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Report

Strengthening the UN human rights treaty monitoring system: what are the next steps?

Wednesday 14 – Friday 16 January 2015 | WP1375

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The ten committees of independent experts set up to monitor implementation of the United Nations' human rights treaties occupy a central role in the international protection of human rights. The quality of their work is of critical importance. But the functioning of this human rights treaty body system, built up over the past half century, has of late been under severe stress. A series of initiatives, consultations and discussions over the last five years, designed to address the increasing challenges, culminated in April 2014 with the adoption by the UN General Assembly of a resolution, A/RES/68/268, on "Strengthening and enhancing the effective functioning of the human rights treaty body system." While this outcome has many positive elements, further important issues remain to be resolved if the system is to prove sustainable in the years to come.

To address such issues, this meeting brought together members of the treaty bodies with government representatives, officers from the UN Office of the High Commissioner for Human Rights (OHCHR), non-governmental organisations (NGOs) and academic experts. Participants took stock of recent developments, in particular the adoption and implementation of GA Res 68/268, identified major outstanding issues and what steps might be taken to address them, and looked at ways to secure greater compliance by States with their obligations under the treaties.

Key points

- The adoption without a vote of UN General Assembly Resolution 68/268 represents a significant achievement in addressing immediate challenges confronting the human rights treaty bodies; for the future sustainability of the system, work must now be pursued on two tracks: Implementation of Res 68/268, alongside the development of more ambitious, long term plans for the system's effective functioning in years to come. While OHCHR should take the lead, this must remain a multi-stakeholder process.
- An independent study should be undertaken, using applied research and academic rigour, to look at future options for the long-term sustainability of the treaty body system. The study should reflect earlier proposals as well as consider new ones.
- Distinguished and competent candidates should be nominated for/elected to the treaty bodies; election of individuals in governmental or executive positions should be avoided. A compendium should be drawn up of good practices with regard to transparent processes for nomination and election of treaty body

members.

- Full respect needs to be ensured for the 2012 Addis Ababa Guidelines on the independence and impartiality of treaty body members; members must recuse themselves when there is, or appears to be, a conflict of interest. Further guidance could be given to new treaty body members as part of their induction.
- More space and opportunity should be provided for strategic discussion between treaty bodies; the recent creation by the Swiss government of the Geneva Platform for Human Rights Treaty Bodies presents one significant opportunity for this.
- The perspective of rights holders is of critical importance; they should be allowed greater engagement in the work of the treaty bodies. A compendium of good practice could be compiled aimed at harmonizing methodologies in relation to NGO participation.
- There must be a serious and system-wide response to the problem of reprisals against individuals or organisations who seek to engage with or otherwise assist the treaty monitoring bodies in their work.
- More regular, substantive dialogue between treaty body members and States parties is needed; it should involve other stakeholders, including National Institutions and NGOs.
- A meeting should be organised between National Government Agents and the treaty bodies dealing with individual complaints to discuss ways to address difficulties encountered in relation to the complaints system.
- There needs to be stronger “marketing” of the treaty body system beyond Geneva, using modern means of communication and more targeted media work, as a first step in enhancing impact at the national level.
- Each treaty body should address the issue of implementation as a standing agenda item. Each State party should create a sufficiently high-level focal point to facilitate implementation.
- OHCHR could be asked to help States identify methodologies for securing follow-up and models for databases to assist in this process.
- The whole of the UN system should be engaged in assisting States to secure implementation. The deployment of Capacity-Building Officers in a number of regions will provide valuable support to this work.

Continuing challenges and opportunities

1. The adoption of Res 68/268 on “Strengthening and enhancing the effective functioning of the human rights treaty body system” by the UN General Assembly, following difficult negotiations, represents a major positive step. The discussions raised significantly knowledge about the system and engaged States parties, treaty bodies and multiple stakeholders in concern about the future, while the resolution presented a whole series of detailed, concrete measures to address current difficulties. A considerable number of steps have already been taken: for example, most of the treaty bodies have decided to introduce simplified reporting procedures; streamlined dialogue has been endorsed by member States; election information is being published on the web; dedicated capacity building officers are being deployed to the field; extended meeting times are being brought into effect; and a pilot phase of webcasting is being developed. Reductions in costs in certain areas, such as interpretation and documentation, and streamlined reporting, should allow for more capacity to clear backlogs in examining reports. The precise effects of these measures will take some time to evaluate.
2. Notwithstanding, financial and human resources remain a serious challenge, and will

be even more so if States increase compliance with their reporting obligations. Thus, as implementation of GA Resolution 68/268 goes ahead, it should just buy sufficient time to allow the system to continue. More ambitious, long term plans need to be developed for its future effective functioning. If the human rights treaty body system is to function effectively in the years to come, there has to be imaginative thinking as to the way forward. While many consider that it is for OHCHR to take the lead in these discussions, this must remain a multi-stakeholder process. An independent study should be undertaken, using applied research and academic rigour, to look at future options for the long-term sustainability of the treaty body system. Much work has been done on this in the past, and the study should reflect earlier proposals as well as consider new ones.

3. The stresses on the treaty body system are a never-ending story and the framework provided by GA Res 68/268 is not sufficient to deal with all of these, particularly in respect of their effective functioning to protect human rights in practice. Many remaining gaps can be traced back to lack of material support. The system has to be fully financed from the UN's Regular Budget for its stability. But often what the GA decides in terms of budgetary allocation has at best zero effect: for example, the recent regularisation of existing posts was accompanied by the loss of extrabudgetary resources and assignment of new tasks.
4. The tensions between expediency and consistency, quality and quantity in the work of the human rights treaty bodies need to be carefully calibrated. Measures to address the effectiveness of the system cannot be limited to the technical aspects. Further serious efforts need to be made within the UN and among and within the member States to increase the impact of the treaty bodies' work – their essential purpose of securing the protection of human rights should always be at the forefront. One major opportunity for such greater impact lies with the support to the treaty body system from other parts of the UN system – the Special Procedures, the Universal Periodic Review (UPR), OHCHR's field offices, and other UN departments and agencies. Non-governmental organisations and National Institutions need to be allowed greater engagement in this process.
5. The quality of the treaty bodies' work also needs to be assured: concluding observations should be clearer, more concise, and focused on what is most important. High quality membership of the committees should result in stronger outcomes, but more adequate preparation time is also required. There needs to be more space and opportunity for strategic discussion between treaty bodies and exchange of expertise among their members; the recent creation by the Swiss government of the "Geneva Platform for Human Rights Treaty Bodies" provides one major opportunity for this. Equally, the UN's treaty bodies need to work more in cooperation with regional bodies and ensure harmony in their findings.
6. Since they work on a voluntary basis, the treaty bodies' members' time is, however, limited. The members' status, and the question of more formal professionalization of the treaty body system, needs to be addressed. While the time might not yet be ripe, the idea of a unified treaty body is still open for discussion. There is some support for a delicate, gradual approach.

Independence, impartiality and integrity

7. GA Res 68/268 reaffirms that the independence and impartiality of members of the human rights treaty bodies is essential for the performance of their duties and responsibilities and calls for members of high moral standing serving in their personal capacity. But the resolution falls short in proposing how to ensure this. The Addis Ababa Guidelines, adopted by the treaty body chairpersons in June 2012, set out what is needed in this respect. They explicitly state that independence and impartiality of treaty body members is compromised by the political nature of their affiliation with the executive branch of the State. They encourage independence to be added to the oath

of treaty body members and for non-participation where there might be any conflict of interest. The Addis Guidelines rely on self-regulation. In order to safeguard the integrity of the system as a whole, it is essential that they be applied in practice. Res 68/268 invites the Chairs of the treaty bodies to keep States parties updated on their implementation.

8. One major opportunity to enhance the integrity of the system would be through greater transparency in the processes for nominating and electing treaty body members. While it might not be easy for States to agree on an institutionalised format or even guidelines in this regard, examples of good practice can and should be compiled. NGOs can contribute to the building of confidence in the nomination/election process by developing platforms, organising hearings with candidates, producing independent critiques, and so on. There is little optimism that significant changes can be brought about in the politics of voting within the UN, but some States are notably refusing to trade votes in treaty body elections. Given the increasing complexity of the treaty bodies' work, it could be useful to provide more in-depth induction to new treaty body members, with a clear focus on issues such as impartiality.

The working methods of human rights treaty bodies

9. In the recent intergovernmental discussions, working methods were judged best left to the treaty bodies themselves, although some States would have preferred to see them addressed at the time. The treaty bodies should be inventive in developing their working methods, while keeping within the framework of the obligations that States parties have signed up to; some procedures might initially be optional in pilot phase. More regular, substantive dialogue between treaty body members and States parties is needed beyond current arrangements and should also involve other stakeholders, including National Institutions and NGOs. Among specific areas that might be given priority focus in this dialogue could include outstanding reports, gaps in General Comments and the use of recourse to the International Court of Justice (ICJ) for inter-State complaints. Consideration could be given to conducting parts of the dialogue in smaller groups.
10. There is still some concern about the reduction in the maximum allowable length of States parties' reports; it can take much more time to produce a suitably concise report and prompt longer committee discussions. More attention needs to be given to the way in which Lists of issues prior to reporting (LOIPRs) are drawn up and what information is needed as a basis. The clustering of issues in a joint venture between a number of committees is one idea that has met with different reactions from the treaty bodies but might be worth exploring further by States parties. More attention also needs to be paid to the Common Core Document. While the possibility of meeting in dual chambers is to be tested, this does require extra servicing; the example of the Committee on the Rights of the Child (CRC) should be studied.
11. Much emphasis is placed on the dialogue with the State party in the context of its report; this should be genuine dialogue, each listening to the other, if solid, useful conclusions are to be reached. It should involve not just the treaty body and the State party, but include other stakeholders such as National Institutions and NGOs.
12. The consideration of individual complaints requires a distinct approach, different skills and competencies. If insufficient resources continue to be given to the treatment of individual complaints, this can adversely affect national confidence in the system. Current delays in their consideration appear to stem from lack of Secretariat capacity. For such reasons, strong arguments are made for all individual complaints to be dealt with by one unified body. More lessons could be learned from the European Court of Human Rights in this area, especially in regard to questions of admissibility and remedies, as well as the protection of victims and general case management. A meeting of Government Agents could usefully be convened with treaty bodies dealing with individual complaints to examine problems faced and put forward suggestions in

relation to, for example, methods of communication, thresholds for interim measures in asylum cases and accessibility by the most vulnerable. The mechanism of friendly settlements, under certain conditions, especially with regard to equality of arms, could be considered a valuable tool. Although a friendly settlement might preclude a determination on the issue, it can serve as a catalyst for modifying related legislation or structural measures.

13. Efforts to align the work of treaty bodies aim to improve their work ultimately. All the committees are increasingly looking to each other's recommendations. Synergies with the UPR and Special Procedures are also very important, the latter in particular with regard to individual complaints, where appropriate reference to treaty body recommendations needs to be made. Special procedures mandate holders might also usefully provide briefings to treaty bodies prior to reviews.
14. The treaty bodies can only work well when they have access to the necessary information and can assess its veracity. They must also be able to ensure that all people can have safe, unhindered access to them or communication with them. Alignment of best practices is needed with regard to the modalities for NGO engagement with the treaty bodies. Where there is a lack of NGO information, OHCHR should promote awareness of the reporting process at national level and solicit input. International NGOs should make space for nationals. The Committee against Torture in particular lays great store by its meetings with civil society prior to States parties' reviews. National NGOs need more help to visit Geneva for this purpose. Private sessions with victims can be essential for a treaty body. An increase in the severity of reprisals in a number of countries needs to be confronted – privately and publicly. Where appropriate, this might also be taken up for discussion by third States in the context of meetings of States parties. There has to be a serious and system-wide response to the problem of reprisals against individuals and groups seeking to engage with the treaty bodies or otherwise assist them in their work.
15. General comments issued by the treaty bodies can help States draft their reports, as well as serve as a reference in drawing up State policies or in courts (the International Court of Justice and other high instances now refer to the treaties and General Comments) and by NGOs, laws enforcement agencies and so on. Since they should be useful for all, consultation processes are needed and the General Comments need to be more widely publicized, made more user-friendly and available in local languages. New fact sheets could be issued.

Impact on the ground

16. Implementation of the decisions and recommendations of the treaty bodies is essential, not only to preclude continuing violations but also for the authority and credibility of the system itself.
17. As a starting point, there must be political will on the side of the State party. Where there is little political will, regional organisations may serve to encourage this. Greatest impact can be found where there is a countrywide strategy and joint follow-up. States parties need to appoint a sufficiently high level focal point to oversee and facilitate implementation, identify agencies involved, set up a calendar for actions to be undertaken and matters to be addressed in follow-up reports and maintain links with the UN system. IT tools and databases have proved invaluable in facilitating follow-up and cutting down the time needed for subsequent reporting. Delegations to the constructive dialogue could usefully include those State officials who will be responsible for follow-up.
18. Immediate impact has been seen on some occasions when treaty body members have been able to visit a country after a review, but whether all treaty bodies are best placed to deal with implementation is still open to question. Undoubtedly they can assist States parties in elaborating public policies. In view of their impact on legislation, national

parliaments can usefully be involved in dialogue and interaction with the treaty bodies, including any visits. A constructive dialogue with parliaments and other public policy agencies prior to reporting can be of great value. The active involvement of National Institutions and NGOs is key in all countries.

19. For the treaty bodies themselves to induce greater impact, their decisions and observations must be concrete, actionable and clearly targeted. Priority recommendations for most immediate follow-up should be identified. Each treaty body should have the issue of implementation as a standing agenda item, though they may approach the matter differently. Where appropriate, several treaty bodies may wish to decide on a joint follow-up procedure. One useful tool developed by the Human Rights Committee grades the level of implementation of recommendations on a scale of A to E. Others are looking at indicators to measure implementation. The LOIPR should inquire about follow-up given to earlier recommendations.
20. There also should be formal recognition of the interpretation of treaties by the treaty bodies.
21. There needs to be much greater public awareness and outreach in order to promote implementation. Each treaty body should have its own web site where recommendations can be made more visible. Wider use can be made of video-conferencing with national actors; the UN Country Team might be able to help with this. Webcasting and the use of social media such as Twitter can have an important multiplier effect. For all of these, language must be simplified. A member of the OHCHR press team now dedicated to the treaty bodies can make a big difference in securing greater visibility for their work.
22. Human rights play an increasingly central role across the UN system, and for future sustainability of treaty body monitoring, engagement of the whole UN family is vital. Among the opportunities now available to promote implementation are: the Development Assistance framework (UNDAF) - an agreement signed between the UN Country Team and the Government; the Rights Up Front initiative of the Secretary General, which governs all of the UN's work; the post-2015 Sustainable Development Goals; One UN for system-wide coherence; and the role of the UN's Resident Coordinators both in their terms of reference and appraisal process. To operationalize these various opportunities, and work with the State party to develop a plan of action, OHCHR needs to be in the driving seat but the whole of the UN system needs to be engaged. The presence of Capacity-Building Officers in a number of regions will provide a much greater capacity to disseminate outcomes and work with the Country Teams to mainstream the treaty bodies' recommendations and views/decisions on individual cases. Implementing action may be direct or indirect – the latter, for example, seen in different agencies applying findings in a Human Rights Based Approach to cooperation activities. Recommendations of different treaty bodies, the UPR and the Special Procedures in some instances are usefully clustered together to facilitate implementation. There is now sufficient good practice at country level usefully to compile and share.
23. OHCHR could be asked to make a compilation of what methodologies already exist and give guidance in the development of databases facilitating follow-up – identifying what has been achieved, what is underway, what is on-going, etc. The regional human rights systems provide interesting models for oversight of implementation/enforcement of decisions. Other models worth examining include those governing anti-terrorism or trade-related recommendations which, while enjoying the same legal status, benefit from substantially higher implementation rates.

Conclusion

The adoption without a vote of UN General Assembly Resolution 68/268 represents a significant achievement in addressing immediate challenges confronting the human rights

treaty bodies. For the future sustainability of the system, and the ultimate goal of *strengthening* the functioning of the treaty bodies in order to secure effective protection of human rights, then more ambitious, long term plans must be developed. While OHCHR should take the lead, this must remain a multi-stakeholder process. In the meantime, States should think very carefully before creating any further treaty bodies.

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