

Strengthening the Human Rights Treaty Bodies: A Modest but Important Step Forward

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In less than a decade, the size of the treaty body system has doubled without commensurate resources. Such an unprecedented increase generated paralyzing backlogs of States parties' reports and individual communications. In addition, the proliferation of human rights treaties and monitoring bodies sometimes resulted in divergent interpretation. Thus, measures to enhance state compliance as well as to ensure coherence among the various provisions covering identical issues can no longer be delayed.

In addressing these challenges, the UN High Commissioner for Human Rights launched a project for strengthening the treaty bodies in 2012. She submitted a report setting out various recommendations. The key proposals of the report included establishing a comprehensive reporting calendar ensuring strict compliance with human rights treaties and equal treatment of all States parties. In addition, the report suggested the enhancement of visibility of processes, as well as a more careful selection of Committee members. Many of these proposals were endorsed by the General Assembly, while others were ignored. Despite its flaws, this process is the first successful strengthening of the human rights bodies in 50 years, and paves the way to effectively tackle the challenges faced by the treaty bodies even though only through an incremental process.

Keywords: human rights; implementation; compliance; human rights instruments; human rights treaty bodies; strengthening of the UN human rights treaty bodies

1. Introduction

The establishment of the United Nations in 1945, and the provisions of the United Nations Charter provided a basis for a comprehensive system of human rights protection. Since then, a great number of treaties have been adopted at universal, as well as at regional level. The focal points of human rights 'legislation' in the UN is the Universal Declaration of Human Rights¹ and the Convention on the Prevention and Punishment of the Crime of Genocide.² These were followed by two Covenants, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Apart from these, various subject-specific conventions has been adopted.³ The provisions of the Covenants are relatively brief, more general and thus granting a relatively wide freedom to Contracting Parties to choose the measures they deem appropriate to realise the goals. The specialised

¹ UDHR adopted by the UN General Assembly on 10 December 1948 in Paris.

² Convention on the Prevention and Punishment of the Crime of Genocide, UNGA Resolution 260 (III), Paris, 9 December 1948.

³ For the list of core international human rights instruments, visit <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>. Details of the treaties will be considered in Part Three titled 'Current Mechanisms'.

conventions, on the other hand, are more elaborate on States Parties' obligations; nevertheless, they still allow certain room for discretion.⁴

The objective of this paper to provide an overview of the complex situation relating to the implementation of, or compliance with, the core universal human rights treaties, as well as the enforcement of the views and judgments of the monitoring bodies set up by the named treaties. Thus, it neither aims to cover other regional mechanism, nor the so-called Charter-based machinery.⁵

Based on Jacobson and Weiss,⁶ this paper uses the following terminology. The term 'implementation' will be used to refer to "measures that countries take to effectuate international treaties in their domestic law", whether the treaty is self-executing or not, and thus requires national legislation to transpose the treaty provisions. Compliance refers to "whether countries in fact adhere to the agreement's provisions and to the implementing measures". Thus it covers both substantive and procedural obligations. The authors complement these with the notion of compliance with the spirit of the treaty. Compliance thus includes compliance with matters of substance, compliance with obligations of a procedural nature, and compliance with the broad normative framework of the treaty.⁷

Against this conceptual background, Part Two of this contribution deals with the relation between international and domestic legal order, and the various mechanisms developed by the States to receive international legal norms into their national legal order. Part Three provides a brief general description of the current mechanisms, highlighting the main flaws of the protection of human rights at UN level. Part Four considers the recommendations formulated by the High Commissioner for Human Rights and other stakeholders with a view to enhance compliance by States Parties of their human rights obligations and the effectiveness of monitoring by the treaty bodies. Part Five concludes with the examination of Resolution 68/268 adopted by the General Assembly to respond to these challenges.

2. The Relations Between the International and Domestic Legal Order

As a preliminary issue, it must be recalled that as far as compliance with international treaties and, in relation to that, implementation techniques are concerned, much depends on the relationship between public international law and the domestic legal order of a particular State. In States following the *monist*

⁴ *E.g.* in Art. 4 the CERD imposes an obligation on States Parties to criminalise acts of racial discrimination, in Article 6 the duty to provide effective remedies, but it does not prescribe *e.g.* the actual severity of the penalties, or the methods of effective remedy.

⁵ On the UPR see *e.g.* J. Vengoechea-Barrios, *The Universal Periodic Review: A New Hope for International Human Rights Law or a Reformulation of Errors of the Past?* 12 *Revista Colombiana de Derecho Internacional* 2008, pp. 101-116; E. Domínguez Redondo, *The Universal Periodic Review of the UN Human Rights Council: An Assessment of the First Session*, 7 *Chinese Journal of International Law* 2008, pp. 721-734; Komanovics, Adrienne, *The Human Rights Council and the Universal Periodic Review: Is it more than a public relations exercise?* in: Balogh Zsolt György (ed.), *Essays of Faculty of Law University of Pécs, Yearbook of 2012, Pécs 2012*, pp. 119-146; Komanovics, Adrienne & Mazur-Kumrić, Nives, *The Human Rights Council and the Universal Periodic Review: A novel method of promoting compliance with human rights*, in: Tímea Drinóczi, Mirela Župan, Zsombor Ercsey, Mario Vinković (eds.), *Contemporary legal challenges: EU – Hungary – Croatia, Pécs-Osijek 2012*, pp. 641-669.

⁶ Weiss, Edith Brown and Jacobson, Harold K., *Getting Countries to Comply with International Agreements*. *Environment*, Jul/Aug 1999, Vol. 41 Issue 6, pp. 16-20 and 37-45, at p. 18. See also Harold Jacobson and Edith Brown Weiss, *Strengthening Compliance with International Environmental Accords: Preliminary Observations from a Collaborative Project*, *Global Governance* Vol. 1, 1995, pp. 119-48. See also L.J. LeBlanc, A. Huibregtse & T. Meister, *Compliance with the reporting requirements of human rights conventions*, *The International Journal of Human Rights*, Vol. 14, No. 5, 2010, pp. 789–807, p. 790.

⁷ LeBlanc et al. 2010, p. 790.

approach, international treaties will automatically be part of the national law as a result of their ratification. Courts will, however, rely on it only if these treaties can be regarded as self-executing, i.e. “the relevant provision creates a right that can be relied upon directly before it without further steps being needed by way of legislative or other state action”.⁸ Even then, national courts might be reluctant to make use of what is seen as ‘foreign’ law.⁹ In States following the *dualist* approach, further legislative action is needed subsequent to the ratification of treaties to be enforceable in the national legal order. The rank of the treaty, and other related issues must be set out in the legislation incorporating the treaty in the national legal order.¹⁰

In relation to international treaties, the United Nations Convention on the Law of Treaties (VCLT), reflecting customary international law, provides in Article 26 that once consent to be bound has been expressed and the treaty has entered into force, the treaty shall be kept by the parties in good faith (the principle of *pacta sunt servanda*). The scope of this principle in the context of human rights treaties was further clarified by the Human Rights Committee. General Comment 31 provides that the obligation to give effect to treaty rights binds all branches of the State, requiring the State to take legislative, administrative, judicial and other measures.

... All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level – national, regional or local, are in a position to engage the responsibility of the State party. The executive branch that usually represents the State party internationally, including before the Committee, may not point to the fact that an action incompatible with the provisions of the Covenant was carried out by another branch of government as a means of seeking to relieve the State party from responsibility for the action and consequent incompatibility. This understanding flows directly from the principle contained in article 27 of the Vienna Convention on the Law of Treaties, according to which a State party “may not invoke the provisions of its internal law as justification for its failure to perform a treaty”. Although article 2, paragraph 2, allows States parties to give effect to Covenant rights in accordance with domestic constitutional processes, the same principle operates so as to prevent States parties from invoking provisions of the constitutional law or other aspects of domestic law to justify a failure to perform or give effect to obligations under the treaty. In this respect, the Committee reminds States parties with a federal structure of the terms of article 50, according to which the Covenant’s provisions “shall extend to all parts of federal states without any limitations or exceptions”.¹¹

In order to ensure respect for the rights of persons and groups, by ratification of or accession to the Covenant States are required to adopt measures to ensure full realization of Covenant rights. In the same General Comment, the Human Rights Committee argued, that

Article 2, paragraph 2 [of the Covenant], requires that States Parties take the necessary steps to give effect to the Covenant rights in the domestic order. It follows that, unless Covenant rights are already protected by their domestic laws or practices, States Parties are required on ratification to make such changes to domestic laws and practices as are necessary to ensure their conformity with the Covenant. Where there are inconsistencies between domestic law and the Covenant, article 2

⁸ David Harris, Michael O’Boyle & Colin Warbrick, *Law of the European Convention on Human Rights*. Oxford University Press, Oxford, 2009, p. 24.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Para. 4, General comment No. 31: The Nature of the General Legal Obligation. Adopted on 29th March 2004, its 2187th meeting.

requires that the domestic law or practice be changed to meet the standards imposed by the Covenant's substantive guarantees. *Article 2 allows a State Party to pursue this in accordance with its own domestic constitutional structure and accordingly does not require that the Covenant be directly applicable in the courts, by incorporation of the Covenant into national law.* The Committee takes the view, however, that *Covenant guarantees may receive enhanced protection in those States where the Covenant is automatically or through specific incorporation part of the domestic legal order.* The Committee invites those States Parties in which the Covenant does not form part of the domestic legal order to consider incorporation of the Covenant to render it part of domestic law to facilitate full realization of Covenant rights as required by article 2.¹²

Despite the *pacta sunt servanda* principle, as laid down generally by the VCLT and specifically by the human rights treaties, States have developed various judicial techniques to avoid having to apply international law, or to deal with cases involving international law.¹³

A further factor influencing compliance with international obligations is the lack of detail or clarity of treaty provisions, which is inherent in international texts having regard to the whole process of international law-making. In such a situation, and without guidance from the treaty bodies, even the most human rights-committed national judges and authorities may interpret or apply international obligations incorrectly.¹⁴ In a situation where an issue has not been ruled upon by human rights treaty monitoring bodies, national courts will have no choice but to adopt their own interpretation, which might vary from State to State.¹⁵ In addition, the meaning attributed to a specific treaty provision by one court in a given State Party might be at variance with the interpretation of the same provision by another national court.

The situation is a bit different if the issue has already been addressed by the treaty bodies: here jurisprudence *can* provide guidance. National courts are, however, clearly *not bound* to follow the interpretation of treaty bodies developed in previous cases. While most UN treaty bodies have the mandate to adopt “views”, these are devoid of binding force.¹⁶ Nevertheless, there are a number of arguments in support of the view that States are required to respect and enforce the views issued by these committees. These include the basic obligation of *pacta sunt servanda*, the more specific obligation “to

¹² *Ibid.*, para. 13, emphasis added.

¹³ Jan Klabbers, *International Law*, Cambridge University Press, 2013, p. 287. See also H. H. Koh, *Why do Nations Obey International Law?* Yale L.J., Vol. 106 No. 8, 1997, pp. 2599–2659; R. Goodman & D. Jinks, *Incomplete Internalization and Compliance with Human Rights Law*, EJIL, Vol. 19 No. 4, 2008, pp. 725–748; T. M. Franck, *The Power of Legitimacy Among Nations*, Oxford University Press, 1990; O. C. Okafor, *The African Human Rights System, Activist Forces and International Institutions*, Cambridge University Press, 2007, pp. 12–62 (focusing primarily on relationship between institutions and domestic forces). – See e.g. the so-called ‘political questions’ doctrine, or the act of state doctrine, Klabbers 2013, p. 301.

¹⁴ “Traditionally, courts are often seen to show a preference for relying primarily on national law in their jurisprudence. However, national courts have developed a growing awareness of their role in applying relevant international standards, though practice differs considerably.” Ilias Bantekas & Lutz Oette, *International Human Rights Law and Practice*, Cambridge University Press, 2013, pp. 79–80.

¹⁵ Harris et al. 2009, p. 25.

¹⁶ “The types of decision differ between treaty bodies and courts. Proceedings before UN treaty bodies and regional human rights commissions are quasi-judicial and such bodies adopt decisions. There is a continuing debate about the legal nature of these decisions, which some bodies refer to as ‘views’ or ‘opinions’. Some observers, and frequently states parties or domestic courts ... claim that they are purely recommendatory. The formal arguments put forward in support of this position are not very convincing. While there is general agreement that they are not binding as such, it is appropriate to see these decisions as ‘authoritative interpretations’ of the respective treaties that determine to what extent, if any, a state has failed to comply with its obligations. As a consequence, states parties are required to take the necessary measures to remedy any violations found and bring their conduct in conformity with their obligation to give effect to treaties, such as required under article 2 ICCPR.” (References omitted.) Bantekas & Oette 2013, pp. 296–297.

respect and to ensure” the rights recognized in the relevant human rights treaty (see e.g. ICCPR Article 2), and finally the implicit obligation that a State Party having accepted the possibility of individual communications also accepted the obligation to comply with the recommendations formulated during the consideration of individual communications.¹⁷ It is argued that rejection of the “views” is “good evidence of a State’s bad faith attitude towards its ICCPR obligations”.¹⁸

3. Current Mechanisms

3.1. General Description

Since its inception, the UN has been very active in the promotion of human rights. Standard-setting started with the adoption of the Universal Declaration (1948) and was followed by various treaties which, taken together, are also called as the International Bill of Human Rights. Albeit the Declaration is not technically legally binding, it is regarded as the consensus of global opinion on fundamental rights. At the moment, there are nine core international human rights treaties, most of them complemented by optional protocols, focusing on certain sets of rights (civil and political rights; economic, social and cultural rights), expanding on a certain right (prohibition of racial discrimination, prohibition of torture) or providing protection to various vulnerable groups (women, children, migrant workers, disabled persons). Each of these treaties has established a committee of experts to monitor implementation of the treaty provisions by its States parties. Some of the treaties are supplemented by optional protocols dealing with specific concerns, or allowing for individual communications.¹⁹

¹⁷ Article 5(4) of ICCPR-OP1 provides that the Committee shall forward its views to the State Party concerned and to the individual. – “However, it would be wrong to categorize the Committee’s views as mere ‘recommendations’. They are the end result of a quasi-judicial adversarial international body established and elected by the States Parties for the purpose of interpreting the provisions of the Covenant and monitoring compliance with them. It would be incompatible with these preconditions of the procedure if a state that voluntarily has subjected itself to such a procedure would, after first being one of the two parties in a case, then after receiving the Committee’s views, simply replace the Committee’s position with its own interpretation as to whether there has been a violation of the Covenant or not. ...the presumption should be that the Committee’s views in Optional Protocol cases are treated as the authoritative interpretation of the Covenant under international law.” R. Hanski & M. Scheinin, *Leading Cases of the Human Rights Committee*, 2nd revised edition, Turku: Institute for Human Rights, Åbo Akademi University, 2007, p. 23. See also Keller & Ulfstein, *UN Human Rights Treaty Bodies. Law and Legitimacy*, Cambridge UP, 2012, pp. 92-100.

¹⁸ S. Joseph, J. Schultz & M. Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary*, 2nd edn, Oxford University Press, 2004, p. 24. See also H.J. Steiner, R. Goodman & P. Alston, *International Human Rights in Context: Law, Politics and Morals*, 3rd edn, Oxford University Press, 2008, p. 915; and C. Tomuschat, *Human Rights: Between Idealism and Realism*, 2nd edn, Oxford University Press, 2008, p. 220.

¹⁹ The text of these core human rights treaties is available at <http://www.ohchr.org/Documents/Publications/CoreTreatiesen.pdf> and <http://www.ohchr.org/Documents/Publications/newCoreTreatiesen.pdf>.

Table 1: Core Human Rights Treaties

Date of adoption	Core human rights treaties
1965	International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
1966	International Covenant on Economic, Social and Cultural Rights (ICESCR)
1966	International Covenant on Civil and Political Rights (ICCPR)
1979	Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
1984	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
1989	Convention on the Rights of the Child (CRC)
1990	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)
2006	Convention on the Rights of Persons with Disabilities (CRPD)
2006	International Convention for the Protection of All Persons from Enforced Disappearance (CPED)

The bodies established by the treaties are international committees of independent experts, with a membership ranging from 10 to 25. Members are chosen with a view to equitable geographic distribution and adequate representation of different legal systems and cultures. Members are nominated and elected by the States parties to the relevant treaty from among their nationals for a renewable four years. They serve in their individual capacities.

The mandate of these treaty bodies includes the review of periodic reports and, depending on the treaty and its optional protocol, the consideration of individual or inter-State communications, or the conduct of country-visits.

Table 2: Activities and Functions of Treaty Bodies²⁰

Activities and functions of treaty bodies	Treaty bodies									
	CERD	CESCR	HRC	CEDAW	CAT	SPT	CRC	CMW	CRPD	CED
Examination of State reports / Concluding observations	✓	✓	✓	✓	✓		✓	✓	✓	✓
Individual communications	✓	✓	✓	✓	✓		✓	✓	✓	✓
Inter-State complaints	✓	✓	✓	✓	✓		✓			✓
General comments	✓	✓	✓	✓	✓		✓	✓	✓	✓
Inquiry procedure through country visits*		✓		✓	✓	✓	✓		✓	✓
Follow-up procedure	✓	✓	✓	✓	✓	✓				

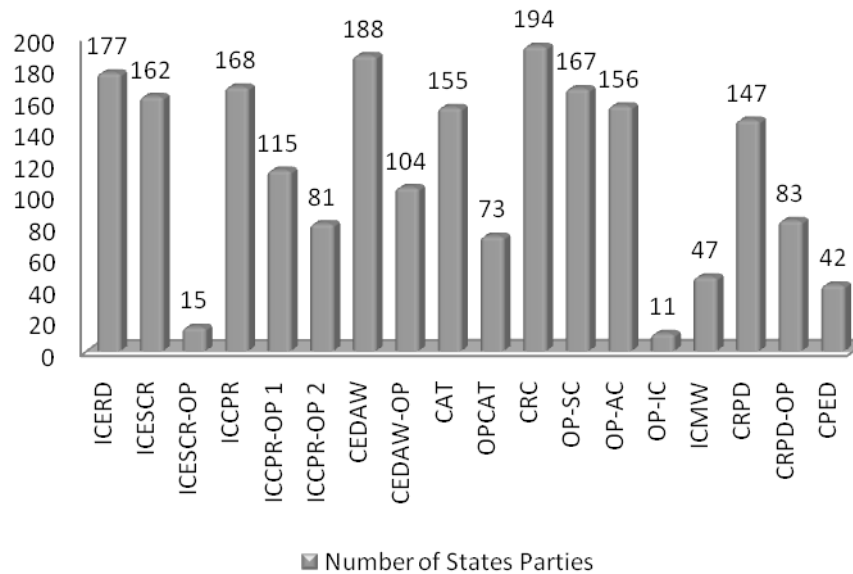
* To investigate well-founded allegations of systematic violations of human rights

As of July 2014, the status of ratification of international human rights instruments is as follows.²¹

²⁰ Based on International Service for Human Rights (ISHR), *Simple Guide to treaty bodies*, 2010, p. 34. <http://www.ishr.ch/guides-to-the-un-system/simple-guide-to-treaty-bodies?task=view>, reflecting the situation as of July 2014.

²¹ As of 18 July 2014, <https://treaties.un.org/Pages/Treaties.aspx?id=4>.

Figure 1: Status of Ratification of International Human Rights Instruments



3.2. Challenges

The present situation is characterized by “low rates of compliance, large backlogs of reports, and unequal treatment of States parties.”²² The divergent periodicities of reporting arising from the core treaties create chaotic schedules as well as a heavy burden on States parties. Scarce human resources coupled with increasing workload of treaty bodies cause further delays in the reporting process, resulting in long delays between the submission and consideration of reports. The proliferation of human rights treaties and monitoring bodies is another flaw of the present system which can easily lead to divergent interpretation. Finally, criticism has been expressed in relation to the independence and impartiality, as well as the expertise of treaty body members in the field of the relevant treaty.²³

In the words of the High Commissioner, the current legal and practical deficiencies of state compliance with treaty-obligations are the following.

“Currently, ... only 16% of States parties report on time²⁴; and even with this low compliance rate, four out of nine treaty bodies with a reporting procedure are facing significant and increasing backlogs of reports awaiting consideration. ... The treaty body system is surviving because of the dedication of the experts, who are unpaid volunteers, the support of staff in OHCHR and States’ non-compliance with reporting obligations. However, at a time when

²² Questions and Answers on the Comprehensive Reporting Calendar prepared by the OHCHR, Human Rights Treaties Division, November 2012, available at <http://www.ohchr.org/Documents/HRBodies/TB/HRTD/QAReportingCalendar.pdf> p. 19.

²³ Questions and Answers on the Comprehensive Reporting Calendar (fn. 22) 2012, p. 4; Report of the United Nations High Commissioner for Human Rights on the strengthening of the human rights treaty bodies pursuant to Assembly resolution 66/254, GA/66/860, 26 June 2012 (hereinafter referred to as the HC Report 2012), pp. 12 and 25-26, and Guidelines on the independence and impartiality of members of the human rights treaty bodies (Addis Ababa guidelines), HRI/MC/2012, Addis Ababa, 25 to 29 June 2012, paras. 3 and 5.

²⁴ This figure is based on a calculation of reporting during the 2010-2011 biennium.

human rights claims are increasing in all parts of the world, it is unacceptable that the system can only function because of non-compliance.”²⁵

Having regard to the poor compliance data, and based on the mandate given by General Assembly Resolution 48/141 to “rationalize, adapt, strengthen and streamline the United Nations machinery in the field of human rights with a view to improving its efficiency and effectiveness”, the HC embarked upon an investigation on ways to strengthen the treaty body system. In its report of 2012, she made various recommendations, including new methods to ensure strict compliance with human rights treaties and equal treatment of all States parties, enhancing independence and impartiality of members of the human rights treaty bodies, ensuring the consistency of treaty body jurisprudence, increasing coordination between treaty bodies, and enhancing transparency.²⁶

Following the launch of the intergovernmental process in 2012, the General Assembly adopted resolution 68/268 in April 2014 to address the challenges exposed by the report of High Commissioner. This part of the paper aims at identifying the flaws and defects of the current system.

3.2.1. Initial and Periodic Reports

Treaty bodies (with the only exception of SPT) receive and consider reports submitted by States Parties aiming at the examination of the level of the State’s implementation of and compliance with its obligations under the treaties. Reporting provides an opportunity to take stock of the state of human rights protection within the jurisdiction of the States Parties. Whereas some of their functions are quasi-judicial, nevertheless the treaty bodies are not judicial bodies; they were created to monitor the implementation of the treaties.

In carrying out this task, treaty bodies have developed general comments or recommendations²⁷ interpreting provisions of their respective treaties both substantially and procedurally. These GCs provide substantive guidance on specific articles of the convention, or provide more general guidance for State Parties on topics such as how to prepare their reports to the treaty bodies.

Non-compliance with reporting obligations is due to various factors. First of all, contracting parties to human rights treaties (all with a very high number of participants) face *heavy reporting duties* (see Table 3). Presuming a State has ratified all nine core treaties and the optional protocols with a reporting procedure, it is obliged to prepare and submit approximately 20 reports within the short period of 10 years.²⁸ Certainly, such unpredictable and unbalanced schedule of deadlines, coupled with the Universal Periodic Review obligations, requires considerable resources and capacity. Delay in the consideration of State reports by the treaty bodies creates a need for considerable updating of information by the time of the dialogue.²⁹

²⁵ P. 9 of Report of the United Nations High Commissioner for Human Rights on the strengthening of the human rights treaty bodies, Doc. A/66/860.

²⁶ HC Report 2012, p. 11.

²⁷ The actual designation differs in the treaties, but both disguises the same phenomenon. CERD and CEDAW use the term ‘general recommendation’.

²⁸ HC Report 2012, p. 21.

²⁹ *Ibid.*, p. 37.

Table 3: Reporting Periodicity Under the Treaties

Treaty	Initial report due within ...	Periodic reports due every ...
ICERD	1 year	2 years
ICESCR	2 years	5 years*
ICCPR	1 year	4 years**
CEDAW	1 year	4 years
CAT	1 year	4 years
CRC	2 years	5 years
CRC-OP-SC	2 years	5 years or with next CRC report
CRC-OP-AC	2 years	5 years or with next CRC report
ICRMW	1 year	5 years
CRPD	2 years	4 years
CED	2 years	***as requested by CED (art. 29(4))

* Article 17 of the Covenant does not establish a reporting periodicity, but gives the Economic and Social Council discretion to establish its own reporting programme.

** Article 40 of the Covenant gives the Human Rights Committee (HRC) discretion to decide when periodic reports shall be submitted. In general, these are required every four years.

*** Article 29 of the Convention does not establish a reporting periodicity.

Secondly, there is a *chronic under-reporting or long delay in the submission of reports by many States*. As implied in the previous paragraph, this is partly due to the heavy reporting obligations of States Parties to several, or all, universal human rights treaties. In view of this, some treaty bodies allow for late reports to be submitted with subsequent reports in the form of a ‘combined’ report. Furthermore, since 2006, States are required to submit a so-called *common core document (CCD)*.³⁰ This common base document provides general information on the State Party, such as basic facts and figures, its political and legal system, and other relevant information which, in turn, is used by all the treaty bodies in their reviews of States Parties’ treaty compliance. It serves as a basis for all State reporting obligations under those UN human rights treaties which a particular State has accepted. States Parties are required to keep the CCD as current and up to date as possible. Additional treaty-specific reports are still required, but with somewhat more limited scope than previously.³¹ Despite the fact that the use of CCD simplifies the preparation and presentation of national reports, as of July 2014, only 73 States parties have produced a CCD. As of 15 May 2014, twenty-two out of the 196 States Parties have submitted all their reports under the relevant international human rights treaties and protocols.³² Table 4 contains information about/on non-reporting and late-reporting States.

³⁰ The core document was introduced in 1991 by the meeting of chairpersons of the treaty bodies as a way of reducing some of the repetition in the reports. Until 2006, this ‘core document’ submission was voluntary. The guidelines for CCD were reviewed in 2006. See “Harmonized Guidelines on Reporting under the International Human Rights Treaties, Including Guidelines on a Common Core Document and Treaty-Specific Documents,” HRI/MC/2006/3, adopted at the 5th Inter-Committee Meeting of June 19-21, 2006, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=HRI%2fMC%2f2006%2f3&Lang=en.

³¹ “Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents” (HRI/MC/2006/3 and Corr.1).

³² These are Belgium, Canada, Czech Republic, Fiji, Finland, Germany, Guatemala, Kuwait, Montenegro, Niue, Norway, Paraguay, Peru, Poland, Portugal, Russian Federation, Singapore, Slovakia, Tuvalu, USA, Uzbekistan, and Venezuela. Follow-up to General Assembly resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system and to the decisions of the twenty-fifth meeting of Chairpersons

Table 4: Overview of Non-reporting and Late-reporting States by Treaties (15 May 2014)³³

Treaties	No. of States parties (a)	Overdue initial reports (non-reporting)		Overdue periodic reports (late-reporting)		Total overdue report
		Number (b)	Percentage	Number (c)	Percentage (c)÷[(a)-(b)]	Number
ICCPR	168	23	13.7	59	60.7	82
ICESCR	162	29	17.9	37	27.8	66
ICERD	177	14	7.3	87	53.4	101
CAT	155	27	17.4	42	32.8	69
CEDAW	188	8	4.3	35	19.4	43
CRC	194	2	1.0	43	22.4	45
ICRMW	47	21	44.7	4	15.4	25
CRPD	144	52	36.1	0	0.0	52
ICPPED	42	20	50.0			20
Total	1,599	308 (19.3%)		307 (33.2%)		615

Since States are frequently delayed in submitting their reports and treaty bodies have also accumulated a serious backlog in the consideration of States Parties' reports, follow-up of concluding observations has gained momentum. While it is inherent in the system that all treaty bodies request States Parties to provide information on implementation of the recommendations contained in previous concluding observations in their subsequent reports, various committees (Human Rights Committee, CEDAW, CAT and CERD) require inter-sessional additional reports from States Parties. Adherence to periodicities would undoubtedly reduce the need for such inter-sessional additional information.

Notwithstanding the persistent high level of non-compliance with reporting obligations, treaty bodies do not have the necessary capacities to keep the pace with incoming reports: in March 2012, *treaty bodies faced backlogs* amounting to a cumulative 281 State Party reports pending consideration.³⁴ In addition, no automatic increase in resources emanate from new ratifications despite increasing the workload of the treaty body.³⁵ It has been shown that:

... at current levels of ratification, if every state party would report as per prescribed periodicity, treaty bodies should review an average of 320 state party reports per year. However, the actual timely reporting compliance rate is at only 16%. Even at this level of noncompliance, the present backlogs are unsustainable.³⁶

of the human rights treaty bodies pertaining to reporting compliance by States; Note by the Secretariat on Late and non-reporting by States parties; 4 June 2014; p. 5.

³³ Adapted from the following document: Follow-up to General Assembly resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system and to the decisions of the twenty-fifth meeting of Chairpersons of the human rights treaty bodies pertaining to reporting compliance by States; Note by the Secretariat on Late and non-reporting by States parties; 4 June 2014; pp. 5-6.

³⁴ "For those treaty bodies that consider individual communications, the increasing number of petitions (an average of 480 individual communications pending in 2011) has also led to significant delays in this procedure." HC Report 2012, p. 23.

³⁵ Comprehensive cost review of the human rights treaty body system, Geneva, April 2013, pp. 3 and 10.

³⁶ *Ibid.*, p. 11.

Table 5: Backlog of Treaty Bodies, as of December 2012³⁷

	Number of concluding observations	Number of decisions and views	In-hand backlog of States Parties reports	Petitions pending consideration
Human Rights Committee	14	80	32	360
CERD	22	1	22	6
CESCR	12	n/a	50	n/a
CRC	36	n/a	107	n/a
CEDAW	20	6	30	15
CRPD	4	3	32	7
CED	1	n/a	4	n/a
CAT	17	25	25	100
CMW	4	n/a	5	n/a
TOTAL	130	115	307	488

To streamline examination of State reports, and following the practices established by CAT in 2007, two more treaty bodies (HRC and CMW) have adopted the optional reporting procedure of List of Issues Prior to Reporting (LOIPR).³⁸

Long interval between submission and consideration has various drawbacks: it creates double reporting obligation for States Parties as relevant information will need to be updated at the time of examination, resulting in wasting the costs of translating State Party reports. In addition, States without the certainty that their report will be considered timely, or rather, with the certainty that their report will *not* be considered according to periodicities will be tempted to be less focused in their reports. Finally, treaty bodies are inclined to treat the reports in a comprehensive manner, covering all issues instead of focusing on major and/or timely issues.³⁹

In view of in-hand backlog (the backlog of reports submitted but not considered), the General Assembly is frequently requested by the treaty bodies to increase their capacity through the granting of additional meeting time and related resources. These requests have sometimes been granted fully or partly, while in other cases they have not been acted upon.⁴⁰

Finally, *the volume of documentation* represents another challenge to the efficient functioning of the human rights treaty bodies. In the last years, various measures have been taken to reduce the use of interpretation and documentation. Thus, in 2006, the Harmonized guidelines on reporting under the international human rights treaties established that “if possible, common core documents should not exceed 60-80 pages, initial treaty-specific documents should not exceed 60 pages, and subsequent

³⁷ Adapted from Comprehensive cost review 2013, p. 11.

³⁸ HC Report 2012, p. 31 – “This new reporting procedure (referred to as “lists of issues prior to reporting”) consists of the preparation and adoption of a list of issues to be transmitted to a State party in advance of the submission of its periodic report: the State’s response to this list will constitute its periodic report under the Convention, instead of a standard report submitted under traditional reporting guidelines. The State party that reports under this procedure will have fulfilled its reporting obligations under the Convention.” Treaty bodies’ lists of issues prior to reporting (targeted/focused reports), adopted at the Eleventh inter-committee meeting of the human rights treaty bodies, Geneva, 28–30 June 2010, HRI/ICM/2010/3, para. 8. – This procedure was later renamed as the simplified reporting procedure, see HC Report 2012, para. 4.3.1.

³⁹ Questions and Answers on the Comprehensive Reporting Calendar, 2012, p. 4.

⁴⁰ Comprehensive Cost Review, 2013, p. 10.

periodic documents should be limited to 40 pages". Still, the total cost of the current treaty body system amounts to 48.36 ? USD,⁴¹ which could be reduced by the reduction of the working languages (and the translation costs) as well as the streamlining of annual reports.

3.2.2. Individual Complaints

Several treaty bodies have the power to consider individual communications. In this regard, the treaty bodies' activities are similar to that of a judicial forum, albeit their final views are not legally binding and there is no way to enforce their recommendations. The mechanism follows a general pattern.

Thus, the treaty body first examines the admissibility of the complaint (also called as communication). The complaint must meet, *inter alia*, the following conditions: the State Party has ratified the relevant treaty and explicitly recognized the competence of the treaty body to consider individual communications (*ratione personae*); the alleged violation relates to one of the rights listed in the applicable treaty and the State Party has not declared a reservation to the particular article (*ratione materiae*); the communication originates from the victim of the alleged violation; the author of the complaint has exhausted all domestic remedies; and the communication is not manifestly ill-founded.⁴² If the complaint is deemed admissible, the Committee will send the complaint to the State Party, asking for clarification or a response by the State.

The treaty body will then consider the merits of the case in closed session. The Committee may find that no violation has taken place (and the procedure comes to an end), or on the contrary, that the State Party has violated the complainant's rights. In the latter case, the Committee formulates its views as well as recommendations, and calls upon the State to give effect to its recommendations. The treaty bodies stipulate a period of either 90 or 180 days within which the State party is requested to provide information regarding implementation of the relevant decision.

As with State reports, scarce human resources lead to considerable backlogs in the consideration of individual communications, which is made worse by the fact that certain States do not cooperate with the Committees despite frequent reminders to submit their comments.⁴³

3.2.3 Independence and Expertise of Committee Members

As mentioned earlier, the treaty bodies are composed of 10 to 25 members, depending on the treaty, and are nominated and elected by the States Parties to the relevant treaty from among their nationals for a renewable four years. Here, the problems include substantive as well as procedural issues, such as:

- the selection and nomination of members are not transparent;
- members often have positions or links that might cast doubts on their impartiality, independence, and credibility;
- the elected members do not always have the necessary expertise,
- and may not be able to meet the demands of such positions (availability, and coping with the workload).⁴⁴

⁴¹ In 2012. See Comprehensive Cost Review 2013, p. 4.

⁴² For the exhaustive list of admissibility criteria see the relevant treaty provisions. The list of core human rights treaties is provided in Table 1 above.

⁴³ HC report 2012, p. 23.

Having reviewed the major challenges, the next part gives a brief description of the recommendations formulated during the treaty body strengthening review process.

4. Recommendations

In the course of the process aiming at strengthening the treaty bodies, the High Commissioner for Human Rights formulated various proposals,⁴⁵ including the following:

- to create a comprehensive reporting calendar,
- to simplify and align the reporting process,
- to strengthen the individual communications procedures,
- to strengthen the independence and expertise of treaty body members,
- to strengthen the implementation of the treaties, and
- to enhance the visibility and accessibility of the treaty bodies.

These recommendations as well as proposals formulated by other stakeholders (treaty bodies, States, United Nations entities, civil society and national human rights institutions) during the treaty strengthening process will be examined in turn.

4.1. Comprehensive Reporting Calendar: Predictability and Stability in Reporting

The HC recalled that the current reporting deadlines created an unpredictable and unbalanced schedule of deadlines for the treaty bodies as well as States Parties. States Parties are lagging behind in submitting their reports, while the treaty bodies are delayed in the examination of these reports. Inevitably, the objective of the reporting procedure is adversely affected by such long delays. Thus, the HC proposed a single *Comprehensive Reporting Calendar*, based on a periodic five-year cycle. This cycle would involve a maximum of two reports per year for a State which is party to all the nine core human rights treaties. Furthermore, every report submitted would be examined one year following its submission.⁴⁶

4.2. Simplified and Aligned Reporting Process: Introduction of the Simplified Reporting Procedure (SRP)

The proposal for *simplified reporting procedure*, to date known as List of Issues Prior to Reporting (LOIPR),⁴⁷ would assist States to meet their reporting obligations while improving the quality of reporting. At the moment, the reporting procedure consists of four stages (the submission of the report by the State; preparation of LOIs by the treaty body; submission of written replies by the State; constructive dialogue), which could be streamlined. According to the HC proposal, the basis of the state reporting

⁴⁴ Ibid., pp. 74-80.

⁴⁵ Ibid.

⁴⁶ HC report GA/66/860; Questions and Answers on the Comprehensive Reporting Calendar 2012, p. 3.

⁴⁷ This procedure was introduced by the Committee against Torture, followed by the Human Rights Committee and the Committee on Migrant Workers; all receiving positive feedback from States Parties. In fact, this procedure has led to shorter State reports. See Intergovernmental process on strengthening the Human Rights Treaty Body System. Thematic discussions and informal-informal meetings. 11-17 April 2013, p. 5.

would be the Common Core Document,⁴⁸ which would be then followed by a three-step cycle: first, the treaty body would send a questionnaire focusing on recommendations of the previous concluding observations. SRP questionnaires would not exceed 25 questions / 2500 words. Then the State party would submit its report based on the SRP questionnaire, followed by a dialogue conducted on the basis of the State party's report in reply to the questionnaire. This procedure, coupled with strict adherence to page limitations⁴⁹ would, in turn, reduce translation costs, as well as accelerate and facilitate the smooth working of treaty bodies.

Figure 2: Traditional Reporting Progress⁵⁰

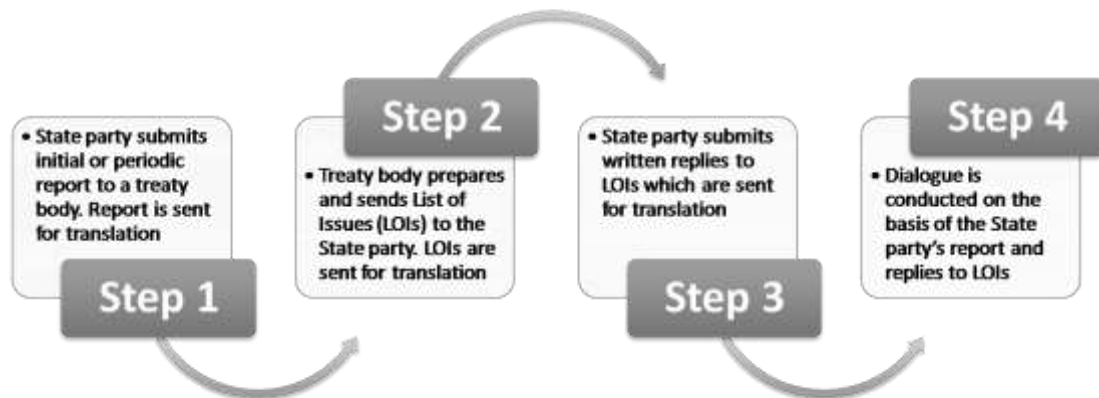
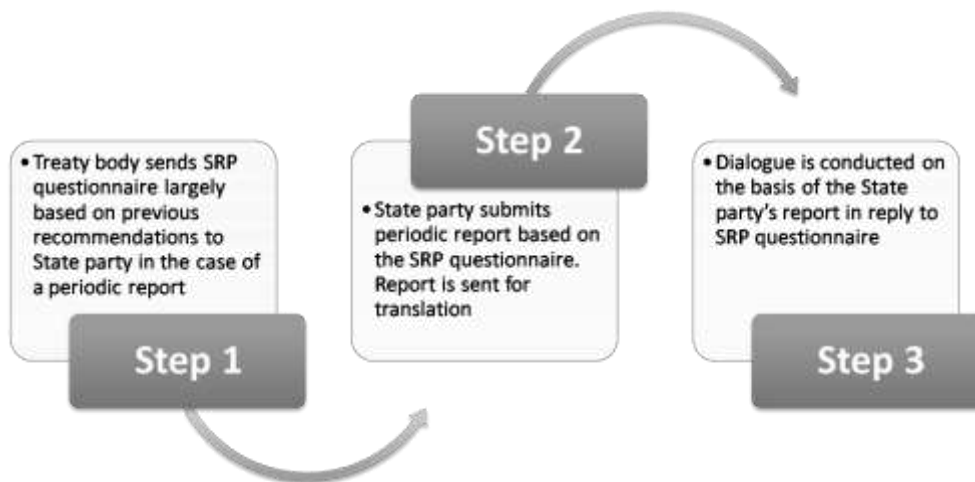


Figure 3: Simplified Reporting Procedure⁵¹



⁴⁸ Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a Common Core Document (CCD) and treaty-specific documents, HRI/MC/2006/3 and Corr. 1. – As of July 2014, 73 States have produced a CCD; taking China, China–Hong Kong and China–Macau as three separate items. See <http://www2.ohchr.org/english/bodies/coredocs.htm>.

⁴⁹ See page 13 of the Harmonized guidelines on reporting under the international human rights treaties (2006) and footnote 32. According to OHCHR data, in 2011, 64% of the periodic reports, and 33% of the initial reports exceeded the applicable page limit (40 and 60 pages, respectively). See p. 56 of HC Report 2012.

⁵⁰ Adapted from HC Report 2012, p. 50.

⁵¹ Ibid.

In order to improve the efficiency of constructive dialogue, in its report the HC recommended better time management, increased discipline, stronger chairing and strict limitations on the number and length of interventions. In addition, treaty bodies should refrain from making innumerable recommendations and focus on priority issues.⁵²

Further institutionalized cooperation with other UN partners, and increased level of interaction among treaty bodies, national human rights institutions (NHRIs) and civil society organizations (NGOs) would contribute to the promotion and protection of human rights. Meaningful interaction with stakeholders is often hampered by limited awareness, lack of capacity and resources, and in some cases alleged reprisals suffered by NHRIs and civil society organizations. The HC proposed formal meetings of treaty bodies with NGOs and NHRIs, which would ensure their full and inclusive participation at all stages of the reporting process.⁵³

4.3. The Individual Communications and Inquiry Procedure

Human rights treaty bodies, with the exception of SPT, have the mandate to consider individual communications, in many cases dealing with and formulating views on provisions which are covered by various human rights treaties. Such provisions include e.g. the prohibition of racial discrimination, discrimination based on gender, or torture. Such a situation leads to the multiplication of individual communications' procedures and diverging decisions. To ensure consistency of jurisprudence, the HC report suggested the alignment of working methods of all treaty bodies with a complaint procedure. Such common guidelines could cover various issues, including the separation of admissibility and merits, the practice of granting interim measures, standardized deadlines for submissions, aligned procedure in relation to the facilitation of friendly settlements, and the inclusion in final decisions of individual as well as general remedies. Furthermore, the HC recommended the mutual reliance and cross-referencing of views and concluding observations of the various treaty bodies, as well as systematic references to the jurisprudence of regional human rights mechanisms.⁵⁴

With regard to the unique method of on-site visits established by the OPCAT and carried out by the Subcommittee on Prevention of Torture, the HC recommended various measures to increase its capacity (i.e. increase in its membership) and ensure more regular visits.⁵⁵ Obviously, the yearly 3 visits on average do not allow the SPT to comply with its mandate to provide "an innovative, sustained and proactive approach to the prevention of torture and ill treatment".⁵⁶

⁵² HC Report 2012, p. 56.

⁵³ HC Report 2012, pp. 63-66.

⁵⁴ This would be facilitated by the establishment and maintenance of a treaty-body database. HC Report 2012, pp. 70-73.

⁵⁵ The SPT has carried out an average 2.5 regular visits a year (two visits in 2007, 2012 and 2013; three visits in 2008, 2009, 2010 and 2011. Two visits are planned for 2014). See http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/CountryVisits.aspx. The current number of regular visits would take place to each State Party (73 as of July 2014) only every 29 years. HC Report 2012, p. 73. – The comparison of this data with that of its European counterpart clearly demonstrates the limitations of the SPT. On average, the Council of Europe anti-torture Committee (CPT) announces ten regular 'periodic' visits per year, and carries out a yearly 7-8 *ad hoc* visits in addition to the regular ones. (Data from 1998 to 2013, using the data available on <http://www.cpt.coe.int/en/visits.htm>.) (Aggregated data from 1990 to 2013: approximately 15 (14.75) visits per year. Data from 1998 to 2013: approximately 18 (17.875) visits per year.) The CPT was set up under the Council of Europe's "European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment", which came into force in 1989.

⁵⁶ See <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIndex.aspx>.

4.4. Independence of Experts

Independence and impartiality of treaty body members are of paramount importance during the consideration of State party reports and communications; as well as in the course of country visits and inquiries. The attitude of treaty bodies' experts are influenced by numerous factors, such as a member's nationality, place of residence, current and past employment, membership of or affiliation with an organization, or family and social relations. In the performance of their duties, experts must avoid situations where a real or perceived conflict of interest might arise. As regards the composition and membership of treaty bodies, a survey carried out in 2012 established the following.

Taken together, the treaty bodies have 172 members. Analysis of their composition shows: (a) frequent affiliation to the executive branch in members' professional backgrounds; (b) gender imbalance; and (c) uneven geographic representation. Fifty-five members have an affiliation to the executive in their state of origin and one quarter of those also occupy official functions – Chairperson, Vice-Chairperson, or Rapporteur – in their respective treaty body.

Only 39% of the elected members are women. The highest rates of gender imbalance are found in the Committee on the Elimination of Discrimination against Women (22 out of 23 members are women) and the Committee on Enforced Disappearance (nine out of ten members are men).

Members from European states occupy 35% of all the seats. All other regions have a significantly lower proportion.

Overall, if the number of states parties to a particular treaty is compared to the representation of that region in the membership of the treaty bodies, states from Africa and Asia and Pacific are under-represented, while states from Europe and the Middle East and North Africa are over-represented.⁵⁷

Self-regulatory guidelines have been adopted by the Human Rights Committee as early as 1999, to safeguard the perception of independence and impartiality.⁵⁸ This was followed in 2011 by the adoption of guidelines on the independence and impartiality of treaty body members ('the Addis Ababa guidelines') by the Chairs of the United Nations treaty bodies.⁵⁹ The major proposals, which relate to the selection procedures at national and international level, as well as the expertise and availability of treaty body members, are the following.

- States Parties are expected to select candidates through an open and transparent selection process from the persons who has the relevant capacities and willingness to take on the responsibilities of membership.
- The independence and impartiality of treaty body members is compromised by the political nature of their affiliation with the executive branch of the State. Consequently, States should avoid the nomination of persons whose independence might be adversely affected by their positions, or those who might be exposed to pressures or conflict of interest.
- In addition, the independence of treaty body members must be preserved *during* their term of office as well.
- Candidates should have proven record of expertise in the relevant area.

⁵⁷ Geneva Academy In-Brief No. 1: The Independence of UN Human Rights Treaty Body Members, 2012, p. 6.

⁵⁸ A/53/40, vol. I, annex III.

⁵⁹ Guidelines on the independence and impartiality of members of the human rights treaty bodies ("the Addis Ababa guidelines"), A/67/222 Annex 1.

- The achievement of more diverse committees (in geographical and gender terms) is also suggested.
- The nominee should be able to take on the workload involved in membership.⁶⁰ In order to help prospective members, the OHCHR offered to prepare a handbook with all the relevant information pertaining to membership of treaty bodies, including the election process, expectations, workload, practical information relating to their function such as procedures, working methods, etc.⁶¹
- As far as election at international level is concerned, the HC proposed an open public space for all States Parties to present their potential candidates or nominees for treaty bodies, which would hopefully result in an enhanced quality of nominations, with a view to enhance an open and transparent election process.⁶²

4.5. Implementation of the Treaties

The implementation of treaty body recommendations and views remains the primary responsibility of States Parties. In this regard, much depends on the willingness and capacity of States to implement their obligations arising from participation in human rights treaties. In her report, the HC formulated various proposals to enhance effective realization. Thus, previous concerns and recommendations should be the point of departure for the new *concluding observations* so as to ensure a clear assessment of the progress made by the State Party since the previous review. In addition, strict adherence to deadlines is also of paramount importance: certainty that the next reports will be examined as scheduled provides an important incentive to State Parties to take the necessary implementing measures.

Another proposal centred on the quality of concluding observations. It was suggested that treaty bodies formulate (more) focused concluding observations in order to make compliance simpler and more realistic. From a quantitative perspective, reduced number as well as reduced length of the concluding observations would contribute to achieve greater efficiency and impact.⁶³ As far as the substance of the concluding observations is concerned, it was suggested to make them country specific and targeted; and to avoid recommendations of a general nature, the implementation of which cannot be measured, and give concrete guidance instead.

Inasmuch as implementation and actual compliance with obligations is at the heart of all legal norms, the HC recommended *the strengthening of the follow-up procedures*. While all treaty bodies require States Parties to provide information on the implementation of recommendations contained in previous concluding observations in their subsequent periodic reports, only a few treaty bodies require the submission of written report in between the periodic reports.⁶⁴ The HC argued that if the comprehensive reporting calendar was adopted, meaning that the next periodic reports would be examined as scheduled,

⁶⁰ HRC Report 2012, p. 79: “There have been instances where a member never attended any session for extended periods of time due to conflicting professional engagements in their home country and a few cases in which there was no quorum, either in pre-sessional working group or in plenary, so that decisions needed to be postponed, leading to a waste of meeting time.”

⁶¹ HC Report 2012; Agenda Thematic Discussion, February 2013, pp. 9-10.

⁶² HC Report 2012, pp. 74-80.

⁶³ *E.g.* maximum 20 recommendations and/or 2,500 words. Intergovernmental process on strengthening the Human Rights Treaty Body System. Thematic discussions and informal-informal meetings. 11-17 April 2013, available at <http://www.ohchr.org/Documents/HRBodies/TB/HRTD/ConsolidatedDocumentApril2013.pdf>, p. 5.

⁶⁴ The Human Rights Committee, the Committee against Torture, the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women, see HC Report 2012, p. 80. See also e.g. HRC – Rule 70 of Rules of procedure of the Human Rights Committee, CCPR/C/3/Rev.10.

and provided that states would strictly adhere to those dates, there would be no need for such inter-sessional information. Failing that, the follow-up procedures should be simplified and improved through the adoption of common guidelines.⁶⁵

4.6 Transparency - Measures to Enhance the Visibility and Accessibility of the Treaty Body System

With a view to enhance visibility, disseminate the work undertaken by the treaty bodies, and increase the coherence of the implementation of human rights mechanisms, the OHCHR created the Universal Human Rights Index, which is a publicly available electronic tool.⁶⁶ The database provides easy access to country-specific human rights information emanating from international human rights mechanisms in the United Nations system: the treaty bodies, the Special Procedures and the Universal Periodic Review.

In addition to this, the establishment of a well-functioning, up-to-date and easily searchable treaty body *jurisprudence database* could play a preeminent role in securing easy access to human rights jurisprudence to States Parties, the civil society, academics and other stakeholders.⁶⁷

Other transparency enhancing measures listed in the HC report are as follows.

- All public meetings of the treaty-bodies, including the consideration of State reports, general discussions and discussions of draft general comments, should be webcasted in social media networks too.
- Furthermore, the use of videoconferencing would reduce travel and related costs, while at the same time would give greater opportunities to national civil society actors to engage with treaty bodies.
- Finally, in order to better disseminate the treaty body outputs and interactions, the OHCHR expressed its readiness to make its website more user-friendly.⁶⁸

4.7. Further Proposals Aiming at Cost Reduction

Some of the proposals outlined above have a potential cost-reduction impact (e.g. videoconferencing, reduction of the working languages and the translation costs). In order to get a full picture of the costs related to the treaty body system as such, the co-facilitators of the Intergovernmental Process of the General Assembly on “strengthening and enhancing the effective functioning of the human rights treaty body system” requested detailed information on a number of costing issues. The related costs, which were laid out in a background note in April 2013, are composed of the following items.⁶⁹

- Conference services. This item has two limbs: (1) *meetings support* consisting of interpretation, summary record drafting, meeting room attendants, sound technicians and captioning; and (2) *documentation*, consisting of editing, translation, formatting, printing, distribution and Braille.
- Travel of treaty body members and daily subsistence allowance (DSA).

⁶⁵ HC Report 2012, pp. 80-82.

⁶⁶ Ibid., p. 34. The index is available at <http://uhri.ohchr.org/en>.

⁶⁷ Intergovernmental process on strengthening the Human Rights Treaty Body System. Thematic discussions and informal-informal meetings. 11-17 April 2013, p. 10.

⁶⁸ HC Report 2012, pp. 89-92.

⁶⁹ “Comprehensive cost review of the human rights treaty body system”, Background note, Geneva, April 2013.

- Treaty body staff support,
- UN Information Service.

In 2012, the total cost amounted to USD 49.16 million. According to the Background Note, documentation is a key category where cost reductions can be made. Thus, strict adherence to page limitations and reduction of working languages would have an appreciable impact on the budget. Another field where expenses could be spared is the annual reports of treaty bodies.⁷⁰ At the moment, the annual reports of the treaty bodies reach 500 pages, reproducing all concluding observations and other adopted texts. The translation costs could be significantly reduced if these comprehensive reports would be replaced by a purely procedural report including only a reference to those documents, but not the actual texts.⁷¹

In the light of the above, on 9 April 2014 the General Assembly adopted resolution 68/268 on the “Strengthening and enhancing the effective functioning of the human rights treaty body system”. The resolution has addressed a wide variety of issues, while others were ignored. The strengths and weaknesses of Resolution 68/268 will be analysed in the next section.

5. Addressing the Challenges: GA Resolution 68/268 of 2014

Resolution 68/268 of the General Assembly took up various proposals formulated during the intergovernmental process, while others were ignored. Analysis begins with the examination of the key provisions of the resolution.

In order to eliminate the current backlog of reports, the GA invited States Parties to submit one combined report to satisfy their reporting obligations to a given treaty body for the entire period, as well as the treaty bodies to consider all State party reports awaiting consideration.⁷²

In addition, the GA proposed various capacity-building measures, including advisory services, technical assistance and capacity-building, to assist States parties in fulfilling their obligations under international human rights treaties.⁷³

With a view to modernize the treaty body system and make it viable in the long term, the GA endorsed the efforts to introduce the system of Common Core Documents coupled with the Simplified Reporting Procedure; and invited the treaty bodies to adopt short, focused and concrete concluding observations.⁷⁴ The GA supported the alignment and harmonization of working methods of the treaty bodies, including an aligned methodology for the constructive dialogue, and an aligned consultation process for the elaboration of general comments.⁷⁵ Furthermore, the GA decided to secure additional meeting time to the treaty bodies, the amount of which would be reviewed biennially.⁷⁶

Several measures are listed in the resolution, aiming at the reduction of costs. Thus, the GA decided that the annual reports of treaty bodies are not to contain documents published separately and referenced

⁷⁰ Comprehensive cost review of the human rights treaty body system (April 2013, p. 15.).

⁷¹ Agenda and Background Documentation on Thematic discussion and Informal Consultations, New York, 19-20 February 2013, available at <http://www.ohchr.org/Documents/HRBodies/TB/HRTD/AgendaThematicDiscussionFeb2013.pdf>, p 7.

⁷² Paras. 32 and 33.

⁷³ Paras. 17 to 21.

⁷⁴ Paras. 1, 3 and 6.

⁷⁵ Paras. 5, 14 and 38.

⁷⁶ Paras. 26 and 27.

therein; and established word limits for all documentation of the human rights treaty bodies as well as State Party documentation.⁷⁷ In addition, the GA decided to allocate a maximum of three official working languages for the work of the human rights treaty bodies.⁷⁸ Finally, the GA requested the OHCHR to provide, at the request of a State Party, the opportunity for members of its official delegation not present at the meeting to participate in the consideration of the report of that State party by means of videoconference in order to facilitate wider participation in the dialogue.⁷⁹

The GA also decided “in principle”, with the aim of enhancing the accessibility and visibility of the human rights treaty bodies to webcast, as soon as feasible, the public meetings of the treaty bodies.⁸⁰

The GA reflected on the selection and qualifications of treaty body members. It “encouraged” States Parties to nominate experts of high moral standing and recognized competence and experience in the field of human rights, and emphasised the need, in the election of treaty body experts, to give due consideration to the equitable geographical distribution, the representation of the different forms of civilization and the principal legal systems, balanced gender representation and the participation of experts with disabilities in the membership of the human rights treaty bodies.⁸¹

The GA strongly condemned all acts of intimidation and reprisals against those engaging with the treaty bodies, and urged States to take all appropriate action to prevent and eliminate such human rights violations.⁸²

Finally, the GA also decided to consider the state of the human rights treaty body system no later than six years from the date of adoption of the present resolution, to review the effectiveness of the measures taken.⁸³

As the then High Commissioner Navi Pillay said, the Office of the HCHR and the treaty body Chairpersons “have accomplished what many deemed impossible: the first successful strengthening of the human rights treaty bodies in 50 years” which has been a “tremendous journey”. Nevertheless, the joy is not entirely unfettered.

First of all, a GA resolution is not binding on member states.⁸⁴ Related to this is the fact that many paragraphs of the resolution contain soft formulations, such as those where the GA “encourages” or “recommends” human rights treaty bodies or States parties to introduce certain measures.

The reasons behind non-compliance with treaty obligations are manifold, ranging from budgetary constraints to the heavy burden put on states by the reporting obligations (coupled with reporting obligations under the UPR), and to outright defiance. While efforts of the General Assembly to assist States Parties in various ways in fulfilling their international obligations is welcome, it must be

⁷⁷ Paras. 4, 15 and 16.

⁷⁸ Para. 30.

⁷⁹ Para. 23.

⁸⁰ Para. 22.

⁸¹ Paras. 10 and 13. See also para. 35, reaffirming the importance of the independence and impartiality of members of the human rights treaty bodies.

⁸² Para. 8.

⁸³ Para. 41.

⁸⁴ Some decisions of international organizations relate to the internal workings of the organization, while others are directed at the members of the organization. Generally speaking, decisions of the first type are binding, while in the case of decisions addressed to members much depends on whether that organization is empowered by its constituent document to take binding decisions. In the case of GA resolutions, they do not create obligations for member States. At most, these can be regarded as evidence of the existence of the *opinio iuris*, an important element of customary international law. On the nature of UN GA resolutions, see e.g. Malcolm D. Evans (ed.), *International Law*, Oxford 2003, pp. 141 and 283; or Ian Brownlie, *Principles of Public International Law*, Oxford 2008, p. 15.

remembered that even under present conditions States Parties could comply with their reporting obligations – if they wanted to. Measures to enhance the efficiency of the treaty bodies alone are not sufficient to make up for the lack of political will of those States Parties which chronically fail to meet their reporting obligations. In order to exert pressure, treaty bodies should be given the power to continue to consider States Parties even in the absence of a report.

Table 6: Number of Overdue Reports in Total by Country (15 May 2014)⁸⁵

Number of overdue reports in total	States parties	Number of States parties
10	Mali	1
9	Cape Verde, Lesotho, Niger, Panama, San Marino	5
8	Belize, Malawi, Nigeria, Saint Vincent and the Grenadines (4 States parties)	4
7	Bahrain, Botswana, Libya, Namibia, Nicaragua, Pakistan, Romania, Seychelles, South Africa, Vanuatu	10
6	Algeria, Bangladesh, Bolivia (Plurinational State of), Côte d'Ivoire, Democratic Republic of the Congo, Dominica, Equatorial Guinea, Guinea, Guyana, Honduras, Lebanon, Senegal, Syrian Arab Republic, Zambia	14
5	Afghanistan, Antigua and Barbuda, Benin, Brazil, Chad, Congo, Egypt, Eritrea, Gabon, Georgia, Malaysia, Mauritania, Mozambique, Philippines, Saudi Arabia, Swaziland, Timor-Leste, Trinidad and Tobago, Tunisia, Uganda	20
4	Bahamas, Barbados, Burkina Faso, Burundi, Cuba, Democratic People's Republic of Korea, Djibouti, Ghana, Guinea-Bissau, Hungary, India, Indonesia, Jamaica, Lao People's Democratic Republic, Liechtenstein, Luxembourg, Serbia, Somalia, Sri Lanka, Zimbabwe	20
3	Argentina, Azerbaijan, Bhutan, Bosnia and Herzegovina, Central African Republic, Comoros, Croatia, Gambia, Grenada, Latvia, Liberia, Maldives, Malta, Mauritius, Monaco, Nauru, Nepal, Papua New Guinea, Republic of Moldova, Rwanda, Saint Kitts and Nevis, Sierra Leone, Slovenia, Solomon Islands, Suriname, Togo, United Arab Emirates, United Republic of Tanzania, Yemen	29
2	Andorra, Angola, Australia, Bulgaria, Cambodia, Chile, Costa Rica, Cyprus, Denmark, Dominican Republic, Ecuador, Estonia, France, Iceland, Iran (Islamic Republic of), Iraq, Ireland, Italy, Jordan, Kiribati, Madagascar, Marshall Islands, Mexico, Micronesia (Federated States of), Morocco, Myanmar, Oman, Palau, Saint Lucia, Switzerland, Tajikistan, Thailand, Tonga, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland	36
1	Albania, Armenia, Austria, Belarus, Brunei Darussalam, Cameroon, China, Colombia, Cook Islands, El Salvador, Ethiopia, Greece, Haiti, Holy See, Israel, Japan, Kazakhstan, Kenya, Kyrgyzstan, Lithuania, Mongolia, Netherlands, New Zealand, Qatar, Republic of Korea, Samoa, Sao Tome and Principe, Spain, Sudan, Sweden, The former Yugoslav Republic of Macedonia, Turkmenistan, Uruguay, Viet Nam	34

It must be observed that word limits established for UN and State documentation do not necessarily result in better State reports or concluding observations. Furthermore, the GA missed the opportunity to decide on the introduction of dual chambers, which could have facilitated the timely consideration of State reports and individual communications, which – partly due to further ratifications – are on the rise.⁸⁶

⁸⁵ Late and non-reporting by States parties, Note by the Secretariat submitted to the twenty-sixth meeting of chairpersons of the human rights treaty bodies, 4 June 2014, pp. 6-7. Hungary has four overdue reports.

⁸⁶ "The proposal is to encourage treaty bodies to work in double chambers or two working groups when possible. This would split its membership in two, with half of its membership attending each chamber for the review of a State Party report. The chamber could either both review the report in full and adopt concluding observations or the review could take place in dual chambers and the concluding observations then be discussed in plenary with all members participating. Based on the experience from CRC and CEDAW a double chamber system can increase the number of State Parties reports reviewed by session between 70 to 80% ..." See "Intergovernmental process on

While the resolution recognizes the important and vital work of civil society organisations and activists in promoting and protecting human rights, stronger language could have been used to prevent and address reprisals and intimidation of human rights defenders. In practice, defenders working on women's rights and issues of sexual orientation and gender identity or who challenge 'traditional values' and cultural and religious practices, land and environment rights, or defenders who work to expose corruption or combat impunity for gross violations face a number of threats and restrictions. These range from use of force against peaceful protesters, to arbitrary detention, to defamation and smear campaigns, to online and offline surveillance, and the use and abuse of counter-terrorism laws and measures to silence dissent.⁸⁷

The resolution has the dual aim of eliminating the backlog of State reports (late and non-reporting States), as well as eliminating the backlog of the treaty bodies and to prevent the recurrence thereof. Currently the relative efficiency of the treaty bodies is only possible because of the very large number of overdue reports. At the current rate of ratification of treaties and optional protocols providing for individual communications, the system would collapse if all (or most) States would respect periodicity and report timely. Therefore, Resolution 68/268 is an important, albeit modest step in the improvement of the international human rights system. Nevertheless, the key element in this regard is the willingness and real determination of States, and their leaders, to observe their international obligations.

6. Conclusion

The reasons behind non-compliance with human rights treaty obligations are manifold, ranging from budgetary constraints to outright defiance. The international community has no real means at its disposal to enforce these treaty obligations. Nevertheless, as in any legal system, compliance may originate from the view that it is necessary for the smooth functioning of the community. Rules may be respected not because of the severity of the sanctions arising from breach, but based on the belief that the protection of human rights corresponds with the interests and values of the State. In practice, motivations for compliance vary between States, including the fact that, generally speaking, States are reluctant to explicitly challenge international obligations. In addition, a grave violation of international law will seriously affect the credibility, functioning and international image of a State.

Thus, the broad conclusion must be that while international law appears devoid of proper means of enforcement, a great number of States are sensitive about issues of their international standing and prestige. In democratic States, governments can only act in a manner that is acceptable to their electorate. Having said that, in reality international law comprises only a few, and in many cases soft, methods of enforcement. The reform process described above, if consistently carried through, could meaningfully enhance this unfortunately circumscribed array of means.

strengthening the Human Rights Treaty Body System. Thematic discussions and informal-informal meetings. 11-17 April 2013", available at <http://www.ohchr.org/Documents/HRBodies/TB/HRTD/ConsolidatedDocumentApril2013.pdf>, p. 6.

⁸⁷ See the interview of 16 July 2014 with Michel Forst, who was appointed as the new UN Special Rapporteur on Human Rights Defenders in June 2014, available at <http://www.ishr.ch/news/new-special-rapporteur-human-rights-defenders-sets-out-his-vision>. According to ISHR, "human rights defenders in all regions continue to face serious threats, from physical attacks against women human rights defenders in Pakistan, to worsening legislative restrictions on civil society in Ethiopia, to reprisals against those who seek accountability for human rights violations at the UN in Sri Lanka, to the surveillance of activists working on business and human rights in the US, Canada and Mexico." See at <http://www.ishr.ch/news/civil-society-identifies-key-issues-new-special-rapporteur-human-rights-defenders>.

List of abbreviations

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCD	Common Core Document
CED	International Convention for the Protection of All Persons from Enforced Disappearance
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW-OP	Optional Protocol to CEDAW
CRC	Convention on the Rights of the Child
CRC-OP-AC	Optional Protocol to CRC on the involvement of children in armed conflict
CRC-OP-IC	Optional Protocol to CRC on a communications procedure
CRC-OP-SC	Optional Protocol to CRC on the sale of children, child prostitution and child pornography
CRPD	Convention on the Rights of Persons with Disabilities
CRPD-OP	Optional Protocol to CRPD
GA	General Assembly of the United Nations
HC	High Commissioner for Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OP 1	Optional Protocol to ICCPR
ICCPR-OP 2	Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICESCR-OP	Optional Protocol to ICESCR
ICJ	International Court of Justice
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
OHCHR	Office of the High Commissioner for Human Rights
OP-CAT	Optional Protocol to CAT
SC	Security Council of the United Nations
UN	United Nations