

# Report

## Regional Consultation for Northern America

Columbia University, New York, NY,  
United States of America  
June 1-2, 2017

On June 1-2, 2017, Columbia University hosted a regional consultation for North America regarding reforms to the United Nations (UN) treaty body system contained in General Assembly Resolution 68/268 (2014) and its proposals for strengthening the UN treaty body system. The consultation brought together 28 experts on human rights from academia and civil society, many with experience working with the UN and regional human rights systems. It was co-sponsored by Columbia University's School of International and Public Affairs, the Global Freedom of Expression and Information Jurisprudence Project, the Institute for the Study of Human Rights, the Human Rights Institute at Columbia Law School, and the Arnold A. Saltzman Institute of War and Peace Studies, in cooperation with the Geneva Academy. Prior to the consultation, participants were asked to submit short memoranda addressing a theme from the Concept Paper.<sup>1</sup>

The consultation structure featured six thematically focused sessions: 1) Goals and Impact of the Treaty Body System; 2) The Treaty Bodies and Strategies for Improving Human Rights Practices; 3) Treaty Bodies and Related Institutions: Assessing Compatibilities and Tensions; 4) Treaty Bodies and Civil Society Organizations; 5) Improving Access to the Work and Findings of the Treaty Bodies and Encouraging Follow Up; and 6) Organizational and Legal Challenges to Reform. Thereafter the group summarized and assessed the main ideas and recommendations that emerged from the consultation.

Each of these themes was discussed at length, with some topics arising in several discussions. This outcome document aims to represent the range of opinions expressed over the course of the consultation, albeit without attribution to specific participants. However, where particular ideas or arguments relate to a pre-consultation memorandum shared with the group, those memoranda have been footnoted. Most are publically available on the Geneva Academy website.

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<sup>1</sup> Several of these memoranda are available on the on the website of the Geneva Academy, together with outcome documents and memoranda from all other regional consultations of the Academic Platform.

## GOALS AND IMPACT OF THE TREATY BODY SYSTEM

At the outset participants agreed that the overarching goal of any proposals regarding the treaty bodies should be to enhance the capacity of the treaty body system to promote and protect human rights, and to ‘do no harm’ with respect to individual rights holders. Several participants also underscored that proposals should be reviewed with an eye toward promoting and protecting treaty rights by safeguarding the independence of the treaty bodies and bolstering their effectiveness. To this end, participants were encouraged to consider how and by whom their ideas might be implemented if adopted. More concretely, there was an effort to distinguish proposals that would require changing the treaties from those that could be achieved through informal processes within or among the treaty bodies. With this baseline established, the New York consultation offered an opportunity for participants to think broadly and creatively about the political, legal, and institutional environments in which treaty bodies operate, and to consider how the treaty bodies contribute to, and draw from, the efforts of other institutions working to improve human rights globally.

The consultation organizers began with the question of whether there is currently a global anti-human rights backlash fueled by anti-internationalist, anti-cosmopolitan, and pro-populist sentiments, and, if so, what its implications are for the work of treaty body system. Several participants observed that there is a backlash, and that it has made the work of promoting and protecting human rights both more challenging and more essential. However, one participant cautioned against overstating the scope and depth of the backlash, noting that it is not occurring equally everywhere.

Among participants who expressed concern about anti-human rights backlash, some thought that the treaty bodies and other human rights institutions and actors should forge ahead with proven approaches to human rights advocacy and protection, since to do otherwise may signal retrenchment and threaten to undercut gains already achieved. Others countered that the changing global political environment may require human rights institutions and advocates to modify established approaches – not because they have been ineffective, but due to expectations that resources for human rights promotion are unlikely to grow in the foreseeable future, and may even shrink due to backlash.

Most participants agreed that resource constraints coupled with growing rates of state participation in the treaty body system make it imperative for the treaty bodies to continue experimenting with ways to coordinate more actively with the Human Rights Council (HRC) and its mechanisms. A smaller subset also encouraged exploring new avenues for possible coordination with the Universal Periodic Review (UPR). Also important is figuring out how to better incorporate the knowledge and oversight capacity of civil society organizations (CSOs) into the work of the treaty bodies while simultaneously safeguarding the independence of the treaty body system.<sup>2</sup> Nearly all participants subscribed to the view that improvements along

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<sup>2</sup> See Memorandum of Allison Brysk (University of California, Santa Barbara).

these lines are possible with adequate vision and leadership among the treaty body Chairs and Members. Even so, several participants insisted that, although improvements of this type would be welcome, this alone would be insufficient to address the challenges ahead.

A few participants suggested, in addition, that human rights organizations of all stripes – large, small, transnational, local, multi-issue or single issue – may benefit from introspection about how established frames and strategies might have contributed to backlash from the political right, and from the political left – globally and in particular settings. Others cautioned that while such introspection might be warranted in some quarters, care should be taken to ensure that it does not inadvertently assist states seeking to discredit international human rights, or to redefine and dilute core universalist ideas in the name of making them more palatable to authorities that may be threatened by those ideas.

The interplay between law and politics in human rights promotion and protection was a persistent theme throughout the New York consultation. Although the work of the treaty bodies is often described as ‘legal’ oversight, in practice their activities can be deeply political in nature. This is because adopting treaty body recommendations often requires governments to create or modify laws and institutions with the aim (and hopefully also the effect) of making governance more protective of human rights.

The group generated a range of ideas about whether law or politics is likely to dominate across different state settings and in regard to different rights domains (e.g. the prevention of torture as compared to the advancement of economic, social, and cultural rights). Several participants noted that appeals to law and legal obligations alone were expected to be less effective in poorer and more autocratic states than in richer or more democratic ones. Where governments lack the resources or internal drive to create domestic institutions that empower rights-holders, it was expected that treaty body processes can be effectual only if linked to metaphorical “carrots” (benefits expected to follow from demonstrated improvements in human rights practices) or “sticks” (credible threats to punish, or withhold benefits from states that fail to improve under political and economic conditions where improvements would be reasonably expected). For this reason, even participants pessimistic about the ability to sway the least cooperative subset of states acknowledged that human rights treaties are important “normative intermediaries” in international efforts to coordinate human rights promotion and protection.

There was some convergence around the idea that the treaty body system has the greatest potential for impact among the middle range of state members – those that may be on a path toward representative forms of domestic governance, or that may be trying to avoid backsliding from prior achievements in this sphere. States in this category have both a need for the type of independent legal and institutional expertise that treaty bodies provide, and may also require fewer external incentives to participate than governments on the less rights-protective side of the spectrum. Much of the discussion over the two-day consultation focused on how reforms to the treaty body system and working methods might more effectively engage and persuade this group.

# THE TREATY BODIES AND STRATEGIES FOR IMPROVING HUMAN RIGHTS PRACTICES

Consultation participants were invited to think broadly about which strategies for the promotion and protection of human rights are expected, alone or in combination, to be most effective in persuading governments to improve their practices. As in the prior session, participants were asked to avoid ‘one size fits all’ pronouncements where approaches and challenges might vary in predictable ways across different issues and categories of states. Informing (or disciplining) this discussion was an awareness of the limited resources allocated for the work of the treaty bodies, together with the increasing demands on those resources from growth in treaty membership.

## **FINDING AND USING COMPARATIVE ADVANTAGE**

One idea raised in the discussion was for the treaty bodies to more consciously focus attention and resources on tasks in which they have a ‘comparative advantage’ – meaning where treaty bodies are known to be more effective, or more reliable, than other institutions and actors in the human rights environment, or where they contribute to rights protection in ways that others cannot.<sup>3</sup> Narrowing the focus of treaty body functions in this way would necessitate greater reliance than is already the case on others for certain supporting activities. However the hypothesized result would be a more effective allocation of the limited of resources available for the promotion and protection of human rights.

Consultation participants highlighted five features of the treaty bodies that define their capacity to provide authoritative scrutiny of states’ compliance with international human rights treaty law: (1) the largely public character of their activities, (2) their legal authority to demand participation from all treaty Members, (3) the capacity to authoritatively interpret their respective treaties, (4) the ability to accept and utilize inputs from a wide range of stakeholders, and (5) a high degree of independence. Although many human rights-oriented institutions share some of these attributes, only the treaty bodies possess them all. Most agreed that these features together make the treaty bodies distinctively suited to providing individual states with authoritative assessments of whether, and on which dimensions, they are progressing, or failing to progress, toward fulfillment of their treaty obligations (as distinct from assessments of whether compliance with legal obligations has been achieved).<sup>4</sup>

The group discussed a range of strategies that promoters of human rights – whether treaty bodies, concerned governments, international NGOs, and local CSOs – use to persuade governments to improve their practices. Those identified as most important to the work of the treaty bodies included issuing specific recommendations aimed at strengthening states’ laws and supporting institutions; creating incentives for dialogue among domestic stakeholders; prompting the domestic collection of data on human rights practices; assembling authoritative jurisprudence on human rights treaties and making it accessible; and issuing authoritative

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<sup>3</sup> See Memorandum of Tonya L. Putnam (Columbia University).

<sup>4</sup> See Memorandum of Steven R. Ratner (University of Michigan Law School).

interpretations of human rights law in applied settings. ‘Naming and shaming’ and human rights education were assessed as less central to the work of the treaty bodies, although each is to some degree an inevitable by-product of treaty body proceedings.

Areas where many participants thought that the work of other inter-governmental bodies and non-state actors can assist, treaty bodies in their work include information gathering and primary fact-finding, and real-time monitoring of follow-through on Concluding Observations. This generated little debate, perhaps because these are tasks where treaty bodies already have productive working relationships. A few participants emphasized, however, that even where other organizations are providing extensive fact-finding and follow-up on treaty body recommendations, it is important to underscore that treaty bodies have the legal capacity to engage in these activities where needed, and when time and resources allow.<sup>5</sup>

Another area of considerably more contentious discussion involved how to think about the growing role of treaty bodies’ in adjudicating individual complaints. A few participants suggested that treaty bodies de-emphasize this in order to focus more centrally on the reporting elements of their oversight. This elicited sharp disagreement from other participants who insisted that the ability to hear individual complaints is critical to the work several Committees. These include, notably, the Committee for the Convention Against Torture (CAT), the Human Rights Committee (HRC), and the Committee on Economic, Social, and Cultural Rights (CESCR) under its Optional Protocol. Others saw the suggestion to de-emphasize adjudication of individual complaints as impractical and unwise insofar as these complaints are a legal right for individuals in states that have adopted optional protocols or declarations to that effect. On the functional side, critics of this suggestion underscored that the petitioner requirement to exhaust domestic remedies prior to filing complaints helps the treaty bodies to pinpoint areas of needed reform at both national and regional levels. In addition, individual complaints also serve as a mechanism for elaborating relevant jurisprudence, and a means to secure redress for individuals whose rights have been violated. Nevertheless, it was conceded that human rights treaties require the treaty bodies to be more than adjudicators, and that growth in the volume of individual complaints without an accompanying growth in resources threatens to overwhelm the work of some treaty bodies to the detriment of other important tasks.<sup>6</sup>

Two specific ideas were offered to address this looming issue. The first is for the treaty bodies to consider establishing a joint chamber to hear individual complaints on issues of overlapping substantive relevance. The second is for all treaty bodies with a mandate to receive individual complaints to continue to encourage them as an information-gathering tool, but for those with an especially high volume of complaints to shift to an “impact litigation” model, whereby treaty body experts would fully adjudicate only a subset of complaints that are (if successfully proven) anticipated to have an especially high positive impact. Neither of these proposals generated enough consensus to support a recommendation.

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<sup>5</sup> The consultation conveners noted after the fact that assessing how much (or how little) direct follow up on the part of treaty body members is required, conjunction with Special Rapporteurs and CSOs, in order to ensure reasonable progress on implementing recommendations may be an area for fruitful future empirical research.

<sup>6</sup> See Memorandum of Tonya L. Putnam (Columbia University).

## THE ESSENTIAL CHARACTER OF STATE REPORTING

Participants agreed that treaty bodies cannot bring about improvements in human rights practices without engagement from states, and that this necessitates that governments adhere to their legal obligations to file periodic reports. Others added that reporting provides critically important occasions for local and international human rights CSOs to interact with governments, and for treaty bodies to issue recommendations that can be leveraged in domestic advocacy, while also bringing media attention to human rights issues. In support of these claims, one participant offered her own co-authored empirical study affirming that state engagement with the Committee Against Torture through mandatory reporting is associated with positive changes in states' domestic human rights laws and institutions, although additional work is needed to uncover specific mechanisms of change. This project also indicates that desirable practices like treaty ratifications and timely reporting exhibit "neighborhood effects" – meaning that as regional peers adopt these practices, the likelihood that non-participating states will begin to do so also increases.<sup>7</sup>

At the same time, participants conceded that simply reiterating the obligation to report alone holds little hope for swaying persistent non-participants. Several reasons why some states report late or not at all were raised, most reflecting some combination of government unwillingness and lack of state capacity. Where limitations on state capacity are the driving factor in delinquent reporting, participants recommended, first, encouraging governments to accept assistance to build reporting capacity from the Office of the High Commissioner for Human Rights (OHCHR) or from governments that offer such training and assistance on a neutral basis.<sup>8</sup> Another suggestion was to offer guidance to governments about how to go about systematically gathering and analyzing data on human rights-related issues, perhaps by tapping into existing pools of development aid. This information could then be used in part for reporting to the treaty bodies, and also for other governance tasks at the domestic level.

Where, in contrast, non- or under-reporting is more immediately a function of government resistance to engagement with the treaty body system, the group recognized that different incentives were needed. Several participants expressed support for the practice, recently adopted by the HRC, of treaty bodies announcing annually the intention to undertake a unilateral review of the two or three states most delinquent in their reporting obligations.<sup>9</sup> (The HRC experience thus far appears to indicate that the threat of unilateral review does spur at least some states to issue delinquent reports.) Working from the other direction, it was also suggested that development aid granting governments and private donors alike could be encouraged to begin conditioning aid allocations in part on state reporting and follow-through with treaty body recommendations.

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7 Cosette Creamer and Beth Simmons (2015) "Ratification, Reporting, and Rights: Quality of Participation in the Convention Against Torture" *Human Rights Quarterly* 37(3).

8 Note, such assistant differs from the practice of hiring paid outside consultants to prepare state reports, which, participants noted, could undercut many of the benefits reporting is intended to generate at the domestic level, such as prompting dialogue among stakeholders, and building local capacity for data gathering.

9 The low number is to ensure the feasibility of carrying out the threat on the part of the issuing treaty body.

## TREATY-BODIES AND RELATED INSTITUTIONS: ASSESSING COMPATIBILITIES AND TENSIONS

The focus next turned to how the work of the UN treaty bodies relates to that of other state-based human rights institutions and mechanisms. Participants were encouraged to be explicit about their views on how the treaty bodies fit into the wider ecosystem of human rights promotion and protection, and how this varies by region, and by domestic political context. This required participants also to assess whether and how other institutions operating within, or in close proximity to, the treaty body system appear to assist, or impair, the work of the treaty bodies. The objective was to identify existing complementarities that treaty bodies might use, or strengthen, without compromising their independence.

### **AT THE INTERNATIONAL LEVEL**

At the international level the discussion touched upon potential complementarities between treaty body processes and the UPR, together with the International Criminal Court and the activities of other human rights-relevant sectors of the UN (such as UNDP and UNICEF). The potential for creating beneficial synergies between treaty bodies and various regional institutions, and in particular those of the Inter-American system, was also touched upon briefly. Several participants were inclined to view the UPR with cautious optimism. On the positive side, the exceptionally high degree of state participation in the UPR process was seen as encouraging. However, the potential for the peer aspect of the UPR to create incentives for reviewing states to soften criticism in anticipation of their own future reviews, was a source of concern— particularly if states that are reticent to engage with the treaty bodies try to use their experiences with the UPR to justify that reticence.

One suggestion that generated extensive discussion involved enlisting states to use treaty body reviews as key reference points in UPR assessments. Several participants agreed that this could benefit the treaty bodies and also the UPR in the following ways. First, it would harness the popularity of the UPR as a mechanism to promote implementation of treaty body recommendations. Second, adopting treaty body recommendations as focal performance criteria in the UPR would provide external discipline to UPR processes and thereby contribute to their longer-term integrity. Third, it would increase the profile and relevance of the treaty body system among UN Members. Fourth, it might create additional pressure for individual treaty bodies to issue clear recommendations that are consistent with those of other treaty bodies. Fifth, institutionalizing a law- and norm-defining role for the work of the treaty bodies in the UPR is wholly in line with maintaining the independence and the integrity of the treaty body system.

These potential upsides notwithstanding, consultation participants underscored that developing this type of symbiosis with the UPR would not be easy. At a minimum it would require simplification and regularization of the calendar of treaty body reviews, and also an effort to syncopate it with that of the UPR, so as to ensure that no treaty body review was occurring immediately before or after a country's UPR, or simultaneously with it.

Furthermore, a few participants highlighted that efforts to forge a closer relationship between treaty body reviews and the UPR may also entail risks for treaty bodies. For example, including treaty body recommendations in the UPR may provide states a mechanism for ‘rejecting’ those recommendations under UPR procedures. Although UPR actions would have no formal impact on the obligatory character of those recommendations within treaty body processes, that subtlety may not be widely understood or appreciated. Others expressed skepticism that efforts to have treaty body recommendations more integrated into the UPR would have the conjectured effect on clarity and consistency, particularly where apparent inconsistencies are grounded in differences of treaty law and subsequent practice.

Other inter-governmental institutions and processes viewed as helpful to the work of the treaty bodies from the perspective of fact-finding and monitoring of recommendation uptake included Special Rapporteurs, international tribunals, and Commissions of Inquiry. Participants suggested that treaty body members should aim to reference the work of these institutions (and of other treaty bodies) in reviews and other communications, where relevant, in order to underscore associations, and to encourage reciprocal practices.<sup>10</sup>

By contrast, one consultation participant with United Nations experience outside human rights promotion was less optimistic about possibilities for partnerships between the treaty body system and other, more well-resourced bureaucracies with human rights-compatible missions, such as economic development and peace-building. This participant cautioned that other UN institutions can be wary of the treaty body system due to its independence. Similarly, there is a broadly held (and largely accurate) view that the treaty bodies’ impulse is to foreground human rights principles and legal obligations in every situation – which is not necessarily viewed as helpful by those in other missions

### **AT THE COUNTRY LEVEL**

Here the discussion focused on how the treaty bodies are unusually well positioned (relative to other human rights promoting institutions in the governmental sphere) to engage with states on a ‘problem-solving’ basis with few political strings attached. In order to maximize government uptake of Concluding Observations, a vocal subset of participants urged the treaty bodies to avoid approaching states as monoliths, and to look within them for untapped sources of support for human rights improvements.

One participant explained how directing Concluding Observations to specific actors and institutions inside national and local governments with the capacity to enact recommended reforms, where feasible, and in a non-exclusive manner, can improve uptake. Recommendations targeted in this way can also, encompass steps for implementation, and suggestions for getting other subnational and local experts involved.<sup>11</sup> Depending on the country, those tapped might include bureaucracies, courts, parliaments, and National Human Rights Institutions (NHRIs). They also may encompass sub-national units of federal states, such as Governors’ offices,

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<sup>10</sup> See Memoranda from Steven R. Ratner (University of Michigan Law School).

<sup>11</sup> See Memoranda from JoAnn Kamuf Ward (Human Rights in the United States Research Project, Columbia Law School), and Brian Chang (Parliaments, Rule of Law, and Human Rights Research Project, Oxford University).

legislatures, and courts. By way of example, it was noted that recommendations to eliminate capital punishment get no traction at the federal level in the United States, but do resonate with numerous United States state governments, and with civil society members seeking to influence those governments.

Another participant underscored that parliaments in democracies and democratizing states are an under-leveraged entry point for treaty body engagement for both fact-finding and implementation of recommendations. The idea here was that because parliaments are institutions tasked with creating law, delegating oversight, allocating budgets, and engaging with constituents, achieving buy-in from these institutions, or even a subset of influential members, can sharply improve the diagnostic aspect of treaty body reviews, along with prospects for the adoption and implementation of treaty body recommendations.<sup>12</sup>

Several participants also raised NHRIs as potentially helpful collaborators at the state level in treaty body efforts. Although examples of particular NHRIs playing such a role were noted, other participants were skeptical, and offered counter-examples of NHRI marginalization. In the end the discussion established that NHRIs vary substantially from country to country in terms of their legal and political status inside their respective states, their relative degree of independence, the resources they have to work with, and their working methods. As a result, it was agreed that the treaty bodies would need to make case-by-case assessment of their suitability as addressees of targeted recommendations.<sup>13</sup>

## TREATY-BODIES AND CIVIL SOCIETY ORGANIZATIONS

Among participants there was universal agreement that civil society and CSOs operating at local, national, and international levels are essential to effective human rights promotion, and to the work of the treaty bodies specifically. CSOs activities assist the work of the treaty bodies on a number of dimensions – from assisting with information gathering about countries' rights practices, to monitoring and follow-up on treaty body recommendations between reporting cycles. CSOs also can help to bring the voices and 'lived experiences' of those harmed by rights violations to bear while also representing and assisting individuals in filing complaints. Indeed, without the fine-grained, country-level information about human rights practices that CSOs provide, along with information about the inner workings of individual states and bureaucracies, the quality and impact of the treaty bodies' work in many instances almost certainly would be starkly diminished. Beyond this, CSO engagement helps to spread awareness of the treaty body system in the domains and settings where CSOs are active.

From the other direction, the treaty body system provides human rights-oriented CSOs with a UN-level platform and a schedule (in theory at least) for engaging with governments preparing for review, or under review, or seeking to implement recommendations resulting from reviews. This allows CSOs to bring attention to specific practices, cases, and victims, and to communicate more general findings and recommendations regarding human rights practices to

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<sup>12</sup> See Memorandum of Brian Chang (University of Oxford).

<sup>13</sup> See Memorandum of Sonia Cardenas (Trinity College).

engaged state-level and international audiences. The treaty body cycle likewise incentivizes some states to seek out CSO expertise and resources in understanding and implementing recommendations. Indeed, it is precisely because the treaty bodies are able to speak with legal authority from a position of institutional power that CSOs and victims may not possess that they are an attractive focus.

Even while acknowledging and endorsing the practical symbiosis between the treaty bodies and CSOs, several consultation participants drew attention to the difficulty of managing these relationships.

With respect to Resolution 68/268 specifically, some CSO-based participants expressed strong concerns that recent changes to the treaty bodies' working methods have diminished the ability of all but the most well-resourced CSOs from participating in treaty body processes directly, even in countries like Canada and the United States. For example, it was explained that the adoption of the Simplified Procedures means formulating lists of issues for states to consider prior to reporting. All but a few CSOs are being shut out of this part of the process. Only those with the means and access to show up in Geneva during the formulation of issues, or during country reviews can make their voices heard.

In recognition of the essential character of CSOs in the work of the treaty bodies, several participants recommended that a role for CSOs be institutionalized across the board in the system's working methods, as is formally the case in more recent treaty instruments. They noted that human rights CSOs face a range of challenges in attending to local needs while also navigating diverse agendas and priorities at national and international levels. Participants were reminded that in many settings CSOs and their workers are themselves targets of human rights abuses. As such, they benefit immensely from associations at the international level (from UN mechanisms, foreign governments and International NGOs) as a protective shield from intimidation and retaliation that extends to all who speak publicly, or even in private spaces, about abuses from their governments.

Other participants voiced concerns that CSOs advocating to further institutionalize or enhance CSO influence within treaty body processes are not arguing from a neutral position. In light of this, some participants insisted that research is needed to better understand whether and how formal institutionalization may change dynamics between the treaty bodies, CSOs, and member states under review, and whether such changes are likely to benefit rights holders.

## **IMPROVING ACCESS TO THE WORK OF THE TREATY BODIES AND ENCOURAGING FOLLOW UP**

Part of the consultation focused on generating ideas for enhancing treaty body effectiveness – albeit without reopening the underlying treaties, and without relying the General Assembly to provide large amounts of additional resources. Two themes emerged. The first concerned the need for the treaty bodies to adopt more sophisticated, and less passive communications tools

and strategies. A second (and related) theme centered on the perception that the treaty bodies are under-utilizing webcasting, and other internet-based technologies for hearings and follow-up.

## **COMMUNICATIONS AND MESSAGING**

One participant with extensive experience in a prominent human rights INGO argued forcefully that expanding the positive impact of the treaty body system requires increasing its visibility. This, in turn, demands a different and more active approach to communications and messaging.<sup>14</sup>

An easily adopted general suggestion for improving communications that involves no new technologies would be for treaty body members to draft recommendations using simplified language. The goal here is to make the underlying law, any assessments of state practice, and all Concluding Observations and recommendations easily understood by key state-level audiences – rights holders, non-specialist government civil servants, civil society activists, and journalists. A few participants were aware of studies (not using treaty body materials) that compare readers' comprehension of, and ability to respond to, ideas presented in technical legal language, and those same ideas rendered in simplified language. Predictably, these studies find that simplified language is associated with higher levels of comprehension and more active processing of information.

Another suggestion was for treaty bodies to frame their actions and processes in problem solving terms whenever possible in interactions with governments and the media. In this view, treaty body review should not be understood solely as a critical exercise, but as 'free-of-charge consulting' for governments on how to resolve long-standing shortfalls on their human rights obligations. Other participants were adamant that treaty body review is, and should be, a critical exercise. It was suggested further that over-emphasizing the 'constructive dialogue' aspect of engagement with states, or casting treaty body experts as 'consultants' risks deflecting attention from the legal character of the treaty obligations at issue.

Several participants endorsed the idea that adopting a 21<sup>st</sup> century approach to communications would make the treaty bodies' resources more usable to rights holders and also would help to promote broader understanding of the programmatic aspects of the treaty bodies' work. This, in turn, could help in efforts to identify useful complementarities with other regional and international bodies, and to build (or shore up) the political support of states in the General Assembly.

The active communication and messaging strategies discussed ranged from the relatively simple to the complex. On the simple side, participants agreed that treaty body websites should be redesigned to simplify the interface. Including a linked calendar of upcoming hearings and reviews was flagged as essential, along with a media section where journalists should be able to easily find short press releases that accurately and succinctly explain review outcomes and other developments of note. Use of social media platforms such as Twitter and Reddit was encouraged to give individual treaty bodies an ability to provide timely notification of actions and deadlines to prompt interested followers to seek out 'passive' platforms for more detail.

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14 See Memorandum of Dinah PoKempner (Human Rights Watch, but writing independently).

Moving along the spectrum of complexity, although treaty body websites do contain a great deal of useful information, several participants lamented that often it is poorly organized and minimally searchable. This makes it difficult even for human rights experts to find needed information. The accessibility of treaty body outputs and related materials could be dramatically improved by adopting an updated information architecture and query expansion to make materials searchable by content. More complex and maintenance-intensive additions to communications platforms might involve establishing secure portals for reporting information about rights violations (or other tips), and for other types of communication with rights holders or their advocates.

Of course transitioning to a more active communications strategy would entail a non-trivial investment of time and resources beyond what the OHCHR has already provided in recent enhancements. A few participants proposed reaching out to private foundations for financing, or entities in private industry who may be looking for 'community service' type projects to provide the needed expertise. Alternatively, the OHCHR could try to partner with reputable academic programs in communications and information technology that may be interested in taking on redesign and initial launches as supervised projects. Or, if interest is sufficiently large, an international competition among several such programmes could be set up. Others were wary of recommending that the OHCHR or the treaty body secretariat seek out public-private partnerships due to the potential for such undertakings to generate external dependencies on institutions that do not have rights promotion as an orienting principal. Another concern was the potential for reduced, or inadequately supervised control over content and messaging.

### **Using Internet Technologies to Improve Treaty Body Access and Reach**

A second theme of this discussion concerned encouraging the treaty bodies to make better use of new technologies for country-level outreach to rights holders and activists, and for follow up on concluding recommendations. Participants recognized that some improvements in this area have been introduced via online conferencing and hearing webcasts. These changes have helped to facilitate participation from government officials and CSO representatives not able to be present in Geneva. They have likewise opened treaty body processes to wider audiences of observers. However, to date these innovations have been available only intermittently due to their cost.

Consultation participants agreed that web-based technologies offer treaty body members opportunities to interact directly with rights holders on a far greater scale than ever before – as an aid to fact-finding, hearing individual complaints, and following up on prior interactions and recommendations. On the positive side, several participants emphasized that direct communications have potential to convey 'lived experiences' to a degree heretofore possible only with country visits. As such, they can help treaty body experts to better understand the states they are reviewing from multiple perspectives. Others underscored the value that direct interactions with international-level experts can provide to rights holders, and in particular those whose rights have been violated.

However, participants also cautioned that use of web-based technologies for gathering, communicating, and storing sensitive information about states' human rights practices can create additional risks for persons and organizations seeking to assist treaty body processes if

not done securely. Providing secure portals and storage may pose a variety of technical challenges that will require an ongoing commitment of resources to address. These technology-based opportunities also raise more general questions about the adequacy of the treaty bodies' communications protocols in the Internet age. One participant suggested creating treaty body analogues to the 'information corridors' used in the humanitarian sphere in situations where the risks associated with sharing information are especially high.

Others expressed concern that expanding direct communications could end up placing unreasonable burdens on the time and attention of treaty body members. In recognition that the option of adding permanent staff to the treaty body secretariat to handle increased flows of information is likely unrealistic, one participant proposed creating 'clerkships' for early-career human rights lawyers to spend one or two years assisting individual treaty bodies. The idea of partnering with human rights clinics at law and public policy schools for smaller scale projects was also raised. Others cautioned that care must be taken to ensure that such opportunities, if created, would be made available to a wide range of applicants and educational institutions.

## ORGANIZATIONAL AND LEGAL CHALLENGES TO REFORM

A point of strong consensus among consultation participants was that the treaty bodies' structural independence is a critical distinguishing feature of the system, and one that is worth safeguarding at virtually all costs. Several participants with direct experience with treaty body processes insisted further that an important aspect of this independence is control over working methods. However, some worried that states unfriendly to the objectives of the treaty body system may be inclined to use intergovernmental reviews of the treaty body system, such as the one scheduled for 2020, to further limit their scope and freedom of operation.

A few experts implored the treaty body Chairs to work more proactively to ensure the continued support of 'friendly' states. This, it was argued, will require affirmatively demonstrating that the treaty bodies, in concert with the OHCHR and the treaty body Secretariat, are working to address some well-known grievances articulated by these states. These include (1) awkward clustering of state reporting deadlines, (2) uncoordinated hearing schedules in Geneva that can drain resources and hinder participation, and (3) occasional discrepancies between recommendations issued by different treaty bodies on issues of substantive overlap. Some participants argued that if the treaty bodies do not resolve these problems informally, states that have been strongly supportive of the treaty bodies in the past may be less willing to expend political capital to derail heavy-handed initiatives in the General Assembly that aim to undercut the already limited powers of the system by dictating additional constraints on their working methods.

In this vein two proposals received strong support. The first is to create an informal mechanism for coordinating calendars of state reporting deadlines and Geneva-based review hearings across all treaty bodies. The idea is to limit the number of reports any one state must submit in any calendar year to a maximum of three, while also making it possible for officials to satisfy obligations to appear in Geneva with a single trip. This proposal was thought to be adoptable

and amenable to implementation in short order with adequate leadership from the OHCHR and the treaty body secretariat.

New York consultation participants also discussed other long-standing proposals for consolidation of the treaty bodies, including schemes to shift to requiring a single periodic report from states, or to further simplify reporting guidelines to make it feasible for states to fulfill their reporting obligations on time. Most discouraged these proposals, albeit for a variety of reasons.<sup>15</sup> Some worried that a treaty body reorganization of this magnitude, even if otherwise attractive, would likely invite intensive scrutiny from the General Assembly at a time when internationalist ideas and institutions are under assault. Others focused on the intrinsic value of reporting for state members and cautioned against going too far down the path toward easing reporting burdens by means of word limits and checklists. These participants insisted that much of the value from state reporting is in prompting governments to ask difficult questions about their human rights, to acquire the tools and capabilities needed to assess their actions and omissions, and to engage in public dialogue with experts and stakeholders. Few if any of these goals are served by efforts to simplify or standardize state reporting.

Furthermore, participants in this camp were untroubled by the idea that participating in multiple reviews involves non-trivial amounts of repetition on the reporting side, and on the feedback side. To the contrary, they argued that repetition of substantially similar assessments and recommendations from different sources can be reinforcing, and ultimately may be necessary to achieve impact in some settings. According to this view, more should be done for the treaty bodies and related institutions to recirculate, repeat, and build off of each other's work

This debate linked to another recurring theme in the consultation – the relative value of efforts to improve the 'efficiency' of treaty body work (by which contributors generally meant achieving greater productivity with less cost or effort). All participants acknowledged the resource constraints the treaty bodies must work within, and likewise the need for treaty bodies to retain the political support of key UN members willing to fight for those resources. Most also agreed that increasing "efficiency" can be desirable if it frees up resources for higher value activities. However, several participants pointed out that efforts to improve efficiency can sometimes lead to shifts in underlying values and objectives. The consensus, therefore, was that efficiency should not be sought for its own sake, especially if doing so risks the effectiveness of core treaty body tasks. Moreover, this was another area where opportunities to 'do more with less' were expected to differ by treaty body.

A second proposal that generated interest was for the treaty bodies to consider the limited use of joint chambers on matters of overlapping interest, including, where relevant, the consideration of individual complaints. Adopting this practice would not only reduce the potential for conflicting treaty body recommendations, it would also serve to underscore the interdependence and inter-operability of different areas of human rights. This too was expected to be within the capacity of the treaty bodies to institute, perhaps initially on a trial basis.

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15 See Memorandum of Tana Johnson and Sanjeev Dasgupta (Duke University)

Two additional topics raised during the consultation (albeit with less breadth and depth than those summarized thus far) included problems associated with the timely translation of treaty body materials (as an issue of non-discrimination, and resource intensive undertaking for the system as a whole), and concerns over procedures for the selection of treaty body members. Regarding the second of these, participants agreed that for treaty bodies to carry out their oversight functions effectively and independently it requires that individuals appointed as treaty body Members share at least three characteristics. First, they should have sufficient training and experience in relevant areas of international human rights to carry out their tasks competently. Second, they must be capable of acting independently. Third, they should be willing to approach the role of treaty body member with seriousness and vigor. However, most participants also acknowledged that the current appointment process is not well set up to ensure the consistent election of individuals with these qualities.<sup>16</sup>

## CONCLUDING RECOMMENDATIONS

The following is a summary of the key recommendations on which most if not all participants agreed that action (or in some instances inaction) is feasible and necessary. They are addressed to specific entities participating in the reform process. .

As a body these recommendations are not necessarily consistent with one another. To transform them into a proposed plan of action would require additional discussion and debate regarding priorities and conditional tradeoffs. The group was, however, unanimous in insisting that the legal and policy emphasis of the treaty bodies should remain focused on the empowering rights holders and ensuring the accountability of the States, and that all reform proposals should be assessed in terms of whether and how they further this goal.

### TREATY BODY MEMBERS

- The treaty bodies, under the guidance of the Chairs and with the active assistance of the OHCHR, should emphasize more firmly and publically their role in tracking the progress of individual states toward promoting and protecting human rights on their own terms and with consideration of the political, economic, and social challenges each is facing. Insisting that states report on their progress toward treaty implementation is critical to this objective.
- Treaty bodies should aim to improve the visibility and impact of their recommendations through strategic engagement with others at the global, regional, and national levels – including other UN agencies, and regional human rights mechanisms.
- Where resource constraints require treaty bodies to choose which activities to emphasize and which to curtail, care should be taken to ensure that resources are not expended on tasks that other institutions can carry out where the effect would be reduce the ability of

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<sup>16</sup> See <https://www.opensocietyfoundations.org/reports/strengthening-within-law-and-practice-selection-human-rights-judges-and-commissioners>.

treaty bodies to carry out other human rights promoting tasks that they are uniquely able to provide.

- When treaty bodies are engaging with countries in which Special Rapporteurs or Commissions of Inquiry are also active, efforts should be made on all sides to recognize and support the activities of the other(s) in improving rights practices.
- Where CSOs working in countries subject to review or special inquiries, or assisting with the submission of individual complaints, are not themselves targets of intimidation or retaliation, treaty bodies should take actions to ensure such practices cease.
- In order to preserve the political goodwill of states that are supportive of the treaty body system, individual treaty bodies should take steps to address some key complaints of supportive states by creating a shared reporting calendar together with efforts to coordinate Geneva-based activities in order to ease the travel and other logistical burdens on states acting in good faith to comply with their procedural obligations.
- Treaty body members should remain alert for opportunities to include subnational units of national governments in review processes, and to shape concluding observations to reach and empower such entities.
- Individual treaty bodies should explore ways to use new technologies to follow-up on the implementation of recommendations, and involve additional participation of rights holders, CSOs, and bureaucrats in those efforts. All such efforts should proceed with appropriate attention to the security of rights holders and the information they share.
- Efforts to harmonize working methods across treaty bodies should proceed with attention to ensuring that changes do not undercut the ability of individual treaties bodies to work effectively in their respective spheres.

## **OHCHR**

- Whenever possible the OHCHR should actively promote the work of the treaty bodies in its engagement with states while underscoring how their role and competences differ from the UPR
- Efforts to update treaty body messaging through website redesign and support should continue, including taking additional steps to improve the searchability of hosted content.
- In its support capacity OHCHR should explore possibilities for limited private-public or academic partnerships for updating and expanding treaty body communications platforms and technologies on the condition that the treaty bodies retain full control over content, and dependencies on any one platform or technology are avoided.
- The OHCHR should continue, or expand, programmes to assist states in the task of issuing timely reports that contain systematically collected and analysed data, and to develop strategies for tracking and assessing follow-through of Concluding Recommendations

## **MEMBER STATES AND THEIR REPRESENTATIVES**

- Preserving the independence of the treaty bodies is essential to their work as barometers of states' progress toward implementing human rights treaty obligations, and as authorities on the scope and content of those obligations. Those supportive of the system should try to anticipate and take political steps to neutralize efforts to restrict the scope of treaty body authority or independence..
- In line with the objective of preserving the legal integrity of the treaty body system, Member States should resist all efforts to diminish the treaty bodies' legal competence, individually or as a group, to determine their working methods.
- State-level representatives supportive of the treaty body system should emphasize whenever possible the value of engagement with treaty body processes, both internally to their own governments, and externally to their counterparts in other states.
- Member States should continue, or augment, programmes to assist states, on a politically neutral basis, that have a desire to issue timely reports that contain systematically collected and analysed data on state human rights practices, but which lack sufficient capacity to do so.

## **CIVIL SOCIETY ORGANIZATIONS**

- To help ensure the integrity of the UN human rights system, CSOs should continue to support the work of the treaty bodies by providing information about country-level institutions, laws, and practices, undertaking victim advocacy, and monitoring the uptake and implementation of treaty body recommendations.
- Individually and as a corpus, CSOs should actively support open and inclusive access for organizations wishing to contribute to work of treaty body system at all stages of review processes.

A final overarching recommendation is that all proposed reforms to the treaty body system should be backed by clear expectations about how and why improvements will benefit rights holders. In weighing any recommendation, the possibility that the status quo may be the preferred option should be considered. Also relevant is how different options may interact with other entities and processes in ways that are beneficial (or harmful) to the objective of human rights promotion and protection broadly speaking.