rights of the Child, the Committee on the Rights of Persons with Disabilities, and the Committee on Enforced Disappearances, as these procedures become more widely known.
- The General Assembly attributes meeting time to treaty bodies in a linear manner, based on an assessment of the workload and backlog in State party reviews and individual communications. In 2015, the General Assembly granted the treaty bodies overall 30% more meeting time in resolution 68/268. With 95 weeks of meetings per year, **the TB system is the most condensed in the UN system and has**

reached its functional ceiling. It cannot grow further as demands on States, treaty body members, OHCHR and UNOG (which supports these meetings) cannot expand further, even if resourced.

- With over 160 country reviews and 194 decisions or views on individual communications per year, treaty bodies are typically adopting 200 to 400 recommendations for each State party per reporting cycle (for most treaty bodies this cycle is 5 years). The number of recommendations raises the question of the relevance, repetition and accuracy of treaty body recommendations. It also raises concerns as to States' capacity to **follow-up on and implement treaty body recommendations** (in addition to recommendations from the UPR, SPs and regional mechanisms).
 - Treaty bodies have developed **activities and procedures that, while remaining within their realm of competence, are not funded** by the United Nations, such as Follow-Up procedures. The preparations for General Days of Discussion and General Comments are also activities that are not specifically funded.
 - As a result of new procedures entering into force (CRPD, CEDAW, CRC, CESCR), **treaty bodies are requesting more country inquiries than in the past**, though these are only partly funded (one mission per year, no financial provision for staffing) and require significant preparation by OHCHR.
 - **New international human rights treaties** are in the making and corresponding **new treaty bodies** are being conceived. Currently drafting processes exist for: 1) Rights of elderly persons 2) Rights of peasants and other people working in rural areas, 3) Human rights and transnational corporations. It can therefore be expected that the TB system will continue to grow.
- **The coherence challenge.** With 10 treaty bodies working on overlapping and inter-linked human rights issues, **challenges regarding the coherence of the TB system** are an ongoing concern.
- There is **no link between reporting to international monitoring bodies and the regional monitoring bodies.** Even **reporting to one treaty body bares no relation to reporting to another treaty body.** The **common core document (CCD), an attempt to establish a link among reports to different treaty bodies, is used little and has proved a failure.**
 - Several provisions in the nine treaties and nine optional protocols **overlap.** This leads to repeated requests by TBs, in written or oral form, to States on similar or even identical topics. It also leads to **duplication** in concluding observations.
 - The challenge of overlap is compounded when treaty bodies have **different approaches** to identical human rights challenges in their recommendations. This

also manifests itself in **general comments** adopted by treaty bodies.

- As the number of treaty bodies handling individual communications increases, the risk of diverging jurisprudence also increases. Maintaining **consistency in the treaty body jurisprudence** on individual communications has become a challenge.
 - Despite the fact that 9 of the 10 treaty bodies have similar functions, **they all maintain different working methods and rules of procedure, in spite of years of sustained efforts for harmonization**. The lack of coherence of the TB system in this regard results in: 1) heavy inefficiencies and waste of resources; 2) reduced predictability and accessibility for States and other stakeholders; 3) lack of synergies for those who interact with the TBs (States, NGOs, NHRIs, UNCTs, etc.)
 - With the establishment in 2006 of the UPR and the expansion of the number of Special Procedures mandate-holders, the international human rights mechanisms have expanded significantly. This **fragmentation of the international protection system**, though well intended, has also increased its incoherence. The timelines for reporting and interactive dialogues (country reviews) are not synchronized among the three international human rights mechanisms and create bottlenecks for States, NHRIs and NGOs. Further, **inconsistencies on themes or country situations** also occur among the three main UN human rights mechanisms.
- **The governance challenge.** The TB Chairpersons convened for the first time in 1983. Since 1989, the Chairs have met on an annual basis. Empowered by the treaty body strengthening process, the 10 Chairs have assumed a leadership role on matters of common concern and strived to harmonize diverging methods of work. In recent years they have even convened informal meetings and adopted joint statements. However, in many instances, – despite some evident advances - individual TBs have challenged, blocked or ignored this leadership. As a result, decisions and conclusions reached and endorsed by the 10 Chairs have frequently remained unimplemented by TBs.
- **The membership challenge.** Presently, the 10 TBs are made up of 172 independent experts. This is the largest group of independent experts within one single architecture (the TB system) to support within the UN, with corresponding large-scale logistical and administrative requirements and complexities, including travel arrangements, correspondence, administrative support.
- TBs have not benefitted from regular renewal of their membership as a result of the **absence of term limits** for most TBs (only three TBs have a term limit); at times this has resulted in one State party monopolizing a seat for decades.
 - Both **nomination and election processes lack transparency and a competitive nature** and should be re-thought to achieve **the independence & expertise** that monitoring international human rights treaties requires. Over the years, the quality

of the treaty body members and their participation in the work of the treaty bodies has been un-even.

- The **requirements** for becoming a treaty body member are defined in vague and general terms. Important pre-requisites are missing, such as: knowledge of one of the six official UN languages, availability and time commitment. With many TBs in session three months per year, the **availability of treaty body members**, who combine voluntary treaty body membership with professional occupations at home, has reached its limit.
 - The TB system lacks an **accountability framework** for treaty body members in the form of a proper institutional arrangement that would not threaten treaty body members' independence.
 - All TBs suffer an imbalance in their membership in terms of **gender representation**.
 - Treaties require that due consideration be given during election of members to **equitable geographical distribution**. Evidence shows that this objective is not met in some treaty bodies.
 - A professional background balance is also needed and nothing in the current TB system ensures it or even allows to promote such a balance.
- **The resourcing challenge.** The current budget of the TB system is set at USD 52 million (covering 95 weeks of meeting per year + Travel and DSA of TB members + support staff at OHCHR + UNOG conference and information services). General Assembly resolution 68/268 establishes that in case of further growth the UN is required to provide additional related resources, including staffing. Under the current budgetary restrictions and climate of austerity, it is uncertain if **an increase in resources, in correlation with the expansion of the treaty body system**, will be granted by the General Assembly at its 70th session in 2016.
- The work of treaty bodies has important **cost implications** not only at international level for the UN, but also, and perhaps primarily, **at national level**. Reporting to several TBs (in addition to other international and regional mechanisms) and implementing recommendations has a significant cost for States Parties. The focus on reporting increasingly takes human and financial resources away from national efforts by States to implement a human rights agenda in the first place. By rationalizing reporting, TBs would help States to realize human and financial savings which could be used towards the implementation of the treaty provisions at national and local level.

- The cost of the TB system is not static and **increases regularly** as a result of the creation of new TBs and the increase in State ratifications and reports, TB inquiries and visits, and individual communications. **How can the UN continually increase funding for the TB system?**

➤ **The implementation challenge.** Reporting to the TB system, which was created as a means to improve the human rights situation, has regrettably become an end in itself. Due to the above five key challenges, implementation of international human rights treaties and related UN recommendations by States parties is severely jeopardized and practically overshadowed by the growing multiplicity of reporting processes. An improved treaty body system will impact positively on the human rights by States.

Note: All challenges identified above **do not require more research** as factual and analytical information on these issues already exist. Instead, research is necessary to develop options to remedy these challenges, grounded in lessons learned from past reform attempts. New visionary thinking is required which goes beyond the lowest common denominators and the recycling of old ideas.

➤ See factual evidence in HC 2012 report, in 2013 costing paper to the GA, etc.