Strengthening the United Nations Human Rights Treaty Body System

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Abstract

The United Nations High Commissioner for Human Rights has recently published her much anticipated report on strengthening the United Nations (UN) human rights treaty system. The latest in a series of initiatives launched by the UN over the years to improve the beleaguered treaty system, the report contains a series of recommendations aimed at improving the impact of the treaty system on rights-holders and duty-bearers at the national level. The proposals in the report are based on years of extensive consultations with key stakeholders in the treaty body system that were designed to intensify awareness of the current challenges facing the system as well as to stimulate suggestions for reform. This article considers in detail the potential of the High Commissioner’s proposals to tackle the problems in the system and their overall feasibility in the current political climate.


1. Introduction

The United Nations High Commissioner for Human Rights (UNHCHR) has recently published her much anticipated report on ‘Strengthening the United
Nations Human Rights Treaty Body System.¹ The UNHCHR Report is the product of a reform initiative spearheaded by the UNHCHR in 2009, aimed at improving the impact of the United Nations (UN) treaty bodies on rights-holders at the national level by ‘strengthening their work while fully respecting their independence.’² Publication of the UNHCHR Report follows years of extensive consultations with key stakeholders in the treaty body system, including the States Parties, treaty body members, national human rights institutions (NHRIs) and civil society, designed to intensify awareness of the current challenges facing the system as well as stimulating debate and suggestions for reform. While acknowledging the considerable achievements of the treaty body system to date, the UNHCHR Report sets forth a number of detailed proposals and recommendations for reform of the system based on the consultation process to date. This article considers the potential of these proposals to tackle the problems in the system and their overall feasibility in the current political climate. It begins by setting the UNHCHR Report in context by outlining the extent of the problems which the proposals in the Report seeks to address and describing the nature of the consultation process adopted by the High Commissioner.

2. Background

As is well known, the challenges facing the treaty body system have been escalating for decades and there has been no shortage of creative ideas proffered from within and outside the UN itself on how to address them.³ Part of the


² Ibid. at 9.

difficulties arising stem from the fact that the treaty system is a *de facto* one that was in fact never designed to be a 'system', but which rather has evolved informally into one over time. This has occurred through the development of ten human rights treaties, each with dedicated treaty bodies mandated to monitor the implementation by States Parties of the obligations assumed by them on ratification. The shared characteristics of these treaty bodies, in terms of their nature, functions and powers, together with the steadily increasing, occasionally overlapping and sometimes contradictory demands placed on the States Parties, have led to them gradually being conceptualised as a system, in need of reform as a comprehensive whole. While the pressure for reform is longstanding, it has accelerated in recent years due to a number of compelling factors. First, the system itself has seen unprecedented growth in the past eight years alone, with the adoption of some four new treaties with dedicated treaty bodies, resulting in a corresponding expansion in periodic reporting and individual complaint procedures. Second, with the advent of Universal Periodic Review (UPR) in 2006, the rate of treaty ratification has been gathering pace exponentially, thus generating a major increase in the workload of the treaty bodies as well as an increase in the membership of particular treaty bodies. The demands which this expansion places on the

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5 These include the establishment of the Committee on the Rights of Migrant Workers (CMW) in 2003, the Sub-Committee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) in 2006, the Committee on the Rights of Persons with Disabilities (CRPD Committee) in 2008 and the Committee on Enforced Disappearances (CED) in 2011. The CMW, CRPD Committee and CED each operate mandatory reporting requirements, while the SPT operates a mandate unique to the treaty bodies involving regular visits to places of detention in the Contracting States. New complaint procedures have also been established under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 2009 (OP-ICESCR), 10 December 2008, A/RES/63/117, which came into force in May 2013; the Convention on the Rights of Persons with Disabilities 2006 (CRPD), 6 December 2006, A/61/611; and the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure 2011 (OP-CRC), 27 January 2012, A/RES/66/138, which is not yet in force.

6 The number of ratifications to the six human rights treaties in force in 2000 was 927. By 2012, the total number of ratifications to human rights treaties in force totalled 1,586; see UNHCHR Report, supra n 1 at 17.

7 Membership of the Committee on the Rights of the Child (CRC Committee), the CMW, the CRPD and the SPT has each increased since their establishment due to specific treaty provisions or amendments requiring an increase in membership; see Article 43(2) Convention on the Rights of the Child 1989 (CRC), 1577 UNTS 3; Article 72(1)(b) International Convention on the Rights of All Migrant Workers and Members of Their Families 1990 (ICRMW), 18 December 1990, A/RES/45/158; Article 43(2) Convention on the Rights of Persons with Disabilities 2006 (CRPD), 2515 UNTS 3; and Article 5(1) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2002 (OP-CAT), 2375 UNTS 237.
system, both in terms of the financial and human resources required to service it,\(^8\) can readily be appreciated when one considers that the ranks of treaty body experts alone has swollen to one hundred and seventy-two, compared to just ninety-seven in 2000,\(^9\) while their aggregate meeting time has increased from fifty-one weeks in 2000 to seventy-four weeks in session in 2012.\(^{10}\) Expansion of the system has in turn greatly enlarged the volume of reporting obligations on the States Parties,\(^{11}\) leading to increasing volumes of documentation, as well as high levels of non-compliance and late submission of reports.\(^{12}\) Even taking account of this phenomenon, the gap between submission of State reports and their consideration by the treaty bodies continues to widen, in some cases to manifestly ineffectual proportions. It is estimated, for example, that the average time lag between submission of a State report to the Committee on Persons with Disabilities (CRPD) and its consideration is currently between six to seven years, three to four years for the Committee on Economic Social and Cultural Rights (CESCR) and the Committee on the Rights of the Child (CRC), while the average time-lag for other treaty bodies is two to three years.\(^{13}\) The expansion of the system, together with the persistent refusal of the General Assembly to fund it with commensurate resources, has led to a perfect storm whereby the challenges facing the system threaten to overwhelm it and leave it vulnerable to charges of incoherence,\(^{14}\) ineffectiveness\(^{15}\) and increasing marginalisation.\(^{16}\)


\(^9\) While treaty body members do not receive a salary for their work, the budget necessary to fund their travel and stay at meetings in Geneva and New York apparently accounts for a ‘large percentage of the overall costs of the treaty bodies’. The expansion in terms of membership has inevitably affected this budget, which has increased from US$4.3 million in the biennium 2000–2001 to US$12.1 million for the biennium 2010–2011: UNHCHR Report, supra n 1 at 28.

\(^10\) UNHCHR Report, supra n 1 at 17. The budget for the staff support necessary to service the treaty bodies has increased since 2000 from US$6.1 million in a biennium to US$17.6 billion in a biennium; see ibid. at 27.

\(^11\) As noted in the UNHCHR Report, taking account of average reporting periodicities, a State that ratifies the nine core human rights treaties with reporting obligations can expect to submit twenty reports in a time frame of ten years; see ibid. at 21.

\(^12\) Only sixteen per cent of State reports due under human rights treaties in 2010–2011 were submitted on time: see tables reproduced in the UNHCHR Report, ibid. at 21.


\(^14\) Ibid. at 1; see also UNHCHR Report, supra n 1 at 25.

\(^15\) See, for example, the notoriously damning critique of the treaty body system made by Bayefsky, supra n 3.

\(^16\) See the point made by Lynch and Schokman that ‘NGO engagement with Treaty Bodies must therefore represent a sound return on investment’ in ‘Taking Human Rights from the Grassroots to Geneva... and Back: Strengthening the Relationship Between UN Treaty Bodies and NGOs’, in Bassiouni and Schabas, supra n 3 at 173 and 175.
Shortly after her appointment, the current UNHCHR, Navanethem Pillay, announced her intention in 2009 to tackle this burgeoning crisis by initiating a ‘process of reflection on how to streamline and strengthen the treaty body system to achieve better coordination among those mechanisms, as well as in their interaction with Special Procedures and the UPR’. A novel feature of the ‘strengthening process’ which then ensued and which distinguishes it from previous reform initiatives has been the emphasis placed on advance consultation with key stakeholders in the treaty system. In total, some twenty consultations took place over the course of the following two-and-a-half years involving treaty body members, the States Parties, non-governmental organizations (NGOs) and NHRIs, as well as a broader range of entities including academics and other UN actors. The purpose of these consultations was to heighten awareness of the extent of the problems facing the system and to generate ideas on how to address the challenges as well as the role that each of the stakeholders could potentially play in doing so. Thus, while previous initiatives had involved the presentation of ideas to the


18 The outputs of all the key consultations in the stakeholder consultations are available on the OHCHR website on the Treaty Body Strengthening Process, ibid.


stakeholders on how to transform the system, the ‘strengthening process’ relied from the outset on inputs and ideas from the stakeholders themselves and was specifically designed to be an ‘open, bottom-up, transparent and participatory’ process. The rationale for steering the process of reform in this way stems from the reality that the functioning of the treaty body system and the furthering of its outputs depends to varying degrees on this complex range of actors, each operating with different degrees of involvement, power, expectation and practical experience of the system as it operates as an integrated whole. By conceptualising the reform agenda in this way, the strengthening process clearly reflects a developing consensus that meaningful improvement of the treaty body system and enhancing its impact will only occur with the full involvement of each of the actors that engage with the system and not just the treaty bodies themselves.

3. The UNHCHR’s Proposals

Taking account of the outputs of the consultation process, the High Commissioner has produced a comprehensive package of proposals on ways and means to strengthen the treaty body system. The stated objective of her report is ‘to identify synergies, linkages and areas for mutual reinforcements and potential for future common ground that began to emerge through the consultation process.’ The key criteria used in formulating her proposals were that they should respect the treaties and not involve amendments; have been considered by the stakeholders in the consultation process and be capable of generating broad agreement; be mutually compatible and capable of implementation as a coherent whole; and, most importantly, contribute to strengthening the treaty bodies and enhancing the promotion and protection of human rights. The following sections describe the key proposals contained in the report and analyse their feasibility and capacity to effect significant, positive change in the functioning of the treaty body system.

25 UNHCHR Information Note, supra n 13 at 3.
27 See, for example, the conclusions drawn by Heyns and Viljoen in their influential study that ‘[t]he challenge is to harness the treaty system to domestic forces—domestic constituencies’—that will ensure its realization’ in ‘The Impact of the United Nations Human Rights Treaties on the Domestic Level’ (2001) 23 Human Rights Quarterly 483 at 488.
28 UNHCHR Report, supra n 1 at 10.
29 Ibid.
A. A Comprehensive Reporting Calendar

The most far-reaching recommendation made by the UNHCHR in her Report is that of establishing a comprehensive reporting calendar for those treaties that contain mandatory reporting obligations. This is an idea that has been promoted for many years by NGOs and was formally proposed by the Secretary General to the General Assembly in 2011. It entails organising reporting deadlines into a fixed calendar, based on a five-year cycle and one hundred per cent compliance rate, whereby each State would be expected to submit a maximum of two reports per year, with the constructive dialogue for each submitted report taking place within one year of submission. This would ensure that in any given year, a State could expect to submit no more than two reports and engage in no more than two constructive dialogues on the reports that it had submitted the previous year. The UNHCHR suggests that further refinements to the basic proposal might be implemented whereby the scheduling of each State’s reports under the calendar could be synchronised with their deadlines under the UPR process; and reports could be scheduled on a thematic basis, thus ensuring ‘maximum commonality’ between the reports due each year.

Broadly endorsed by NGOs, the basic objective of this proposal is that it would put an end to the haphazard and unpredictable manner in which State reporting is currently managed. Under the present arrangements, the treaty bodies’ schedules of meetings are established on the basis of reports received, rather than when they are due for each treaty. This has led to an inequitable situation whereby States that report on time are reviewed more systematically...

30 This includes the periodic reporting obligations contained in the core human rights treaties, the ‘once-off’ reporting obligations provided for in the International Convention on the Protection of Persons from Enforced Disappearances 2006 (ICPED), A/61/488 and reports due under the two substantive protocols to the CRC. See, generally, Egan, supra n 4 at 131–77.
32 Measures to improve further the effectiveness, harmonization and reform of the treaty body system: Report of the Secretary-General, 7 September 2011, A/66/344, at paras 27–9.
33 UNHCHR Report, supra n 1 at 37–8.
34 Ibid. at 38.
35 The idea of having a predictable reporting cycle that was synchronised with UPR was supported by some States in the consultation process: see New York Consultation, supra n 20 at 43.
36 UNHCHR Report, supra n 1 at 38. While the Report concedes that some variation in the pairing of reports may be preferred, it specifically advocates the scheduling of reports under the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights close together. Such a coupling would have the advantage of focusing States’ attention on the core obligations that tend to be raised under the UPR Process: ‘a synchronization of the deadlines for these reports with the dates for which the UPR reports are due would result in substantial efficiencies and cost reductions for States parties in the fulfilment of their overall reporting obligations’: ibid.
than others, whereas reviews for defaulting States are regularly pushed back until such time as the treaty bodies have time to conduct a review in the absence of a report. Compliant States may also find themselves overwhelmed by obligations to report under several treaties in the same year. Lack of resources for translation of documentation and adequate meeting time has further compounded these problems by contributing to massive backlogs between submission of State reports and their ultimate review by the treaty bodies. The fixed nature of the calendar proposed by the High Commissioner is thus designed to offset these various problems by providing a clear, predictable and manageable schedule for the States Parties and treaty bodies alike, thus allowing for planning in advance by all of the stakeholders concerned. It might also promote greater systematisation of arrangements at the national level for State reporting by enabling the gradual building up of expertise, ideally through the establishment of a national reporting mechanism.

However, while the internal logic of the High Commissioner’s proposal is compelling, it entails trade-offs that make its ultimate realisation difficult to envisage in practice. A first factor mitigating potential support is the fixed nature of the calendar, mandating as it does review of a State party’s performance under a particular treaty in the absence of a report. While the High Commissioner reasonably argues that immutable deadlines would actually encourage and foster compliance, a number of States in the consultation process expressed serious reservations in principle to the possibility of in absentia reviews, emphasising the incapacity of some States to comply with their reporting obligations. A second factor, noted by the Human Rights Committee (CCPR), in its preliminary statement on the UNHCHR’s Report, is the capacity of treaty body members to take on the extra work that would be involved in implementing it. However, by far the most compelling factor undermining its practical implementation is the cost implications that it potentially entails. In

38 These various issues are all documented by the OHCHR in ‘The Comprehensive Reporting Calendar: aligned reporting schedule for all States Parties and all treaty bodies - Note on a Comprehensive Reporting Calendar’, 2 April 2012, (‘Note on a Comprehensive Reporting Calendar’), available at: http://www2.ohchr.org/english/bodies/HRTD/NewYorkConsultation2012.htm [last accessed 16 January 2013].

39 UNHCHR Report, supra n 1 at 40. It is envisaged that the first six months after submission of each State report would allow for ‘others’ to contribute supplementary information, with the following six months set aside for the treaty body concerned and the Secretariat to prepare for the constructive dialogue: ibid. at 38.

40 Ibid. at 40 and 41.


this respect, it is estimated that the annual cost of implementing the calendar would amount to US$108 million—an amount that would represent an increase of approximately US$52 million or doubling of the current budget allocation.\(^{43}\) The persistent refusal of the States Parties for decades to increase funding to the treaty bodies, together with the concern expressed on this front during the consultation process,\(^{44}\) suggest that endorsement of the comprehensive reporting calendar by States Parties is profoundly unlikely.\(^{45}\)

Perhaps anticipating this result, the UNHCHR Report does set out certain specific, but less preferable, alternatives. These include the implementation of a single, *ad-hoc* exercise aimed at eliminating the current backlog of reports, by granting the treaty bodies a temporary increase in meeting time necessary to do so.\(^{46}\) But as the High Commissioner argues, this proposal not only carries its own significant cost implications, but it would also do little to deter the build-up of future backlogs since it would address none of the precipitating factors.\(^{47}\) A second gambit made in the Report is that in the event of the *status quo* being maintained, a review should be conducted of the current and projected workload of the treaty bodies in order to establish the staffing requirements necessary to provide the system with an adequate level of support.\(^{48}\) While the latter is clearly the least ambitious option, holding as it does virtually no potential for progression, few would be surprised to see its endorsement by States over the demands of the first two proposals.

**B. A Simplified Reporting and Aligned Reporting Procedure**

A significant proportion of the UNHCHR Report on strengthening the treaty body system is devoted to streamlining and harmonisation of the reporting procedure. In a section that envisages a ‘simplified and aligned reporting process’, the Report includes a range of proposals aimed at improving various stages of the reporting procedure—from the submission of State reports, to the operation of the constructive dialogue, through to the production of concluding observations and engagement with civil society, NHRIs and other UN

\(^{43}\) UNHCHR Report, supra n 1 at 42. The Report (at 42–3) contains a breakdown of this figure by projecting a need for US$79 million for conference services, US$12 million for treaty body members’ travel and daily allowances with the remaining amount being required for major increases in OHCHR staffing needs and conference facilities and interpretation facilities.

\(^{44}\) New York Consultation, supra n 20 at para 17.

\(^{45}\) This prediction takes account of further suggestions for reducing the costs of the calendar raised in the consultation process conveyed in the UNHCHR’s Report, such as the examination of reports in parallel chambers and reduction in the issuance of summary records: UNHCHR Report, supra n 1 at 44.

\(^{46}\) This idea was also mooted by the Secretary General in his report on Measures to improve further the effectiveness, harmonisation and reform of the treaty body system: Report of the Secretary-General, supra n 32 at paras 23–6.

\(^{47}\) UNHCHR Report, supra n 1 at 42.

\(^{48}\) Ibid. at 44.
entities. The demand for greater coordination, harmonisation and rationalising of the reporting procedures was a fairly constant theme in the consultation process and the Report seeks to address these concerns with some fairly direct and specific suggestions as follows:

(i) A ‘simplified reporting procedure’

The Report strongly advocates implementation by all of the treaty bodies and adoption by the States Parties of an optional ‘simplified reporting procedure’ (SRP). The SRP replicates in substance the List of Issues Prior to Reporting (LOIPR) procedure, first mooted by Philip Alston in his expert report on the treaty bodies in 1993 and implemented in recent years by the Committee Against Torture (CAT), CPPR and Committee on Migrant Workers (CMW), while introducing further specificity to its operation and introducing a welcome re-naming of the process. Thus, by electing to report under the optional SRP, a State Party’s periodic report under each treaty would consist of a series of answers to an ‘SRP questionnaire’ compiled by the treaty body in question. It is suggested further that the format for SRP questionnaires should be standardised and consist of a maximum of twenty-five questions and no more than 2500 words. There is little reason to doubt the High Commissioner’s contention that adoption of the SRP procedure would entail a number of advantages over the traditional reporting procedure. First, it greatly cuts down on documentation costs and time by eliminating the need for treaty bodies to produce ‘lists of issues’ after the submission of the traditional report, and for the States Parties to produce written replies to same. The requirement to answer clear, targeted questions tends also to result in shorter, more focused reports. This assessment is borne out by the experience of CAT to date in operating the LOIPR procedure whereby an estimated average saving of over US$13,000 dollars for translation costs has been detected in respect of the reports produced by specific States under the LOIPR procedure, as compared to the costs of translating their previous reports under the traditional reporting procedure. One worrying lacuna in the High Commissioner’s presentation of this proposal is its failure to emphasise the importance of eliciting information

49 See, for example, the Marrakech Statement, supra n 22 at paras 16 and 23; Response by Non-Governmental Organisations to the Dublin Statement, supra n 21 at para 26; and Geneva Consultation, supra n 21 at paras 43–50.
50 UNHCHR Report, supra n 1 at 47–50. Implementation of this proposal can be achieved in the context of the comprehensive reporting calendar or without.
51 See Interim Report, supra n 3 at paras 174–82 and elaborated further in the Final Report, ibid. at paras 91–3.
52 UNHCHR Report, supra n 1 at 50.
53 Ibid. at 49.
from civil society and NHRIs in compiling SRP questionnaires, especially in view of the concerns raised about access to the LOIPR procedure on the part of civil society in the consultation process. However, provided that attention is paid to this very important element of the process, the High Commissioner’s decisive call for systematising the SRP is to be commended for its potential to speed up the reporting process and encourage more focused outcomes. Since support for a simplified procedure appears to be strong amongst NGOs and States, the key challenge in implementing this proposal will be to convince those treaty bodies which have not yet implemented the procedure to do so, rather than to cleave to the traditional procedure by what would appear to be no more than force of habit.

(ii) Submission of common core documents and regular updates

Regardless of whether they choose to adopt the SRP or the traditional procedure, the treaty bodies have already adopted harmonised guidelines on reporting in 2006, which include guidelines on the production of a common core document (CCD). The latter document is aimed at avoiding the duplication of unnecessary information by recording, in a dedicated document, general information on the State and its framework for protecting human rights, as well as information on equality and non-discrimination, and effective remedies. As is well known, the CCD initiative has had a troubled history, reflecting serious objections on the part of some of the treaty bodies to the inclusion of an expanded list of ‘congruent provisions’ in the guidelines for the CCD. Objections were voiced on the basis that an overly expansive CCD might risk losing the specific focus of particular committees, while others considered that the CCD should be limited to information that was ‘broadly stable’ and not in need of constant updating. Thus, while the CCD was initially

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54 A graph on page 49 suggests that SRP questionnaires should be based largely on previous recommendations to the State Party in the case of a periodic report: ibid.  
55 Seoul Statement, supra n 21 at para 5(a); and Response by Non-Governmental Organisations to the Dublin Statement, supra n 21 at 19.  
56 NGO Preliminary Response to the UNHCHR Report, supra n 37 at 1.  
57 At the Sion consultation, most States expressed broad support for the LOIPR procedure: supra n 20 at 7; see also the New York Consultation, ibid. at para 41.  
58 There is clearly some reluctance to do so, as evidenced by a paragraph in the Poznan Statement, promoting the view that the treaty bodies should use LOIPR within a larger ‘tool-box’ of reporting options, under circumstances that so require: supra n 19 at para 9.  
61 See the report of the 4th ICM annexed to the Report of the Chairpersons of the Human Rights Treaty Bodies on their 17th Meeting, A/60/278, at para 18; see also Comments and Suggestions Concerning the Draft Harmonized Guidelines on Reporting Under the
conceptualised by the Office of the High Commissioner for Human Rights (OHCHR) in broad terms as potentially including a very wide menu of congruence, the guidelines for the CCD were eventually revised to require States to include information on non-discrimination and equality and effective remedies only as congruent provisions. Moreover, the production of CCDs by States has not been widespread or substantively consistent, with only fifty-eight States Parties producing a CCD since 2006. During the consultation process, however, a number of positive recommendations were made for the submission and regular updating of the CCD on the basis that it constitutes the ‘backbone of the reporting process’. Recognising the potential of the CCD to complement the SRP as well as the proposal for the comprehensive calendar, by ensuring a more comprehensive, yet focused reporting cycle as a whole, the UNHCHR Report encourages the States Parties to use the SRP in conjunction with the CCD and for the treaty bodies, in turn, to ensure that SRP questionnaires complement the CCD. The Report emphasises the importance, in this respect, of adherence by the States Parties to the harmonised guidelines on reporting and thus clearly stops short of recommending a review of the content of the CCD. However, as the study by Andersen and Devereux has revealed, the 2006 Guidelines contain sparse guidance for States on what to include in the CCD, or how to manage appropriate allocation of information in the CCD and in treaty specific reports. Clearly, this is a complex issue, requiring serious consideration and ideally the development of a CCD questionnaire to complement individual SRP questionnaires. As Johnstone notes, in advocating an expanded CCD, any opening up of this issue would best be managed in the context of a dedicated consultation process involving all of the relevant stakeholders.


64 See the survey by Johnstone, supra n 3 at 72–3.

65 UNHCHR report, supra n 1 at 51.

66 Marrakech Statement, supra n 22 at para 16(b); and Poznan Statement, supra n 19 at para 10.

67 NGOs appear to be more circumspect about the value of the CCD, advocating instead that the treaty bodies should evaluate whether it is an effective use of resources and whether cheaper ways can be found to produce the information and keep it regularly updated; see Response by Non-Governmental Organisations to the Dublin Statement, supra n 21 at para 18.

68 States have emphasised the value of the CCD in the context of the LOIPR: see New York Consultation, supra n 20 at para 42.

69 Andersen and Devereux, supra n 60 at 94–7.

70 Johnstone, supra n 3 at 74.
(iii) Strict adherence to page limitations

Enlargement of the treaty body system over time has had major financial implications in terms of documentation with the high translation costs that this entails. Indeed, the cost of translating treaty body documentation constitutes the highest cost item in operating the treaty bodies.71 While all States Parties reports are published in the language of submission (which must be one of the six official languages of the UN),72 on average, the treaty bodies request translation of State reports, responses to lists of issues and information submitted under follow-up procedures into three other official languages.73 The total cost of formatting, editing, referencing, translating and reproducing just one page of treaty body documentation into three languages is estimated to be US$1,560.74 These costs are compounded by the lack of discipline exhibited by the States Parties to date, in particular, in regard to treaty body documentation. For example, while the Harmonised Guidelines on Reporting produced in 2006 indicate that CCDs should not exceed sixty pages, initial reports should not exceed sixty and periodic reports no more than forty,75 these Guidelines are routinely flouted as the UNHCHR’s Report explains. In 2011, for example, sixty-four per cent of the periodic reports considered by the treaty bodies in respect of one hundred and fifteen reporting States exceeded the forty-page limit specified in the harmonised guidelines. This resulted in an estimated over-spend of US$5.5 million in translation costs, in respect of the 2,992 extra pages submitted.76 The treaty bodies also produce, to varying degrees, a significant volume of documentation that must be translated (including concluding observations, individual communications and often voluminous annual reports), the total cost of which is estimated per year to amount to over US$25 million.77

In light of these staggering costs, it is not surprising that the High Commissioner has zoned in on this issue as an obvious target for savings. The experience gleaned from the UPR process, where page limitations are strictly

72 These are Arabic, Chinese, English, French, Russian and Spanish.
74 Ibid. at 13.
75 Harmonised Guidelines on Reporting 2006, supra n 59 at para 19.
76 UNHCHR Report, supra n 1 at 54. The estimate of translating the total amount of 11,500 pages submitted by States Parties in that year is equivalent to US$17,940,000: see OHCHR Background Paper on Costs, supra n 73 at 13.
77 See OHCHR Background Paper on Costs, supra n 73 at 13. The precise estimate is US$25,740,000.
enforced and respected, would suggest that greater regulation of page limitations in the context of the treaty body documentation is achievable and generally supported by most States. To this end, the Report encourages the treaty bodies to remind States systematically in all concluding observations of the need to adhere to the page limitations indicated in the Harmonised Guidelines and to return reports which fail to respect them. Interestingly, the report advocates further specific guidelines in respect of concluding observations, that is, that these should be confined to a maximum of twenty recommendations per 2,500 words and be focused on priority issues. Taken in combination with the recommendation that SRP questionnaires should comprise no more than twenty-five questions per 2,500 words, the aim here is to generate more focused reports, which will in turn encourage more specific and concrete concluding observations.

(iv) Aligned methodology for the constructive dialogue

A central feature of the reporting process and one of its ‘outstanding successes’ is the constructive dialogue deployed by the treaty bodies in examining State reports. While not strictly speaking mandated by the text of the treaties, the process of clarifying state reports through an interactive dialogue with State representatives, backed up by input from NGOs and NHRIs, is a long-standing and well-established practice of all of the treaty bodies which operate reporting procedures. But while the practice may be common to all, the modalities for its execution vary between them and this variation has clearly been a cause of considerable irritation to the stakeholders over the years. During the consultation process, concern was expressed by the States Parties regarding the conduct of the dialogue, particularly as regards a

78 Under the UPR, State reports are required to be no more than twenty pages, while the compilation of UN information and summary of stakeholders’ views, produced by the OHCHR must each adhere to a strict ten page limitation: see Institution Building of the United Nations Human Rights Council, 18 June 2007, HRC/5/1, at para 15(a), (b) and (c) respectively.

79 See OHCHR, Compilation of Excerpts from the Written Submissions by the States Parties to the Call of the UN High Commissioner to Strengthen the Treaty Bodies (‘OHCHR Compilation of Excerpts’) in which the only dissenting voice recorded is that of the Russian Federation, at 7–9, available at: http://www2.ohchr.org/english/bodies/HRTD/NewYorkConsultation2012.htm [last accessed 16 February 2013].

80 UNHCHR Report, supra n 1 at 55. The need for a flexible approach to this issue is conceded in respect of federal States or States with overseas territories, an issue flagged by Sir Nigel Rodley during the State Party consultations in New York: New York Consultation, supra n 20 at para 54.

81 UNHCHR Report, supra n 1 at 55.

82 Ibid. at 55.

83 Ibid. at 53.

84 Johnstone, supra n 3 at 79.

perceived lack of coordination regarding interventions by treaty body experts. Some States, for example, expressed concern about duplication of questions, their provenance and the length of time afforded to interventions.86 While it is obvious that not all States Parties come to the table with ‘clean hands’ on this issue, with filibustering, obfuscation and blatant denials often being the order of the day in regard to the constructive dialogues on some reports,87 there is clearly room for improvement in the harmonisation and better management of the process by the treaty bodies. A recent survey by the OHCHR reveals significant disparities in relation to the length of time dedicated to constructive dialogues (from two to three hour meetings in the case of four committees, to five, eight and nine hours in the case of others).88 Other differences relate to the conduct of the dialogue. For example, most committees allocate fifteen minutes for opening statements by the States Parties, while the Committee on the Elimination of Racial Discrimination (CERD) allocates a sixty-minute period.89 Different practices obtain in respect of the method for compiling and posing questions, with some committees asking questions en bloc, Article by Article, while others, like the CPPR and the Committee on the Elimination of Discrimination Against Women (CEDAW), deploy task forces to manage this aspect of the process.90 The treaty bodies themselves have acknowledged the need to enhance the structure of constructive dialogues, but their deliberations on this issue appear to have produced very little in the way of specific suggestions for reform. The twelfth inter-committee meeting of the treaty bodies reached agreement that opening statements should be limited to thirty minutes (with flexibility in extraordinary situations), meeting time should be limited to two meetings of no more than six hours in total for periodic reports and that guidelines should be devised for better management of meetings, taking account of the ‘specificities’ of particular committees.92 In her Report, the UNHCHR has honed in on this issue and has made far more precise recommendations, drawn from the best practices of particular committees. She has advocated the adoption of guidelines by the treaty bodies, specifying that the length of constructive dialogues for periodic reports should be

86 See Sion Consultation, supra n 20 at 9–10; see also, Geneva Consultation, ibid. at paras 51–2; and New York Consultation, ibid. at para 48.
88 See Bayefsky, supra n 3 at 60.
89 The structure of the dialogue between treaty bodies and States Parties, the structure and length of concluding observations, and the mode of interaction of treaty bodies with stakeholders, in particular national human rights institutions and civil society actors, 18 May 2011, HRI/ICM/2011/2, at paras 4–5 (‘Note on Reporting Modalities’).
90 Ibid, paras 6–9.
91 Ibid, paras 10–5.
limited to two meetings of no more than six hours in total and that opening
statements be limited to fifteen minutes. Furthermore, the Report recom-
mends that country task forces should be established by all committees (as is
the current practice of the CCPR and CEDAW) to prepare for and manage the
dialogue, that questioning should be by ‘theme’ in regard to initial reports and
on specific and pressing issues in regard to periodic reports and that interven-
tions should be limited by the use of a speech timer. States Parties are urged
in turn to send high-level and well-informed delegations to the meetings and
to provide short and precise replies to questions. It is unclear why the
Report does not recommend a practice whereby the list of questions to be
posed should be sent in advance to the State Party under review, as was
urged by many States in the consultation process. Such a practice would
surely go some way to speeding up the process and enable States to better pre-
pare for the dialogue. Notwithstanding this one omission, there is no doubt
that the recommendations made would go some way to eliminating much of
what Bayefsky has termed the ‘dysfunctional dimensions’ of the constructive
dialogue. The real question will be whether the treaty bodies will move to im-
plement them across the board, given their reluctance to innovate from their
individual practices or to heed previous recommendations along the same
lines.

(v) Focused concluding observations

Consistent with all of the previous recommendations, the UNHCHR Report
urges treaty bodies to craft and adopt more focused and targeted concluding
observations, containing concrete and achievable recommendations. This is
an issue on which virtually all of the participants in the consultation process
agreed on the basis that further refinements to this key output of the reporting
process would facilitate implementation at the national level. Like the evolu-
tion of the constructive dialogue, the very notion of concluding observations
on each State report has had an interesting, developmental history. Although the idea of commenting on each State report was emphatically

93 UNHCHR Report, supra n 1 at 57.
94 Ibid.
95 Ibid.
96 Geneva Consultation, supra n 20 at para 51.
97 Bayefsky, supra n 3 at 63.
98 UNHCHR Report, supra n 1 at 62–3.
99 Ibid. at 60–2.
100 New York Consultation, supra n 20 at para 48; Marrakech Statement, supra n 22 at para 16(c);
and Seoul Statement, supra n 21 at para 7. In contrast to the other groups, participants
at the Consultation with UN Entities and Agencies agreed that broad recommendations
did give States the flexibility to decide on ways and means to implement them: see supra
n 24 at 6.
resisted in the early life of the treaty bodies by Eastern bloc countries as potential interference in domestic affairs, the easing of Cold War tensions gradually led to the adoption by each of the treaty bodies of such a practice, albeit that the structure of their concluding observations came in slightly different shapes and sizes.\textsuperscript{102} While the going has been slow, progress has been made on harmonising the nomenclature used in the observations and concerns now centre on their length, specificity and structure. In 2010, the average length of concluding observations was six to eight pages, the lengthiest being those of the CRC, which averaged twenty-one pages.\textsuperscript{103} As to structure and specificity, NGOs have urged the treaty bodies to formulate ‘targeted, specific, measurable, achievable and time-bound’ recommendations.\textsuperscript{104} It has also been argued that the diplomatic language used in the observations needs to be attenuated, with committees clearly specifying whether a particular treaty norm has been violated.\textsuperscript{105} The OHCHR Secretariat has also made very specific suggestions to the treaty bodies for improving the structure of the concluding observations, including the idea of limiting the length of paragraphs and number of sub-paragraphs and prioritising recommendations.\textsuperscript{106}

The Report repeats a number of these suggestions\textsuperscript{107} while recommending specifically that the treaty bodies adopt a common format for concluding observations and reduce their length, optimally to six pages (3,500 word count), taking into account the number of substantive provisions and the treaty in question.\textsuperscript{108} It suggests that previous observations should be the starting point for the next set of observations and that the recommendations made should include concrete guidance for States in regard to what is needed to implement treaty obligations. Furthermore, the UNHCHR repeats a suggestion made earlier by her to the treaty bodies that the observations should be divided according to immediate and long-term priority issues, based ‘on a balance between urgency and the feasibility of addressing the different issues within any given reporting cycle’.\textsuperscript{109} Recommendations for structural change should be made systematically, while those of a programmatic nature should include

\begin{enumerate}
\item Ibid. at 29–31.
\item See Note on Reporting Modalities, supra n 89 at para 28.
\item Pretoria Statement, supra n 19 at para 9.1.
\item See the Lucerne Consultation, supra n 23 at 6–7.
\item Note on Reporting Modalities, supra n 89 at 34, paras 32, 33 and 35.
\item UNHCHR Report, supra n 1 at 61–2.
\item In their preliminary response to the UNHCHR’s Report, NGOs reiterate their support for precise and focused concluding observations, but register their disagreement with the notion that ‘shorter is necessarily better’: see NGO preliminary response to the UNHCHR Report, supra n 37 at 1.
\item UNHCHR Report, supra n 1 at 62. During an earlier meeting with members of the treaty bodies, the UNHCHR had previously acknowledged that prioritisation is a sensitive subject, given the indivisibility of rights and hence that the goal here would be to structure concluding observations around immediate, medium-term and short-term ‘deliverables’: see Note on Reporting Modalities, supra n 89 at para 36.
\end{enumerate}
indicators by which to measure achievement.\textsuperscript{110} If a particular treaty provision or standard has not been respected, the treaty body should specify the Articles in question ‘for greater clarity’ and finally, cross-referencing of the recommendations of other bodies, the special procedures and the UPR should occur when relevant.\textsuperscript{111} The specificity and force of these recommendations demonstrate just how far expectations have changed in regard to concluding observations, since the days when any form of overt adjudication of a State’s human rights record was strictly avoided in the reporting process. Like many of the other recommendations aimed predominantly at the treaty bodies, however, their fruition depends entirely on the willingness of the each of those bodies to recognise the value of coherence in the outputs of the collective whole, as opposed to preserving the perceived need for particularity in respect of their individual mandates.

(vi) Further institutionalisation of relations with other UN entities

Writing a decade ago, Clapham recorded how peripheral the work of the UN human rights treaty bodies appeared to be to the realities of human rights work on the ground for UN field operations.\textsuperscript{112} Recognising this lacuna, the consultation process included a specific consultation with UN entities and specialised agencies and their voice in the process has generated a number of useful recommendations in the ensuing Report.\textsuperscript{113} These include recommendations to the treaty bodies themselves to systematise and align their modes of interaction with UN entities and to develop guidelines to this end; to UN country teams—to provide coordinated input on States reports, to support States and related stakeholders in fulfilling their respective roles in the reporting process and to support and facilitate the translation and distribution of treaty body outputs, as well as the crucial, follow-up phase.\textsuperscript{114} These recommendations are clearly aimed at enhancing system-wide coherence between the treaty bodies and UN entities, and at making the latter a more central player in procedures that are of obvious relevance to their work on the ground. Although the Report is vague as to the costs of implementing these proposals, it is clear that to do so in a meaningful way will require significant investment of time and resources on the part of OHCHR, field presences and UN country teams.\textsuperscript{115}

\textsuperscript{110} UNHCHR Report, supra n 1 at 62.  
\textsuperscript{111} Ibid.  
\textsuperscript{112} Clapham, supra n 87 at 175–6.  
\textsuperscript{113} See Consultation with UN Entities and Agencies, supra n 24.  
\textsuperscript{114} UNHCHR Report, supra n 1 at 63–4.  
(vii) Aligned models of interaction between treaty bodies, NHRIs and civil society

The more activist stance taken by the treaty bodies in fulfilling their reporting functions since the end of the Cold War also finds expression in the increased role accorded to NGOs in those procedures. In this respect, participation by NGOs in the reporting procedures has grown from a point where they had no formal role at all to play in the process to one which has been aptly characterised as a ‘critical dependency’ of that process.116 This input takes the form of direct provision of ‘shadow’ reports to the treaty bodies on the State’s performance in implementing the particular treaty in question, through to oral presentations to the treaty bodies of their key concerns in advance of the constructive dialogue.117 The role played by NGOs in the reporting procedures has also been steadily supplemented in recent years by those of NHRIs, many of which have gradually drawn on the treaty body system as a means to fulfill their vital ‘bridging’ role between the international human rights system and the national stage.118 Through the provision of shadow reports and oral presentations, NHRIs have increasingly moved to systematise their interactions with the treaty bodies119 and the treaty bodies have in turn begun to deepen their engagement with such institutions in the reporting process.120 An obvious source of frustration for both groups, however, is the lack of coherence and alignment in the modes of engagement deployed by individual treaty bodies in interacting with them.121 For example, some treaty bodies meet with NGOs in formal, public meetings for stakeholders; others meet with them in private, closed meetings; some employ a combination of both modes of interaction, while still others supplement formal meetings with private, lunch-time

117 For a critical perspective of the experiences of NGOs with the UN treaty reporting procedures, see Clapham, supra n 87 at 175, and ‘Defining the Role of Non-Governmental Organizations with Regard to the UN Human Rights Treaty Bodies’, in Bayefsky, ibid. at 183, 192–4; see also in the latter volume, Theytax-Bergman, ‘State Reporting and the Role of Non-Governmental Organisations’ at 45; Brett, ‘State Reporting: An NGO perspective’, at 57; and Thomson, ‘Defining the Role of Non-Governmental Organizations: Splendid Isolation or Better Use of NGO Expertise’, at 219.
121 See Marrakech Statement, supra n 22 at para 23(a); and Pretoria Statement, supra n 19 at para 4.
briefings. Similar disparities exist vis-à-vis modes of interaction with NHRIs, with some treaty bodies listening to the views of NHRIs alongside those of NGOs, others meeting with them separately and one giving NGOs speaking rights during the constructive dialogue.

Clearly, as the treaty bodies themselves have recognised, that there is much room to harmonise their working practices so as to create a less confusing landscape for these key contributors to the process. To this end, the Report proposes that henceforth, formal meetings between the treaty bodies and NGOs and NHRIs should take place over the course of three hours, during official public meeting time, with two hours being devoted to NGOs and the third hour devoted to NHRIs. Such meetings should be scheduled to take place on the first day of the week in respect of the State reports scheduled for consideration in that week. Additional, private, one-hour, lunchtime meetings may be scheduled by NGOs on the day before consideration of their particular State’s report, in which NHRIs ‘could also participate.’ The potential advantages to this arrangement, as recorded in the Report, are that public meetings are officially recorded, facilitated by interpretation and open to the State Party in question. The supplemental lunchtime briefings could expand the time available for discussion and allow for more ‘in-depth’ discussion. However, what is perceived as a virtue may also be a vice and in this instance, the automatic pooling of NGOs and NHRIs together in public session, as well as in private, may be problematic as it may stifle the voice of NGOs in such situations as there will be no forum in which they can freely draw matters to the attention of the treaty bodies, without fear of reprisal from the State. This is especially so where the NHRIs in question are not compliant with the Paris Principles or play ‘an ambiguous role’ on the domestic stage in terms of genuine human rights protection. Furthermore, even where no such concerns arise, unless it is well managed, such an arrangement may also potentially lead to friction between such bodies in vying with each other for precious speaking time. Not surprisingly, this proposal has been received as a lightning rod for NGOs and has been flagged by the CCPR as requiring further discussion with the bodies concerned ‘given the distinct nature and functions of non-governmental organisations and NHRIs.’ One approach to managing these concerns might be for the treaty bodies to exercise their discretion in regard to the need for private meetings and, in any event, to limit oral participation rights.

122 Note on Reporting Modalities, supra n 89 at paras 51–2.
123 Ibid. at para 44.
124 UNCHR Report, supra n 1 at 65.
125 The Report specifically alludes to the problem of reprisals against NGOs and proposes measures aimed at averting them, see ibid. at 67.
127 NGO Preliminary Response to the UNCHR Report, supra n 37 at 2–3.
128 CPPR Preliminary Statement on the UNCHR Report, supra n 42 at para 3.
to NHRIs which have been accorded ‘A’ status by the International Coordinating Committee of NHRIs. This approach would be consistent with that taken by the Human Rights Council where only ‘A’ status institutions have speaking rights before that body, whereas ‘B’ status institutions are afforded observer status only and ‘C’ status institutions are accorded no rights or privileges at all. In operating such a criterion, however, the treaty bodies would need to apply some measure of flexibility, given the difficulties faced by some well-functioning, thematic human rights institutions and classical ombudsman in complying with the Paris Principles.129

C. Strengthening the Individual Communications Procedure

Of all the recommendations made in the UNHCHR’s Report, perhaps the most radical and surprising relates to the operation of treaty body individual communications procedures. In this respect, the Report recommends that the treaty bodies ‘pronounce themselves’ on a proposal generated during the consultation process by CERD for the creation of a joint, treaty body working group on communications, to be composed of experts from each of the treaty bodies.130 CERD’s proposal is a diminution of a suggestion made earlier by it in response to the former High Commissioner’s proposal for a unified standing treaty body (USTB) for the processing of individual complaints.131 Recognising that the latter proposal would entail amendment of the treaties which may not be ‘opportune’ at the current time, the new proposal moots the establishment of a working group which could discuss individual cases and make recommendations for the adoption by the appropriate committees during their plenary meetings. The UNHCHR Report appears to broadly welcome this proposal, taking the view that it would not require treaty amendment and would add value to existing arrangements by contributing to the development of consistent standards and jurisprudence among the treaty bodies; reinforce the justiciability and interdependence of rights; ensure more coherent outputs given the participation of experts with a broad range of expertise; and contribute to alignment of working methods as between the various committees that deal with communications.132

The surprising element of this proposal is that it undoubtedly sails close to the wind of the former USTB initiative, albeit in the specific context of

129 See Reif, ‘The Shifting Boundaries of NHRI Definition in the International System’, in Goodman and Pegram, supra n 120 at 52.
132 UNHCHR Report, supra n 1 at 68.
individual communications. Clearly, the notion of a preliminary working group, mandated to make recommendations to each of the treaty bodies in respect of particular complaints, is a less muscular prospect than that of a unified body with competence to make decisions on the cases themselves. However, beyond the very vague and general statements made in the Report regarding the ‘added value’ of this initiative, there is virtually no attempt to elucidate the substantive merits of this proposal or any rationale as to how it would make the complaints procedures more effective in practice—a weakness that was considered to be crucial to the failure of the USTB initiative. Furthermore, it is by no means clear that such an arrangement could validly be achieved on an informal basis as each treaty/protocol only gives competence to members of its own designated treaty body to receive and consider the substance of individual communications from States which have agreed to be bound by the complaint procedure in question. Indeed, this point would appear to be the basis for the ‘unease’ which the CCPR has expressed regarding this proposal.\(^{133}\) Although an expert consultation of treaty body members on complaint procedures did agree that the possibilities for forming such a working group needed to be further explored, one member of the group apparently questioned the wisdom of harking back to a proposal previously rejected by the States parties.\(^ {134}\) The preference expressed by that member for inter-committee meetings on substantive issues as opposed to specific cases is certainly more persuasive, though its full merits would need to be fully explored and tested in practice.

Beyond the latter proposal, the Report does make further, more predictable recommendations regarding the enhancement of the complaint procedures. These include a proposal for the treaty bodies to prepare guidelines on common procedures for all of the treaty bodies with complaint procedures and for inquiries.\(^ {135}\) Ideally, as suggested by many of the consultees,\(^ {136}\) the guidelines on complaint procedures should include a direction that in all final views and recommendations, clear and specific guidance should be given to States on the remedies that must be afforded to the particular victim as well as on the measures necessary to ensure structural change in the State to

\(^{133}\) CCPR Preliminary Statement on the UNHCHR Report, supra n 42 at para 6, noting the ‘need for a juridical approach to the consideration of communications that is clearly based on the substantive and procedural provisions of respective treaties and their respective memberships.’

\(^{134}\) Consultations on TB Strengthening: Expert Meeting on Petitions, supra n 19 at 4.

\(^{135}\) UNHCHR Report, supra n 1 at 69.

\(^{136}\) See NGO Statement on Individual Communications, supra n 21 at 5–6; and Seoul Statement, ibid. at 10(b). See further Kletzel, Maia and Zwaig, ‘Strengthening of the UN Treaty Bodies’ Complaint Procedures: Elements for a Reform Agenda from an NGO Perspective’, in Bassiouni and Schabas, supra n 3 at 93, 209–19.
guard against similar violations in the future.\textsuperscript{137} Further elements should include guidelines on mutual cross-referencing, standardised deadlines, working methods on admissibility, interim measures and protection measures.\textsuperscript{138} The Report also endorses the resounding support shown in the consultations for the creation by the OHCHR of an up-to-date and well-functioning database on individual complaints, aimed at increasing the visibility of and accessibility to the complaint procedures.\textsuperscript{139}

Finally, the Report alludes to the possibility made explicit only in the OP-ICESCR and the OP-CRC for the parties to an individual complaint to achieve a friendly settlement of the dispute with the assistance of the treaty body in question.\textsuperscript{140} Recognising that complaint procedures are normally suspended by the other treaty bodies where the parties are attempting to achieve a settlement of the matter, the Report urges the treaty bodies to make themselves available to assist in such settlements and to devise rules of procedures to that end.\textsuperscript{141} The CCPR, for its part, has expressed cautious interest in this proposal, noting the need for it to take account of the specificities of complaints procedures, their non-binding nature, the inequality of arms between States and individuals as well as the question of the proper role to be played by the treaty bodies in this respect.\textsuperscript{142} Accepting these observations, the proposal nonetheless appears to be a sensible and practical one. Even though the terms of earlier instruments do not specifically provide for this activity, it appears to be consistent with the mandates of the treaty bodies under the complaint procedures and, more importantly, is unlikely to encounter significant political opposition given the explicit adoption of such procedures in the newer complaint procedures.

\textbf{D. Strengthening the Independence and Expertise of Treaty Body Members}

The quality of treaty body membership was a fairly dominant theme in the consultation process, with States Parties, in particular, regarding membership as a 'key element' in strengthening the treaty body system.\textsuperscript{143} The treaties provide minimal guidance on the necessary attributes for treaty body membership, requiring usually that members be of high moral character, recognised

\begin{itemize}
\item \textsuperscript{137} This is in line with the current practice of CEDAW, as opposed to the practice of the other treaty bodies which deal with individual complaints, whose recommendations tend to be specific to the individual: see Follow-up procedures on individual complaints—Note by the Secretariat, 16 December 2010, HRI/ICM/WGFU/2011/3, at paras 8–11.
\item \textsuperscript{138} See NGO Statement on Individual Communications, supra n 21; and Seoul Statement, supra n 21.
\item \textsuperscript{139} UNHCHR Report, supra n 1 at 71.
\item \textsuperscript{140} Article 7(2) OP-ICESCR and Article 9 OP-CRC.
\item \textsuperscript{141} UNHCHR Report, supra n 1 at 71–2.
\item \textsuperscript{142} CCPR Preliminary Statement on the UNHCHR Report, supra n 42 at para. 7.
\item \textsuperscript{143} Geneva Consultation, supra n 20 at para 28.
\end{itemize}
competence in the relevant field and serve in their personal capacity. Some treaties specify that consideration be given in the election process to persons with legal experience,144 while more recent instruments allude to the need for ‘balanced gender representation’145 and in the case of the CRPD for membership to include persons with disabilities.146 However, from the outset, concerns have been raised regarding the high proportion of serving diplomats on the treaty bodies, lack of gender balance and lack of representation by persons with civil society backgrounds.147 Recent statistics bear out these concerns, indicating that eighteen per cent of the current cohort of treaty members is comprised of serving diplomats or government officials, only nine per cent have civil society backgrounds, while men outnumber women by a ratio of almost two to one.148

In terms of concrete suggestions to improve the quality and expertise of treaty body membership, the UNHCHR’s Report makes a range of related recommendations. First, it takes up the persistent suggestion made in the consultations that States adopt an open and transparent selection process, aimed at ensuring the selection of suitably qualified personnel who are willing to take on the full range of responsibilities required of membership. Second, the Report recommends, rather timidly, that the nomination or election of persons holding positions in government or any other positions that might expose them to pressure or conflicts of interests or generate a negative profile for the individual’s own credibility or that of the treaty system as a whole should be avoided.149 Recognising that the implementation of these recommendations lies entirely within the power of States, the Report makes an innovative proposal, which, if taken up, could strengthen the hand of civil society actors and NHRI’s to monitor the election of treaty body members, thus generating pressure for the nomination of suitable candidates. This involves the creation by OHCHR of an ‘open space’, through the use of modern technologies, where States could present their potential candidates for nomination to the treaty bodies, under conditions to be moderated by five former treaty body

144 See, for example, Article 28(b) International Covenant on Civil and Political Rights 1966 (ICCPR), 999 UNTS 171; Article 17(1) of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (UNCAT), 1465 UNTS 85; and Article 26(1) ICPCED, supra n 30.
145 Article 26(1) ICPCED; and Article 34(1) CRPD.
146 Article 34(1) CRPD.
147 See Bayefsky, supra n 3 at 108–12; and Edwards, ‘Universal Suffrage and the International Human Rights Treaty Bodies: Where are the Women?’, in Bassiouni and Schabas, supra n 3 at 151.
149 Ibid. at 75.
members. By enhancing the quality of information available regarding potential candidates, the aim of this proposal is to ensure a more transparent election process with better quality candidates.\footnote{150} Not surprisingly, these proposals have been warmly endorsed by the NGO sector.\footnote{151}

The treaty bodies, for their part, have long since been energised by concerns over their perceived independence.\footnote{152} Prompted partly by the consultation process,\footnote{153} the Chairpersons have recently endorsed a set of self-regulatory guidelines on independence and impartiality of members (‘the Addis Ababa Guidelines’) and have urged that the Guidelines be promptly adopted by each of the treaty bodies through their individual rules of procedure.\footnote{154} The Guidelines set out guiding principles and obligations of conduct for treaty body members, which are aimed at eliminating real or perceived conflicts of interest in the performance of their functions, in their relations with States and in their participation in any other human rights activities.\footnote{155} The UNHCHR Report also encourages the adoption of the Guidelines, which are clearly a positive step in providing objective guidance to members and forging peer-pressure amongst themselves in matters of impartiality and independence. They should also go some way to scotching the idea raised by some States during the consultations for a ‘code of conduct’ to be drafted by the States Parties themselves for treaty body members, similar to that which has been adopted in respect of the special procedures mandate holders.\footnote{156} Finally, the Report promises to put into effect an idea generated by treaty body members in the Poznan Statement\footnote{157} for the development of a Handbook and dedicated webpage by the OHCHR on the expectations, required availability and workloads of treaty body members, the aim of which will be to ensure up-to-date information for all stakeholders on vacancies arising as well as appraising potential candidates of the level of commitment required of treaty body members.\footnote{158}

\begin{footnotes}
\item[150] Ibid. at 79.
\item[151] NGO Preliminary Response to the UNHCHR Report, supra n 37 at 2.
\item[152] See Human Rights Questions: Implementation of Human Rights Instruments—Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights—Note by the UN Secretary General, 21 October 1997, A/52/507, at paras 67–8, recording the views of the eighth meeting of Chairpersons of the treaty bodies on the issue of treaty body membership; see further documents cited in the Poznan Statement, supra n 19 at para 19.
\item[153] See the call made in the Poznan Statement by treaty body members for a working group to be established to prepare guidelines on eligibility and independence of treaty body members: ibid. at para 19.
\item[155] Ibid. at Annex I, 26–33.
\item[156] See discussion on this point at the New York Consultation, supra n 20 at para 33.
\item[157] Poznan Statement, supra n 19 at para 21.
\item[158] UNHCHR Report, supra n 1 at 77–8.
\end{footnotes}
E. **Strengthening the Capacity of States to Implement the Treaties**

Recent studies reveal a clear deficit in implementation rates of treaty body recommendations, thus generating an obvious need to focus on ways and means of improving this disappointing reality. Improving the process by which recommendations are arrived at is somewhat meaningless where the recommendations fail to attract compliance on the ground. The UNHCHR Report groups together a number of areas identified in the consultation process that need to be tackled in order to encourage implementation. However, as will be seen, this section of the Report is, to some extent, disappointing in regard to the narrow focus of the proposals and the recipients thereto.

(i) **Follow-up of treaty body recommendations**

An obvious starting point for proposals on intensifying implementation rates is that of measures and procedures being taken to follow-up on treaty body recommendations. A perusal of the documents that emerged from the strengthening consultations reveals that there was no shortage of innovative ideas on how to enhance strategies for follow-up by the treaty bodies themselves of their recommendations. These included ideas for the systematisation of better coordinated and more inclusive follow-up procedures; the development of a specific, inter-committee ‘treaty body follow up mechanism’ for all treaty bodies or the establishment of a dedicated unit on follow-up or senior level ‘Treaty Body Follow Up Coordinator’ post within OHCHR. Treaty bodies were also urged to develop indicators to monitor implementation and to conduct studies, in conjunction with OHCHR, to identify obstacles to implementation. The notion of follow-up visits to monitor implementation has also

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160 Dublin II Outcome Document, supra n 19 at paras 105–11.

161 This recommendation was made by participants at the Lucerne Consultation, supra n 23 at 10.

162 See Response by Non-Governmental Organisations to the Dublin Statement, supra n 21 at para 25; and NGO Statement on Individual Petitions, ibid. at para 3(2)(a). It should be noted that the treaty bodies have already taken the initiative of establishing a Working Group on Follow-up which has made numerous recommendations on ways to harmonise and enhance methods of follow-up in respect of periodic reporting and individual communications, but has stopped short of suggesting a coordinated mechanism in this respect: see Points of Agreement of the Inter-Committee Meeting Working Group on Follow-Up, 12–14 January 2011, available at: http://www2.ohchr.org/english/bodies/icm-mc/WGfollowup.htm [last accessed 16 January 2013].

163 Pretoria Statement, supra n 21 at para 10(h); and Dublin II Outcome Document, supra n 19 at 113.
been advanced repeatedly.\textsuperscript{164} While it seems clear that a combination of these various ideas would undoubtedly enhance the rather bare-bones follow-up procedures currently operated by many of the treaty bodies, it is equally clear that the current resourcing of the treaty body system makes it almost impossible to envisage their adoption in practice, involving as they would a significant injection of human and financial capital.\textsuperscript{165}

Conscious perhaps of this reality, the UNHCHR Report takes a minimalist position in regard to the strengthening of treaty body follow-up procedures.\textsuperscript{166} While it firstly contends that the adoption of the comprehensive calendar would reduce the need for treaty body, follow-up procedures (ensuring as it would a fairly constant review of compliance by States’ with their treaty obligations), the report goes on to argue in the alternative, that the treaty body follow-up procedures should be simplified and aligned, both for concluding observations and individual communications.\textsuperscript{167} Currently, four of the treaty bodies operate formal, follow-up procedures, in the context of State reporting which variously involve requesting States Parties to provide a written report on efforts made to implement recommendations made in the concluding observations within one or two years of their adoption.\textsuperscript{168} All of the five treaty bodies that operate individual complaint mechanisms have adopted follow-up procedures, though these again are subject to variation in terms of the level of information demanded of States and the timelines involved.\textsuperscript{169} The UNHCHR Report argues that the treaty bodies should adopt common guidelines for these procedures, and take joint actions for implementing recommendations, including engaging UN country teams, issuing joint press statements and making joint efforts to urge the adoption of enabling legislation by the States Parties.\textsuperscript{170}

While these may be weak and unimaginative proposals, compared to the gamut of stronger ones put forward in the consultation process, they perhaps signify an appreciation of the reality that, in a context of scarce resources, it

\textsuperscript{164} Poznan Statement, supra n 19 at 28; Dublin II Outcome Document, ibid. at para 110; Seoul Statement, supra n 21 at para 10(d); and NGO Statement on Individual Communications, ibid at para 3.1(e).

\textsuperscript{165} The Dublin II Outcome Document recognises that the OHCHR does not have the human and financial resources to conduct regular follow-up activities, supra n 19 at para 104. This point was also made during the Consultations on TB Strengthening: Expert Meeting on Petitions, ibid. at 2.

\textsuperscript{166} This fact is specifically noted by the CCPR in its preliminary statement on the UNHCHR Report: supra n 42 at para 10.

\textsuperscript{167} UNHCHR Report, supra n 1 at 80.


\textsuperscript{169} See Follow-up procedures on individual complaints, supra n 137 at 15–22 (in relation to the CCPR, CAT, CERD and CEDAW, but not the CRPD Committee which was not yet operative at the time of writing).

\textsuperscript{170} UNHCHR Report, supra n 1 at 80–1.
is simply unrealistic to expect the treaty bodies to perform a comprehensive, follow-up role. Follow-up is obviously an extremely important activity for the treaty bodies in terms of measuring the effects of their respective performances, but it is becoming increasingly obvious that other actors and institutions have an extremely valuable role to play in this endeavour on the national and international stage. Recognising this fact, the Report goes on to recommend that the States Parties should move to establish or reinforce what it terms ‘standing national reporting and coordination mechanisms’ (SNRCM), which should have a dedicated role to play in guiding and monitoring the process of implementing treaty body recommendations as well as coordinating and preparing their periodic reports. Reflecting the notion of ‘national frameworks’ mooted during the consultation process, the SNRCM envisaged by the UNHCHR should be designed to lead consultations with NHRIs and NGOs on reporting and implementation; identify the relevant actors involved in implementation and guide them through the process; liaise with members of the judiciary to inform them of treaty body recommendations; and collect and disseminate judicial decisions relevant to international human rights law. In many respects, this model replicates, in a wider context, the type of national body that States have agreed to create in recently established human rights treaties which are designed to bolster national implementation (such as ‘national preventive mechanisms’ established under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and national ‘focal points’ established under the Convention on the Rights of Persons With Disabilities). There can be little doubt that their establishment (particularly if backed up, where necessary, with UN capacity building activities and supplemented by standing Parliamentary committees as advocated in the Report) would greatly strengthen the capacity of States to implement the treaties by providing a central axis at the national level for following up on the outputs of the treaty bodies.

Where the Report arguably disappoints is in its failure to expand further on the range of other initiatives that might be taken to improve implementation of treaty body recommendations. One of the strengths of the consultation

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172 UNHCHR Report, supra n 1 at 85–7.
174 UNHCHR Report, supra n 1 at 85.
175 Articles 17–23.
176 Article 33.
177 UNHCHR Report, supra n 1 at 83–5.
178 Ibid. at 85.
process was the willingness, first signalled by treaty body members in the Dublin Statement and reinforced in other consultations, to conceptualise reform of the system as a multi-faceted and dynamic process, involving not just the treaty bodies and the States Parties, but also NHRIs and NGOs. In regard to follow-up, it is widely recognised that properly resourced and independent NHRIs are well placed to play a crucial role in this endeavour, by raising awareness of treaty body outputs, dialoguing with government departments and liaising with treaty bodies in the matter of implementation. During the consultation process, NHRIs committed to publicising and disseminating treaty body outputs, organising training activities and keeping under review State Parties’ implementation of their obligations under the conventions. NGOs also perform vitally important follow-up activities and made similar commitments during the consultation process to raise awareness of the work of the treaty bodies by disseminating their recommendations.

While reference is made to the consultative role that such bodies may play with the mooted SNRCM, the Report could have reinforced these commitments by addressing recommendations specifically to these actors in the matter of follow-up. Furthermore, follow-up is definitely an area where synergies with the UPR can be exploited and one might have expected this issue to feature more prominently in this section of the Report, with a specific recommendation for information on non-implementation of treaty body outputs to be systematically included in the UPR compilation documents. Reference is made to the possibility of the treaty bodies making suggestions to special procedures mandate holders to conduct country visits to a State Party which is experiencing difficulties or is persistently failing to implement treaty body recommendations, but again surprisingly little attention is paid to ways and means of forging stronger links between the treaty bodies and the Special Procedures to this end. In short, while valuable suggestions are made in this section of the Report for strengthening the capacity of States to implement the treaties, it could certainly have gone further by conceptualising follow-up measures dynamically as requiring a ‘multi-tiered’ approach, ideally involving a multiplicity of responses beyond those operated by the treaty bodies, the States Parties and UN capacity building initiatives.

179 Dublin Statement, supra n 19 at para 6.
180 See Bristol Seminar, supra n 171 at 15.
181 Marrakech Statement, supra n 22 at paras 25, 26 and 28.
182 Bristol Seminar, supra n 171 at 15–8.
183 See the list of NGOs commitments to Engagement with the Treaty Bodies annexed to the Response by Non-Governmental Organisations to the Dublin Statement, supra n 21.
184 This point was made by experts at the Bristol Seminar, supra n 171 at 3; see also the Poznan Statement, supra n 19 at para 31; Consultations on TB Strengthening: Expert Meeting on Petitions, ibid. at 2; Lucerne Consultation, supra n 23 at 11; and in the Response by Non-Governmental Organisations to the Dublin Statement, supra n 21 at para 28.
185 UNHCHR Report, supra n 1 at 81.
186 Bristol Seminar, supra n 171 at 20.
(ii) General comments

Apart from follow-up measures, the UNHCHR’s Report highlights the development by the treaty bodies of general comments as making an important contribution to assisting compliance by States with their treaty obligations.\textsuperscript{187} This is definitely an area in which calls for ‘efficiency’ have sometimes eclipsed the goal of effectiveness in the consultation process. For example, some States argued that the treaty bodies should abandon the practice of adopting general comments altogether and focus exclusively on examining reports and individual communications.\textsuperscript{188} The UNHCHR Report provides a persuasive rationale for the continued adoption of general comments. By fleshing out in more detail the obligations owed by States under the treaties, the Report maintains that general comments contribute to a greater understanding of those commitments thereby facilitating greater compliance.\textsuperscript{189} Their utility has also been defended on efficiency grounds on the basis that they can in fact save time by providing guidance in deciding cases and in formulating concluding observations.\textsuperscript{190} The Report identifies room for improvement, however, in the processes by which general comments are arrived at, recommending the adoption by all of the treaty bodies of an aligned process of consultation with the States Parties, UN entities, NHRIs and NGOs during the elaboration of such comments. This should include requests to provide written submissions and/or participation in the days of general discussion devoted to the particular issue under consideration.\textsuperscript{191} Submissions made by other actors should also be made accessible on the treaty body websites.\textsuperscript{192} This recommendation responds to the demands frequently made of the treaty bodies to adopt more transparent decision-making processes in regard to the topics chosen and the elaboration of general comments, taking into account the views of other actors in the process.\textsuperscript{193} Interestingly, the Report stops short of recommending the adoption of joint general comments by the treaty bodies on thematic issues, as had been advocated in some quarters during the consultation process.\textsuperscript{194}

\textsuperscript{187} UNHCHR Report, supra n 1 at 82.


\textsuperscript{189} UNHCHR Report, supra n 1 at 82.

\textsuperscript{190} Contribution of Professor Gerald Neuman in regard to the Human Rights Committee specifically, New York Consultation, supra n 20 at 6.

\textsuperscript{191} UNHCHR Report, supra n 1 at 82.

\textsuperscript{192} Ibid. at 82.

\textsuperscript{193} See, for example, the Seoul Statement, supra n 21 at para 9(a); and the Lucerne Consultation, supra n 23 at 9.

\textsuperscript{194} Lucerne Consultation, supra n 23 at 9.
F. Enhancing the Visibility and Accessibility of the Treaty Bodies

The final batch of recommendations made in the UNHCHR Report advocates increasing accessibility to and heightening the visibility of the treaty bodies through the use of modern technologies, such as webcasting and video-conferencing and augmenting dissemination of treaty body outputs through improved UN databases, social media and national, regional and media outlets.\(^{195}\) The experience of webcasting in the context of UPR has generated persuasive arguments for its deployment in treaty body sessions as a tool to increase publicity for the work of the treaty bodies, to support training and generally as a means of demystifying the process.\(^{196}\) Webcasting of treaty body sessions would also provide a counter-balance to the sometimes distorted impression that can be transmitted of a State’s human rights record generated through the UPR process.\(^{197}\) While the value of face-to-face dialogue cannot be gainsaid, the allied technique of videoconferencing undoubtedly provides a vehicle for increasing participation in treaty body sessions for all stakeholders.\(^{198}\) All of the stakeholders involved in the consultations have expressed broad support for increasing the use of these technologies in the context of the treaty body system,\(^{199}\) though there appears to be some prevarication by the States parties on the basis of costs.\(^{200}\) In this regard, the Report acknowledges the cost implications of rolling them out in the UN buildings used by the treaty bodies in Geneva, but argues that webcasting could generate cost-savings opportunities in the long run by replacing the current costly exercise of producing summary records of meetings, while video-conferencing can also save money by reducing travel expenses.\(^{201}\) These are compelling arguments and it seems only a matter of time before the usage of these techniques is sanctioned at least on a pilot basis. Similarly, while the Report underscores the willingness of the OHCHR to improve the treaty bodies’ database and disseminate outputs through a variety of means, it makes it clear

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195 UNHCHR Report, supra n 1 at 88–93.
196 Lucerne Consultation, supra n 23 at 6; Poznan Statement, supra n 19 at para 23; and Dublin II Outcome Document, ibid. at para 41.
198 It is encouraging to note in this respect that the value of face-to-face dialogue in the reporting process was specifically recognised by many States at the informal consultation in Sion with video conferencing seen as a means only of expanding the size of its delegation: see Sion Consultation, supra n 20 at 13.
199 Lucerne Consultation, supra n 23 at 6; Poznan Statement, supra n 19 at para 23; and Dublin II Outcome Document, ibid. at para 41. See also the CCPR Preliminary Statement on the UNHCHR Report, supra n 42 at para 13; and the NGO Preliminary Response to the UNHCHR Report, supra n 37 at 3.
200 New York Consultation, supra n 20 at para 49; see also the OHCHR Compilation of Excerpts, supra n 79 at 25–8.
201 UNHCHR Report, supra n 1 at 90. Proposals to reduce the translation of summary records are contained elsewhere in the Report at 58–9.
that such activities depend completely on the allocation of necessary resources by the States parties.202

4. The Road Ahead: The Inter-Governmental Process on Treaty Reform

As noted previously, one of the distinguishing features of the ‘strengthening process’ that has marked it out from previous reform efforts has been the elicitation of stakeholder views. This approach, combined with the assumption of leadership by the UNHCHR and her office in exploring ways of improving the system, are recognised elements of transformation methodologies commonly used across a range of entities from businesses, hospitals to government bodies and agencies.203 Their deployment by the UNHCHR in the context of treaty body reform, however, clearly served to irritate the sensibilities of a number of States during the consultation process. A summary of the Geneva consultation of the States Parties on treaty body strengthening records the view of several States that there was a need for a ‘leading role of States Parties in the process’; that States should not be conceptualised as being on a par with civil society or NHRIs and that ultimately the outcome of the process would rely on States to be ‘legally valid and meaningful’.204 Taking the lead on this perspective, the representative of the Russian Federation tabled a resolution before the General Assembly in February 2012, aimed at establishing an open-ended intergovernmental forum to conduct negotiations on ways of strengthening the treaty body system.205 As the ISHR has noted, initial indications were ominous as to the inclusivity of this process: the first draft of the resolution apparently made no reference to the High Commissioner’s strengthening process and, even though the final draft promised to take account of her Report, the text clearly sought to marginalise its importance and that of other stakeholder input, promising to take account of the latter on an informal basis only.206 Although the Resolution was less than enthusiastically endorsed by a considerable number of States, its ultimate adoption signalled

202 Ibid. at 93.
203 See generally, Nightingale and Srinivasan, Beyond the Lean Revolution: Achieving Successful and Sustainable Enterprise Transformation (New York: Amacom, 2011). The authors (at 2) define an ‘enterprise’ as ‘a complex, integrated, and interdependent system of people, processes and technology that creates value as determined by its key stakeholders’.
204 Geneva Consultation, supra n 20 at 3.
206 In this respect, the ISHR points out, para 6 of GA Res 66/295 requests the President of the General Assembly to ‘work out separate informal arrangements, after consultation with Member States, that would allow the open-ended intergovernmental process to benefit from
the view of a significant number that States Parties should be controlling the agenda of treaty body reform.207

Thus far, the process has taken the form of two informal meetings by the co-facilitators of the process (Iceland and Indonesia) with Member States, numerous bilateral consultations and thematic discussions on 16 to 18 July 2012 respectively.208 Despite prevailing uncertainty as to the effect that the inter-governmental process would have on the authority of the UNHCHR Report, the co-facilitators decided to use it as a template for discussions with the States Parties and in a civil society forum convened on 4 September 2012.209 Apart from the latter event, the process has been predictably minimalist in terms of its engagement with stakeholders, resulting in NGOs210 and treaty bodies211 alike expressing concern about their lack of involvement in the proceedings. Very little concrete information has emerged from the discussions to date. The co-facilitators’ formal report to the President of the General Assembly merely records that there is ‘common ground’ on some unspecified issues, though others (such as the comprehensive reporting calendar, resources and capacity building) require further clarification.212 Some delegations were apparently of the view that issues including the simplified reporting procedure, the requirements of summary records and the need for the inputs and expertise of the human rights treaty bodies, national human rights institutions and relevant non-governmental organizations, bearing in mind the intergovernmental nature of the process: (emphasis added): ibid.


209 A ‘non-paper on themes for discussion’ distributed by the co-facilitators of the inter-governmental forum to civil society organisations on 31 July 2012 substantially reproduces the recommendations and ideas generated by the UNHCHR in her Report as the basis for discussion at a civil society forum with those organisations, available at: https://docs.google.com/file/d/0B5YtL2TUo5vJb1B5WHBERm1Ma1U/edit?pli=1 [last accessed 16 January 2013].

210 Apart from the civil society forum, ISHR reports that only two NGOs were invited to participate formally in panel discussions during the State consultations. NGOs were able to observe discussions and take part in side events only: ISHR, General Assembly Extends Intergovernmental Process on Treaty Body Strengthening, 27 September 2012, (‘ISHR Report on the Inter-Governmental Process’), available at: http://www.ishr.ch/treaty-bodies/1363-general-assembly-extends-intergovernmental-process-on-treaty-body-strengthening, [last accessed 16 January 2013]. NHRIs were apparently allowed to make an intervention at the opening of the thematic discussions on 16–18 July 2012.

211 Report of the Chairs of the Human Rights Treaty Bodies on their 24th Meeting, supra n 154, para 6. The co-facilitators held a video conference with the Chairpersons on 25 June 2012, at the Chairpersons’ request, on the inter-governmental process.

212 Report of the Co-Facilitators, supra n 208. Other informal summaries indicate that while several States have supported the proposal for a comprehensive reporting calendar in principle, they have simultaneously expressed concern that it would be ‘unsustainable and very costly’: ISHR Report on the Inter-Governmental Process, supra n 210.
focused concluding observations could be addressed in the short term, while others wished not to focus on specific issues, preferring instead to discuss all issues ‘on an equal footing’ and to come up with a final comprehensive agreement.\(^{213}\) A cohort of hard line States, known as the ‘cross-regional group’\(^{214}\) has been pushing a specific agenda, apparently aimed at diminishing the authority of the treaty bodies and their members by continuing to advocate for a code of conduct similar to that which has been imposed on the Special Procedures mandate holders and greater transparency in the interfacing between the treaty bodies and NGOs.\(^{215}\) At the request of the co-facilitators, the General Assembly has voted to extend the intergovernmental process until its 67th session, effectively providing for the continuation of negotiations through to an unspecified time in 2013.\(^{216}\) In the meantime, on a more positive note, the Chairpersons of the treaty bodies have welcomed the broad thrust of the proposals in the UNHCHR Report and have recommended that each committee should carefully review those recommendations addressed to the treaty bodies with a view to potentially implementing them in coordination with other treaty bodies.\(^{217}\) Indeed, despite objections from some of the States Parties, the OHCHR appears to be suitably determined to encourage this process on the part of the treaty bodies,\(^{218}\) notwithstanding the evasiveness that appears to be defining the inter-governmental process.

5. Conclusion

The product of a sustained and well-executed consultation process, the UNHCHR Report makes a number of concrete and practical suggestions that, if implemented, would undoubtedly increase the efficacy of the UN human rights treaty system. These include proposals for a simplified reporting procedure, alignment of the working methods of the treaty bodies, enhancing the

\(^{213}\) Report of the Co-Facilitators, ibid. at 5.

\(^{214}\) These include Belarus, Russia, Bolivia, China, Cuba, Iran, Nicaragua, Cuba, Pakistan, Syria and Venezuela: ISHR Report on the Inter-Governmental Process, supra n 210.


expertise and independence of the treaty body members, improving access to the system and raising its profile in general. Although part of a multi-stakeholder process, the recommendations made in the Report are aimed chiefly at the ‘two-key decision makers’—the States Parties and the treaty bodies. Many of those targeted at the treaty bodies (concerning harmonisation and alignment of working methods) are constructive, specific and cost-free and will require mainly a change of mindset to implement. Some of the more ambitious proposals, however, (such as the comprehensive reporting calendar) would require such significant political will from the States Parties and a corresponding injection of financial resources as to make it difficult to envisage their immediate adoption in practice. With commitments already made by NGOs and NHRIs in the consultation process, the ball is now firmly in the court of the States Parties and the treaty bodies to engage meaningfully with the recommendations made in the Report and to take decisions on them. Otherwise, it may end up being consigned to the history books as yet another valiant attempt to galvanise an increasingly ineffective, but worthy, system crying out for repair.

219 Ibid. at 10.