**PROPOSAL OF THE COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES**

**2020 Review for Treaty Body Strengthening**

**3 AUGUST 2021**

**Background**

The Committee on the Rights of Persons with Disabilities (CRPD) is putting forward this proposal to progress towards implementing the outcomes of the 2020 review for treaty body strengthening. The proposal provides implementation options to advance the collective ideas that have been developed over several years by different stakeholders to achieve this outcome. This outcome can only be achieved through a predictable, adequate and sustainable budget that ensures that treaty bodies can fulfil their mandate and protect rights holders.

This proposal builds on the prior agreed decisions and recommendations of the previous Treaty Body Chairs’ meetings. At the 31st meeting held in 2019, the Chairs agreed to a position statement (Annex III, A/74/256), which constituted the Chairs’ vision for the 2020 review. This position statement outlined agreements regarding simplified reporting procedures, a review capacity of treaty bodies limited to three months per year, and the option of conducting reviews at the regional level by a delegation of the treaty body. At the 32nd meeting held in 2020, the Chairs agreed on a written contribution for the Co-Facilitators of the 2020 review (para. 46, A/75/346). This written contribution further developed the issues of the position statement from the 31st meeting, including in relation to a predictable review cycle, the option of replacing every second review with focused reviews in situ and the need for mechanisms for reasonable accommodation for experts with disabilities. These issues were reflected in the report of the Co-Facilitators (A/75/601).

The decisions and recommendations of the meetings of the Treaty Body Chairs were based on contributions from Treaty Body experts, facilitated through a 2018 OHCHR questionnaire, through focal points within each Treaty Body and through the Working Group on COVID 19, an inter-committee working group focused on working methods during the pandemic.

In preparation for the 33rd meeting of the Treaty Body Chairs in June 2021, the Chairs decided to establish a drafting group, which included previous and current Chairs and representatives of the Working Group on COVID 19. This drafting group prepared the 7 June 2021 Non-paper, which is available on the extranet. This Non-Paper provided several options for consideration by the Chairs at their 33rd meeting.

This proposal responds to General Assembly resolutions 57/202 and 68/268, which require the Treaty Body Chairs to take a leadership role in accelerating the harmonisation of the treaty body system. It also responds to the recommendation of the Co-Facilitators that the OHCHR should work in partnership with the Treaty Bodies to develop proposed options for costings in relation to three main components of Treaty Body strengthening:

1. Predictable schedule of reviews

2. Harmonised working methods

3. Digital Uplift

Critically, this proposal aims to capture the most fundamental elements that have been expressed by numerous Chairs and experts. While a consensus outcome from the 33rd meeting was not possible, these fundamental elements can constitute a common ground to progress towards a treaty body system that is sustainable, efficient, and predictable. The status quo is not sustainable. It will not address the backlog, it will not enhance the guidance required by States to meet their obligations, it will not bring us closer to the people whose human rights are violated, and it will only leave the Treaty Body system inefficient and more vulnerable to inadequate resources.

This proposal also responds to the encouragement and support of 46 Member States and numerous civil society organisations and coalitions for the Treaty Body Chairs to provide leadership to progress, streamline and modernise the Treaty Body system. The inputs of these States and civil society organisations were useful for the preparation of this proposal. In addition, a letter from the African Group on Human Rights Issues reaffirmed their support for improving the effectiveness and efficiency of the Human Rights Treaty Body system. The letters from Member States and civil society are available on the extranet. As the custodians of human rights law, the Treaty Body Chairs have a significant opportunity and responsibility to harness this overwhelming support from States and civil society to maximise the strengths, modernise the resources and strengthen and harmonise the Treaty Body system.

Historically, Treaty Bodies were not established as one system, but subsequent growth has required a coherent Treaty Body system to avoid fragmentation of international human rights law. If we have fragmentation in the development of law, there is a significant risk that different and conflicting human rights standards are developed, which enables States to ignore some standards and preference others and which weakens the protections for all people. We need to respect and acknowledge the importance of the specific mandate of each treaty body, but we also need to develop a consistent and coherent body of law that provides holistic protection for rights holders and certainty for States in meeting their human rights obligations. It is only through treaty bodies working as a coherent system that we preserve our credibility and receive the respect of States.

A consistent and coherent Treaty Body system requires harmonised working methods, advanced integrated digital platforms and adequate resources and support. Existing working methods, digital platforms and budgeting arrangements do not respond to the need for a consistent and coherent system; they are inadequate and leave the Treaty Body system unsustainable. This is exemplified by the current backlog, the inadequacy of the online interface, including for the petitions unit, and inadequate resourcing to support Treaty Body experts to fulfil their mandates.

Strengthening the Treaty Body system commenced in 2009, with extensive engagement and discussion among Treaty Bodies, Member States, civil society and other stakeholders since this time. It is clear that strengthening the Treaty Body system would be beneficial for States Parties, rights holders as well as Treaty Bodies in that it would create a more coherent and efficient system. For States, it injects predictability, increases compliance and reduces reporting burdens; for rights holders it strengthens transparency, engagement and participation; and for Treaty Bodies it enables better and more sustainable resourcing and harmonisation.

**Treaty Body Strengthening**

This proposal starts from the position that Treaty Body strengthening must focus on enhancing the functions and capacity of the Treaty Body system; that all State Party reviews, full and focused, are held in-person; and that there is specificity in one Treaty Body system for a consistent and coherent body of international human rights law.

**1. Predictable schedule of reviews**

The CRPD supports a predictable schedule of reviews based on a five year review cycle, and factoring in the dates of the Universal Periodic Review (UPR). The legal requirement for submission of periodic reports would not be affected. It is the dates of reviews that would be harmonised in a predictable manner.

This review cycle would consist of a full review of State obligations followed by a focused review of a maximum of 3-4 issues. This means that every second review would be a focused review, with a full review being conducted every alternate five years. This is discussed below in further detail in harmonised working methods.

This review cycle would need to recognise the mandates of the Treaty Bodies that do not have periodic State Party reviews - Sub-Committee for the Prevention of Torture (SPT) and the Committee on Enforced Disappearances (CED). These Treaty Bodies would establish regular and predictable schedules based on their current practice and with the benefit of more sustainable budgeting for SPT visits and CED urgent actions.

A five year review cycle should be distinguished from the reporting cycle. On average, it takes 12 months from the time a report is received by the OHCHR until it has been translated, prepared and reviewed by the Treaty Body. This means that, in practice, the reporting timeframe is four years and the review cycle is five years.

A predictable schedule of reviews is an opportunity to address the existing backlog in State reporting and reviews. The introduction of the predictable schedule of reviews would address this backlog by applying the same review calendar to all States, regardless of whether they have or have not yet submitted reports. This would aim to increase State Party reporting compliance to its greatest extent and, along with other proposals, decrease the reporting burden on States Parties because they can plan ahead of time and because the focused review would be more streamlined. All States Parties would thus be able to engage constructively in meeting their obligations, which is fundamental to the principle within the Vienna Convention on the Law of Treaties – pacta sunt servanda (agreements must be kept).

There would be an increase in the number of reviews to be undertaken each year by Treaty Bodies with the adoption of a predictable schedule of reviews. This will require innovative and harmonised working methods, adequate resourcing, and advanced, integrated on-line platforms to maximise synergies and reduce duplication in order to take account of this increase in State Party reviews. We note that many States have encouraged this innovation and indicated their willingness to support it.

A predictable schedule of reviews gives the Treaty Body system the strength it needs to fulfil the core elements of its mandate. The lessons learnt from the COVID-19 pandemic and the need for States to Build Back Better means that this development is particularly relevant and pertinent now.

**2. Harmonised working methods**

**Focused reviews**

We support full and focused in-person reviews alternating every five years over a ten year period. The concept of focused reviews has been the subject of discussion and consideration by Treaty Bodies and States since the 1990s. The concept is contained within the legal provisions of the treaties in that they allow for flexibility in the mandate of Treaty Bodies to request and seek additional information from States Parties, such as the practice of follow-up procedures, interim reports and inquiries on specific situations.

Focused reviews allow Treaty Bodies to undertake a targeted in-depth exploration of the progress made by States on 3-4 critical priorities identified in the full review and any emerging issues facing States. Treaty Bodies have the opportunity to provide more specific guidance and support to States Parties for implementation, particularly when implementation of critical issues has had little progress, or where implementation of issues is urgent and critical. It enables Treaty Bodies to take a more constructive and nuanced focus on complex issues and to engage States in a meaningful, in-depth way to support change.

Focused reviews would be conducted in-person and in-country or in the regional UN office, with flexibility to alternate between these options, depending on the agreement of the State Party and the circumstances in-country. Each Treaty Body would conduct their focused reviews with up to two or three treaty body members operating as a country taskforce. A country taskforce would be one of several established by a Treaty Body to undertake the scheduled focused reviews.

By holding focused reviews in-country or at the OHCHR regional office, Treaty Bodies will be able to gain an in-depth understanding of the human rights situation on the ground. A country taskforce has much more access to a broader range of other State actors and independent statutory bodies. A country taskforce will have the ability to meet with representatives from various levels of government, including with representatives directly involved in policy and law development and implementation and who may not normally be included in a delegation for a full review in Geneva. This enables a more targeted, in-depth and comprehensive dialogue on 3-4 issues, provides immediate access to decision-makers and implementers and assists in formulating more relevant, detailed concluding observations to assist States to achieve compliance.

Focused reviews will allow greater access to a broad range of civil society organisations. Many individuals and organisations are unable to travel to Geneva to engage face-to-face with Treaty Bodies, particularly given the discrimination and inequality experienced by the majority of people that Treaty Bodies seek to engage with. This is especially true for people with disabilities as they need additional funding for the higher costs associated with personal support, accessible accommodation, and accessible transport. Meaningful interaction with civil society in-country will be central to the focused review and will enable significant understanding of the impact of law and policy on the daily lives of people.

Support for the focused review could be provided by a Human Rights Treaty Body secretariat member in OHCHR Headquarters, or a Human Rights Officer at one of the OHCHR regional offices or a combination of the two. Concluding observations should be adopted by the plenary of the Treaty Body virtually through digital document sharing. The costing of focused reviews should include different options, including responding to exceptional circumstances.

Current follow-up procedures would be incorporated and harmonised within focused reviews. However, Treaty Bodies could still have the option of undertaking follow-up on critical human rights issues that cannot be deferred to the next full or focused review, as already found in the provisions of many human rights treaties, and this follow-up should be either online or through written submission as is currently the case.

**Reasonable Accommodation**

The General Assembly, in its resolution 68/268 on the strengthening and effective functioning of the treaty body system expressly requested the Secretary-General to make provisions for reasonable accommodation for treaty body experts with disabilities to enable them to effectively fulfil their mandate. In 2019, the Secretary-General enacted the United Nations Disability Inclusion Strategy (UNDIS) to promote accessibility and the full inclusion of persons with disabilities in the UN.

The need for the UN to develop a reasonable accommodation policy has been highlighted throughout the COVID-19 pandemic and is supported by the GA resolution 68/268 and UNDIS. Many Treaty Body experts with disabilities are not able to fully participate in the work of their respective Treaty Bodies because of the limitations of current UN policies in providing individualised support. A UN Reasonable Accommodation policy would enable the UN to implement protocols to identify and provide the individualised supports required by Treaty Body experts with disabilities to be able to fully participate and be included on an equal basis with others. This policy should include a complaint mechanism because the legal standard of non-discrimination on the basis of disability includes the denial of reasonable accommodation as a ground of discrimination.

The UN Reasonable Accommodation policy should be an integral part of harmonised working methods of Treaty Bodies.

**3. Digital Uplift**

**Digital shift**

While State Party reviews should always be held in-person, the pandemic experience has showed that there are areas of Treaty Body work that could benefit from moving on-line and be enhanced by advanced, integrated digital platforms.

Greater engagement and reach with civil society and other non-State actors would be enhanced by undertaking online outreach activities, such as the regional webinars and regional consultations that have already been successfully undertaken by Treaty Bodies with support from OHCHR, It could also be achieved by transferring current Treaty Body practice to online modes, such as holding regional online consultations for Days of General Discussion. Working Groups and joint Treaty Body working groups could also be conducted online.

Individual communications are a significant area that could be enhanced by a shift to digital platforms. The current process is unwieldy and fundamentally time consuming. Complainants can currently face up to 5 years before there is a resolution to the communication, and a digital shift could significantly reduce this time frame. A digital case management system could allow for uploading of communications and tracking the process, including the status of the case. The submission process could be streamlined, make available the option of videoconferencing, allow oral evidence and allow States Parties to respond in real-time. The digital tools required for this process will need to be secure and accessible.

**Digital toolkit**

The digital toolkit for this shift is critical. It will require a very modernised file management and document sharing platform. It should be able to operate as a ‘communities of practice’ platform to support stakeholder engagement, working groups of Treaty Bodies and joint work undertaken by the Treaty Bodies. It will require a video conferencing/webcasting platform that is accessible and sustainable across the digital divide.

The implementation of these platforms will require significant engagement with Treaty Body experts to ensure they can be customised to meet the needs of all Treaty Bodies.

**Honorarium**

The move towards remote and virtual work needs to be recognised as part of the core mandate of Treaty Bodies. While Treaty Body experts undertake their roles on a voluntary basis, the COVID-19 pandemic has highlighted the need for increased online and intersessional work with Treaty Body experts incurring additional costs and associated expenses.

While harmonised and streamlined working methods and the digital uplift should assist in ensuring that additional work does not become the norm, there still needs to be recognition of the time and effort made by Treaty Body experts by providing an honorarium when they undertake online work to fulfil their mandate.

The provision of an honorarium for Treaty Body experts would need to be applied consistently across Treaty Bodies. The parameters of the payment of honoraria should be a standard rate, such as an equivalent of 20% of the existing DSA rate, as suggested by the Treaty Body Chairs in their written contribution to the Co-Facilitators and as recommended in the Co-Facilitators’ report.

The honorarium is a payment in recognition of time, effort, additional costs and complexity of working in an online environment. The parameters of the honoraria should stipulate the hours required for payment based on the experience of current online work. Treaty Bodies currently undertake their online work in two to three hour blocks to accommodate global time zones, the availability of interpretation and the complexity of working online. As such, a two to three hour meeting block could be considered a work unit that qualifies for payment of an honorarium.