'Digital shift': what have the UN treaty bodies achieved, and what is still missing?

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Introduction

Considering the extent to which the effectiveness of UNTBs mattered to Christof Heyns, this essay looks into the extent to which the ten existing United Nations (UN) human rights treaty bodies (UNTBs) have digitalised their operations and more importantly, why further digitalisation is urgently required. The essay considers digitalisation exclusively from a procedural perspective, rather than from a substantive perspective. In other words, it does not consider the extent to which UNTBs are dealing with the human rights impact of digitalisation and new technologies. The essay explores what is missing, how to fill the gap, and some of the hindrances and challenges that need to be overcome. The essay refers to examples of how digitalisation has been implemented by relevant stakeholders such as states, civil society and national institutions in their interactions with UNTBs, and proposes areas of further research for improvements. Although I identify areas where digitalisation has had benefits beyond the UNTBs, and where digitalisation related to UNTBs could benefit other international human rights bodies, my main focus remains on the UNTBs

Looking back

A historical perspective: the predominance of paper

In 2016, a UN Assistant Secretary General described the UN as 'a Remington typewriter in a smartphone world'.[1] His assertion could certainly apply to the working methods of the UNTBs, the vast bulk of which have evolved with a limited and slow pace since the first

1   A Banbury 'I love the UN, but it is failing' 18 March 2016 https://www.nytimes.com/2016/03/20/opinion/sunday/i-love-the-un-but-it-is-failing.html   (accessed 20 December 2021).

Committee started operating over 50 years ago.[2] This is notably true of digitalisation in the work of UNTBs: It is only in the early 21st century, and more specifically in the late 2010s, that the UNTBs finally said farewell to paper. Throughout their initial 50 years, the Committees initially entirely, and later mostly, worked on paper. Civil society organisations were required to submit paper copies of their submissions to the Committees until the mid to late 2010s – more than 15 years after the internet started being democratised. As a young intern in the Secretariat of the UN Committee on the Rights of the Child (CRC Committee) back in 2003, I recall having to organise huge boxes of documents for each Committee member. For each state party under review, each of the 18 members would have paper copies of all documentation made available, including reports from the state party, reports from civil society and UN entities. For every single state party, and particularly those attracting more global attention, this was the equivalent of thousands of pages. One would want to be able to assess the amount of paper which had to be produced for each of the UNTB sessions over 50 years, and the environmental impact this contributed to, including the number of trees required to produce those tons of paper. Of course, the vast majority of that documentation was not read by most UNTB members as it was physically impossible. Members of the UNTBs have always relied on summaries of relevant documentation prepared by the Secretariat.

The website of the Secretariat of the UNTBs, the Office of the High Commissioner for Human Rights (OHCHR) was created in the late nineties,[3] and remarkably, its original versions already included a database of UNTB documents. The current OHCHR UNTB database was established in 2005.[4] It brought public and confidential documents together in a single place, and to this day it provides information on the status of ratification and states' reporting history.

A joint NGO submission to the annual meeting of UNTB chairs in 2015 noted: [5]

> The outdated practice of requiring NGOs to provide numerous hard copies of their reports comes at a major environmental cost and constitutes a hindrance for NGOs from the Global South with limited access to international

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2   The Committee on the Elimination of Racial Discrimination, the first of the ten existing UNTBs, started to operate in 1970.

3   Internet archive wayback machine, 1,704 captures: 21 April 1997-10 December 2021: Office of the High Commissioner for Human Rights https://web.archive.org/web/20021124004514/http://www.unhchr.ch/ (accessed 20 December 2021).

4   United Nations Human Rights Treaty Bodies: UN Treaty Body Database https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx (accessed 20 December 2021).

5   Joint NGO Statement 2015 Annual Treaty Body Chairpersons Meeting 22-26 June 2015, San José at 5 https://tbinternet.ohchr.org/Treaties/CHAIRPERSONS/Shared%20Documents/1_Global/INT_CHAIRPERSONS_NGO_27_23555_E.pdf (accessed 20 December 2021).

mail. It is also less relevant at a time when the overwhelming majority of TB members have access to electronic devices during sessions.

It is only around 2016 that UNTBs finally all implemented a paperless policy, and stopped requiring stakeholders to submit paper copies of their submissions, with discrepancies between Committees in the timeline of implementation. One of the functions of the international NGOs supporting specific UNTBs in Geneva, who are now part of the TBnet network,[6] was to help national NGOs in the submission of paper copies of their reports, given that for many of them, making sure that paper copies would make it on time to *Palais Wilson* in Geneva was challenging, and it was a relief to be able to count on a Geneva based ally.

Paper copies of documents were gradually replaced by soft or digital copies of documents, which for UNTBs are available on an extranet accessible to UNTB members and Secretariat. The extranet was definitely a move in the right direction in terms of reducing the environmental impact related to paper use, as well as the inherent benefits of digitalisation (including search functions). Nevertheless, the extranet also has limitations. For instance, it is clustered according to Committee, meaning that members may not have access to documents submitted recently in relation to a country coming up under review if those documents were submitted to a different Committee. Not all Committee members seem to be aware of all sections of the extranet they have access to, and there is evidence that in some instances, Committee members do not have access to documents such as individual communications and annexes made available on the extranet, and they instead rely on summaries or draft decisions or Concluding Observations (COs) prepared by the Secretariat. Committee members also do not have access to the OHCHR internal database of individual communications (ICs). Unless their attention is specifically directed by the Secretariat, Committee members may not be aware of other pending communications under review in fellow Committees. Situations have been reported of Committee Rapporteurs on ICs not having access to all ICs submitted to their own Committees unless they specifically request access, resulting in potential significant losses of information, due to poorly managed access to digital documentation, and the predominance

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6   Members of the network include the Centre on Civil and Political Rights, working with the Human Rights Committee, World Organisation against Torture, working with the Committee against Torture, Child Rights Connect, working with the Committee on the Rights of the Child, IMADR , working with the Committee on the Elimination of Racial Discrimination, IWRAW Asia-Pacific, working with the Committee on the Elimination of Discrimination against Women, International Disability Alliance, working with the Committee on the Rights of Persons with Disabilities, and the Global Initiative for Economic, Social and Cultural Rights, working with the eponymous Committee.

of an institutional and bureaucratic culture in which confidentiality has become synonymous with impenetrability.

A 1985 UN internal report mentioned that UN 'human rights' – referring to the then UN entity preceding the current Office of the High Commissioner for Human Rights (OHCHR) – 'deserve the best possible computerized management, substantive and administrative support systems and services'.[7] This is an affirmation that remains true over 35 years later. Despite significant progress made in the digitalisation of their work, the UNTBs have so far mostly failed to make the most of the digital shift to facilitate and improve their work. As we will further unpack in the next sections, that situation is due to an accumulation of factors, and responsibilities.

The benefits of digitalisation

The impact of international human rights treaties on the ground was a central concern throughout Christof Heyns' career.[8] The landmark initiative which he undertook with Frans Viljoen and many others over a timespan of 20 years, which was being completed at the time of his unexpected and tragic passing, constitutes one of the most comprehensive global initiative to document the difference that treaties make on the ground. International human rights treaties have made a huge difference, they contribute to changing peoples' lives on all world corners, including thanks to the efforts of their main custodians, the UNTBs, and a myriad of advocates who tirelessly work to make dry legal standards a reality for all individuals, especially those in situations of vulnerability. Christof was capable of thinking outside of the rigid UN box and he had come up with a range of suggestions and ideas to improve the impact of the UNTBs on the ground, including through more in-country and in-region presence.[9] Suggestions from Christof and others contributed to the very first ever in-region session of a UNTB, when the CRC Committee undertook a regional session in the Pacific in March 2020, a development hailed as historic.[10]

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7   E D Sohm (Joint Inspection Unit) 'The changing use of computers in organizations of the United Nations system in Geneva: Management issues' (1985) Geneva. JIU/REP/85/2   https://www.unjiu.org/sites/www.unjiu.org/files/jiu_document_files/products/en/reports-notes/JIU%20Products/JIU_REP_1985_2_English.pdf (accessed 20 December 2021).

8   CH Heyns & F Viljoen 'The impact of the United Nations human rights treaties on the domestic level' (2001) 23 483-535.

9   CH Heyns & W Gravett 'Bringing the UN treaty body system closer to the people' 14 August 2017 https://www.icla.up.ac.za/news/archive/2017/202-bringing-the-un-treaty-body-system-closer-to-the-people (accessed 20 December 2021).

10   A Bowe & J Cooper 'Putting people at the heart of the human rights treaty body system' *Open Global Rights* 17 June 2020 https://www.openglobalrights.org/putting-people-at-the-heart-of-the-human-rights-treaty-body-system/   (accessed 20 December 2021).

As further expanded below, the COVID-19 crisis and the global lockdown it imposed highlighted the dire need to speed up and improve the digitalisation of UNTBs, including their sessions. Although the webcasting of all UNTB sessions is now well established, the impossibility for UNTB experts to travel to Geneva during the COVID pandemic to hold their sessions exposed a glaring gap in their working methods, and opened a huge accountability breach, as dozens of state parties were able to escape scrutiny.[11]

Despite the enormous challenges induced by the COVID pandemic, several actors pointed to the opportunities a global ban on travel represented for civil society participation from a distance. Ochoa and Reinsberg argued as follows: 'If advocates can regularly, reliably, and meaningfully participate in hearings and meetings remotely, participation would become much more feasible for smaller and farther-flung organizations.'[12] Speaking about the vast potential offered by the first ever online session of the African Commission on Human and Peoples' Rights, Biegon noted that 'the virtual ordinary session had a "democratising effect" on the surface. Anyone could join, as access to the virtual platform was contingent on a simple online registration'.[13]

The benefits of optional online participation in UNTB sessions for civil society could be massive, especially for those with limited financial resources, knowledge and connections to the Committees, those geographically more remote from Geneva and who may face considerable restrictions in obtaining visas to travel to Switzerland. It should not come at the expense of restrictions for in person access though. National NGOs have had to rely heavily on the support and facilitation provided by Geneva based NGOs to participate in sessions of the Committees in Geneva, despite the fact that in principle, anyone can participate in these sessions, notably given that UNTBs, unlike the UN Human Rights Council for instance, does not require NGOs to be ECOSOC-accredited to participate. This has led to some of these international NGOs being labelled as 'gatekeepers'.[14] For many groups,

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11 International Service for Human Rights 'Treaty bodies/State scrutiny by UN human rights bodies must resume' 7 October 2020 https://ishr.ch/latest-updates/treaty-bodies-state-scrutiny-un-human-rights-bodies-must-resume/ (accessed 20 December 2021).

12 C Ochoa & L Reinsberg 'Cancelled, postponed, virtual: COVID-19's impact on human rights oversight' *Open Global Rights* 17 July 2020 https://www.openglobalrights.org/cancelled-postponed-virtual-covid-19-impact-on-human-rights-oversight/ (accessed 20 December 2021).

13 J Biegon 'Can the virtual sessions of the African Commission generate more civil society participation?' *Open Global Rights* 26 October 2020 https://www.openglobalrights.org/can-the-virtual-sessions-of-the-african-commission-generate-more-civil-society-participation/ (accessed 20 December 2021).

14 F McGaughey 'From gatekeepers to GONGOs: a taxonomy of non-governmental organisations engaging with United Nations human rights mechanisms' (2018) 36 111-132.

such as indigenous peoples for example, the ability to participate in sessions in Geneva has been limited, despite the fact that they may suffer some of the worst forms of discrimination. The limited ability of some civil society actors to participate in sessions in Geneva has a clear negative impact on the extent to which their issues of concern are reflected in the Concluding Observations (COs), and generally on the national domestication process of UNTB COs. Despite the progresses made through the move towards the full digitisation of documents, including civil society submissions to the UNTBs in recent years, more remains to be done to enable the full participation of civil society in relevant UNTB meetings, including private bilateral briefings between civil society and UNTB members, most of which were entirely held in person only behind closed doors in *Palais Wilson* or *Palais des Nations* prior to COVID-19.

The benefits of digitalisation are also obvious insofar as knowledge management is concerned, specifically for research purposes. The growing digitalisation, archiving and indexing of UNTB COs and views on individual communications in the last two decades has opened up huge opportunities to access information, and contribute to a better dissemination of UNTB outputs. Interestingly, the process was nearly systematically taken over by the UNTB Secretariat following initiatives from third parties. In other words, the processes were rarely initiated by the UNTBs themselves. The current OHCHR-hosted Universal Human Rights Index[15] was preceded by various online databases of UNTB documents and COs, including the University of Minnesota human rights library.[16] The current OHCHR-hosted jurisprudence database[17] was preceded by various online databases on individuals decisions of the Committees, such as the CCPR Centre database of Human Rights Committee decisions.[18] The online webcasting of UNTB sessions, now available on UNTV, was undertaken for years by NGOs. The same can be said of the online presence of UNTBs on social media, which has been chronically lagging behind.

The benefits of digitalisation can also be massive from a financial perspective. The costs of flying UNTB members, states delegates, NGO and NHRI representatives to Geneva are huge. As noted in an academic article about the 2020 review of UNTBs, 'having some online meetings would save huge amounts of resources, not least in terms of the costs

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15   United Nations Human Rights, Office of the High Commissioner: Universal Human Rights Index https://uhri.ohchr.org/en/ (accessed 20 December 2021).

16   University of Minnesota: Human Rights Library http://hrlibrary.umn.edu/research/uncountryreports.html (accessed 20 December 2021).

17   United Nations Human Rights: Office of the High Commissioner 'Jurisprudence' https://juris.ohchr.org/ (accessed 20 December 2021).

18   Center for Civil and Political Rights 'Database and case law briefs' https://ccprcentre.org/database-decisions/ (accessed 20 December 2021).

associated with TB members' travel and per diems paid for living away from home. It would also save states having to send lots of people to Geneva.'[19] It was not uncommon, before COVID, for sessions normally held in *Palais Wilson*, to be relocated to *Palais des Nations* instead, in order to be able to fit all participants in the room. Some reviews of states parties drew over 50, sometimes over 100 participants, which notably contributed to some actors suggesting that reviews could benefit from having less people in one room at the same time.[20]

The inability of UNTBs to adapt to the impossibility to host in person reviews of states parties during the COVID-19 pandemic led a number of UNTB members and their allies to emphasise that such reviews ought to be in person. However, the argument was influenced by the fact that the UNTB members' presence in Geneva is compensated with highly generous UN-standard daily subsistence allowance (DSA), and many members were vocal about the fact that they could not work without compensation.[21] Given the environmental and financial costs of flying people to Geneva, the potential savings enabled by virtual sessions could be considerable. Quite clearly, much of the work of the UNTBs requires in person interaction. Yet hybrid meetings, combining in person and remote participation, or meetings from individuals based in the same world regions, as pioneered by the Subcommittee on Prevention of Torture (SPT),[22] could be considered.[23] Various precedents have demonstrated that the remote participation of state delegations can come with positive benefits, notably the possibility for more participants to join, and thus an ability for states to provide immediate responses to often highly technical questions, rather than having to reach out to capitals after an exhausting day of review, asking for responses to be provided on the following day. As mentioned above, the remote participation of NGOs in UNTB sessions can also bring far-reaching benefits.

Substantial inspiration may be sought from the formidable processes and mechanisms put in place in a number of countries and regions, to

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19   J Sarkin 'The 2020 United Nations human rights treaty body review process: prioritising resources, independence and the domestic state reporting process over rationalising and streamlining treaty bodies' (2021) 25 (8) s 1301 at 1310.

20   J Krommendijk 'Less is more: proposals for how UN human rights treaty bodies can be more selective' (2020) 38 5-11.

21   See discussion below, under the heading 'The elephant in the room: compensation for online work and sessions'.

22   O D Frouville 'The United Nations treaty bodies in a transition period – Progress Review March-December 2020 Chronicle' (2021) https://www.geneva-academy.ch/joomlatools-files/docman-files/working-papers/The%20United%20Nations%20Treaty%20Bodies%20in%20a%20Transition%20Period.pdf (accessed 20 December 2021) at 8.

23   The current chair of UNTB chairpersons said the same in her address to the UNGA on 21 October 2021: 'full state-party reviews should always be held in person, but there are areas of TB work that could benefit from moving online.

facilitate reporting and following up to UNTB COs and views, through the use of suitable tech tools. Some of these mechanisms, including National Mechanisms on Reporting and Follow up,[24] and tools such as National Recommendations Tracking Databases[25] are supported by the OHCHR. Other good practices can be found in the establishment of online tools to report to UN bodies, and then track and facilitate follow up and implementation of UNTB COs and views;[26] or tech tools to gather human rights information for periodic reviews.[27] Such tools have been developed by both state and non-state actors and should ideally be accessible to both.[28]

These examples demonstrate that the potential impact of tech tools on the inputs to, and outputs from UNTBs can be massive. Perhaps more importantly, they can come at very minor costs, and thus enable significant financial savings which in turn could be reinvested in technological capacity building for UNTB members and users.

The challenges and limits of digitalisation

Although the benefits of digitalisation on UNTB working methods are clear, they also induce several challenges. A number of UNTB members have deplored the end of paper, citing a preference to work on paper copies, and some members still work with paper copies which they arrange to print, including for individual communications.[29] More broadly, the extent to which digitisation of working documents has been fully integrated by UNTB members varies across individuals. As mentioned above, fragmentation of information, limited access to documents across the intranet or share point, and the notoriously dysfunctional management of individual communications[30] are

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24   See in this volume of essays, R Murray 'The 'implementation' in 'National Mechanisms for Implementation, Reporting and Follow-up': what about the victims?' xxx.

25   Presentation of the tool see United Nation Human Rights: Office of the High Commissioner 'National recommendations tracking database' available at https://nrtd.ohchr.org/about, see also, 'National Recommendations Tracking Database' available at https://www.youtube.com/watch?v=0likHkHUXuU see also, Online tool United Nations Human Rights: Office of the High Commissioner available at https://nrtd.ohchr.org/login (accessed 20 December 2021).

26   An international example is the Impact OSS database https://impactoss.org/impactoss/

27   See V Ploton & C M Sehat 'Adapting tech tools for human rights monitoring: lessons from Burundi' 20 July 2021 https://www.openglobalrights.org/adapting-tech-tools-for-human-rights-monitoring-lessons-from-burundi/ (accessed 20 December 2021).

28   See national tools developed in Samoa 'Samoa's implementation plan for human rights & development' available at https://sadata-production.firebaseapp.com/; or in Paraguay https://www.mre.gov.py/simoreplus/ (accessed 20 December 2021).

29   HR Ctte member, interview conducted in Geneva in September 2021.

30   See references to case management in C Callejon, K Kemileva & F Kirchmeier 'Treaty bodies individual communications procedures: providing redress and reparation to victims of human rights violations' (2019) The Geneva Academy of International Humanitarian Law and Human Rights https://www.geneva-academy.ch/joomlatools-files/docman-files/UN%20Treaty%20Bodies%20Individual%20

additional challenges. The digitisation processes for external users of UNTBs has also been mostly ad hoc and has resulted in a fragmentation of practices across the Committees, which can be very confusing for users engaging with multiple Committees. For instance, submissions to periodic reviews by the CRC Committee now have to be made through an online platform hosted by the independent NGO Child Rights Connect.[31] An online platform for the submission of NGO reports to CESCR was also recently established by the Secretariat,[32] drawing on the existing platform available for NGO submissions to the Universal Periodic Review, apparently without much if any prior consultations with civil society users. All other UNTBs do not have online platforms for the submission of civil society reports, which can be submitted through the more traditional or regular general email addresses.

An overview of how the UNTBs have gradually adopted new technologies for their work demonstrates a pattern of systemic delays and difficulties in the adoption of these tools, and during transitions. The pattern repeats itself over and over from the delays in establishing websites and databases two decades ago,[33] to the years it took for OHCHR to establish the webcasting of sessions,[34] and the adoption of online platforms for meetings more recently. At a time when the whole world shifted to online tools, notably Zoom, it took months for the UNTBs to be able to start using this platform and instead they had to use other platforms which were notoriously dysfunctional[35] This pattern of delays and systemic inability to take advantage of new technologies in working methods is due to a range of factors, including heavy UN bureaucracy,[36] institutional cultures of opacity and secrecy, undue interference of states in the work of the OHCHR Secretariats and in the UNTB membership, ageing and inadequate UNTB membership, and an institutionalised aversion to change.

Some of the inherent limits to digitalisation in the work of UNTBs relate to the extent to which new tools and technologies are actually used by UNTB members, and users of the system. For instance, it appears that not all UNTB members are using the intranet or sharepoint

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Communications.pdf (accessed 20 December 2021).

31 Child Rights Connect 'Submitting reports and additional information' https://www.childrightsconnect.org/upload-session-reports/ (accessed 20 December 2021).

32 United Nations Human Rights: Office of the High Commissioner 'CESCR submissions system' https://cescrsubmissions.ohchr.org/Account/Login.aspx?ReturnUrl=%2f (accessed 20 December 2021).

33 See this essay, under the heading 'A historical perspective: the predominance of paper'.

34 Joint submission (n 5). A joint NGO submission to the UNTB chairs of 2015 mentioned that the process of OHCHR putting in place the webcasting of sessions was 'taking too long'.

35 Frouville (n 22) at 2.A.

36 See F Baumann 'United Nations management – an oxymoron?' (2016) 22 461-472.

made available to access relevant information about countries under review, or about procedural matters. In spite of the improvements made to the Universal Human Rights Index recently, and the myriad of information made available through the platform, its use could be better democratised amongst potential users, and it should also integrate relevant existing data on states compliance with UNTB COs and views.[37]

A key lesson learnt in relation to the adoption of new technologies by UNTBs in recent years is that ownership taking is crucial. Change in working methods of UNTBs have been more successful when they have been the result of bottom up processes, rather than top down, and when there has been a collective consultation process, with a clear and strong internal leadership. This has applied to the adoption of new technologies: change processes, such as the end of paper copies, which have been 'imposed' or piloted from outside the Committees themselves, often by the OHCHR, have often faced resistance or failed.[38] Although the UNTBs have a soft governing structure through the annual meetings of chairpersons, those have proved unable to bring about any meaningful change across the system, despite repeated attempts to do so.

An International Service for Human Rights (ISHR) submission to the preparations of the 2020 review of UNTBs[39] noted:

> Unless and until fundamental changes can be brought to the chairs meeting mandate, or a new architecture adopted, fragmentation of working methods among the treaty bodies will persist

This applies to changes related to the integration and use of new technologies which can only succeed insofar as most members of the UNTBs are convinced or at least see the benefits of such changes. Unfortunately, UNTB members have not always been suitably consulted in the choice of technological tools affecting their work. This was notably illustrated by the choice of online platforms for UNTB meetings during the pandemic. As Olivier de Frouville recalls:[40]

> The UN (imposed) Interprefy for meetings with simultaneous interpretation and Webex for meetings without interpretation. Treaty body members generally expressed their dissatisfaction with this choice owing to the fact

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37   V Ploton 'The implementation of UN treaty body recommendations: an overview of latest developments and how to improve a key mechanism in human rights protection' (2017) 24 219 at 225.

38   This was notably the case of the notorious proposal by then High Commissioner Louise Arbour for a unified standing treaty body, which was rejected notably due to lack of ownership by a number of UNTB members

39   International Service for Human Rights 'ISHR submission to OHCHR Questionnaire in relation to General Assembly resolution 68/268' (2019) secs 2.5 at 8, https://www.ohchr.org/Documents/HRBodies/TB/HRTD/3rdBiennial/CSO/InternationalServiceHumanRights.docx (accessed 20 December 2021).

40   Frouville (n 22).

that these platforms were deemed too complicated and not very reliable. Another digitalisation challenge is what information and data can and should be made public. This is particularly relevant for UNTBs, which have traditionally applied a culture of confidentiality,[41] which has been described as equivalent to opacity.[42] It is undeniable that much of the information handled by UNTBs is sensitive insofar as it relates to victims and their relatives who may be at risk of persecution, reprisal or other forms of serious harm. Digitalisation of information must preserve the confidentiality of sources and victims as relevant, including through the use of encryption and secure communication channels, which NGOs have asked the OHCHR to improve.[43] Nevertheless, a number of inputs and outputs of the UNTBs could be made public but are not. Those include all submissions by NGOs to countries under review where there is consent from authors. UNTB inquiries have also been described as opaque, notably because final reports may not be made public.[44] Other examples include responses from states parties to CERD early warning and urgent actions, which are not made publicly available on the CERD website, or correspondence between UNTBs and states parties on reprisals, which are confidential except for the Committee against Torture (CAT)[45] and the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW).[46] A comprehensive digital shift process for UNTBs and beyond within OHCHR should also consider what information is currently not public but should be, and the other way round.

41   For instance, in the early 2000s, the only office in Palais Wilson which had to be locked with a key was the CAT Secretariat.

42   For instance, in relation to the inquiry procedure. See 'Joint NGO Statement on the occasion of the Twenty-ninth meeting of UN treaty body chairs' 27-30 June 2017, New York at 5, https://www.ohchr.org/Documents/HRBodies/TB/AnnualMeeting/29Meeting/JoinNGOStatement.pdf (accessed 20 December 2021).

43   See International Service for Human Rights 'COVID-19 | Principles and recommendations on ensuring civil society inclusion in UN discussions' 24 April 2020 https://ishr.ch/latest-updates/covid-19-principles-and-recommendations-ensuring-civil-society-inclusion-un-discussions/ (accessed 20 December 2021).

44   In instances such as the four-year CAT inquiry on Egypt, only a summary was made public. See United Nations Report of the Committee against Torture, Sixtieth Session 18 April-12 May 2017: United Nations, New York (UN Doc A/72/44 secs 58-71).

45   United Nations Human Rights: Office of the High Commissioner 'Committee against torture: reprisals letter' https://www.ohchr.org/EN/HRBodies/CAT/Pages/ReprisalLetters.aspx (accessed 20 December 2021).

46   United Nations Human Rights Treaty Bodies: UN Treaty body Database' https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&CountryID=93&TreatyID=7&DocTypeID=130 (accessed 20 December 2021).

A gap between Geneva and the field: case study on webcasting of UNTB sessions

The live webcasting of public sessions of UNTBs, especially periodic reviews of states parties, constitutes one of the successes of digitalisation. For those who, like Christof Heyns, are concerned with the impact of UNTBs on the ground, the ability for all those who cannot be physically present in Geneva to follow and engage in country reviews made a major difference.

The webcasting of UNTB sessions began in early 2012, and was originally undertaken by a small group of NGOs dedicated to support NGO engagement with the UNTBs, most of which subsequently formed part of the TBnet coalition. These Geneva-based NGOs live webcasted public sessions of the Committee with their own very limited resources on the platform http://www.treatybodywebcast.org/. The quality of image and sound was often unstable, and because they could only use one camera, most of the speakers could not be filmed properly. Despite the difficulties and the 'makeshift' nature of the original practice, it quickly picked up across most public UNTB sessions, and the June 2012 report of then High Commissioner Pillay[47] on strengthening UNTBs, the most comprehensive ever UN report on the system, included a dedicated paragraph with suggestions to systematise the webcasting of sessions. The emerging practice clearly filled a glaring gap, and states subsequently acknowledged the need for the UN to take over the process, which the NGOs had been calling for from early on, in GA resolution 68/268 of April 2014, which instructed the UN to take over the webcasting 'as soon as feasible'.[48]

Following a lengthy and bureaucratic process, typical to the UN, including needs assessment, identification of providers and technical works, it was only in August 2016 that the webcasting effectively became functional and NGOs were finally able to stop filling the gap on their own. The webcasting of sessions has led to significant improvements in bringing the UNTBs closer to the ground, including a series of public events at the national level,[49] often organised with supports from UN

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47 N Pillay 'Strengthening the United Nations human rights treaty body system: a report by the United Nations High Commissioner for Human Rights' June 2012 https://www2.ohchr.org/english/bodies/HRTD/docs/HCReportTBStrengthening. pdf (accessed 20 December 2021).

48 United Nation General Assembly 'Strengthening and enhancing the effective functioning of the human rights treaty body system' Resolution adopted by the General Assembly on 9 April 2014, Sisty-eighth session, res 68/268; secs 22.

49 On the occasion of the 2014 review of Ireland by the HR Ctte, See Media Advisory-Rights Groups Gather in Dublin as Ireland Faces UN in Geneva available at https://www.iccl.ie/archive/media-advisory-rights-groups-gather-in-dublin-as-ireland-faces-un-in-geneva/ (accessed 20 December 2021).

country teams, to follow the reviews of states parties, and discuss amongst relevant stakeholders.

It is worthwhile noting that when she launched her report nearly ten years earlier, Navi Pillay already acknowledged that 'technology can and should serve human rights' and called for 'the utilization of new technologies, including webcasting and videoconferencing to increase visibility and accessibility to these treaty bodies'.[50] Although webcasting is now fully operational, the COVID crisis and the obligation to work remotely for all clearly demonstrated that the UNTBs are still not able to work online, and far from making the most of the potential opportunities of videoconferencing, and online work more broadly. Some of the reasons for this are analysed below.

The current situation

Digitalisation and the 2020 review of UNTBs

As mentioned above, the need for UNTBs to better and more fully embrace new technologies was identified much earlier, including as part of the comprehensive 2012 Pillay report. Yet, aside from some of the highlighted developments such as webcasting of sessions, much remains to be done.

The need was also clearly and widely repeated and articulated ahead of the 2020 review. For instance, a review of state responses to the third UN Secretary General biennial questionnaire on UNTBs[51] found that 21 states

> recommend improving the use of information technology throughout the treaty body system. Further facilitating the use of video-teleconferencing, improving the OHCHR website's navigation and search functions, as well as allowing for the broadest possible broadcasting of treaty body meetings (also through social media) are examples of cost-effective means of improving accessibility to the system.[52]

In preparation of the 2020 review, ISHR noted that 'limited transparency, visibility, and accessibility of the system … considerably limits engagement by national level civil society and national human

50   United Nations Human Rights: Office of the High Commissioner 'A call to save the human rights treaty body system', 22 June 2012 https://www.ohchr.org/en/NewsEvents/Pages/StrengtheningTreatyBodies.aspx (accessed 20 December 2021).

51   Geneva Academy "An overview of Positions Towards the 2020 Treaty Body Review by States, NGOs, Treaty Body Members, Academia, OHCHR" https://www.geneva-academy.ch/joomlatools-files/docman-files/Overview%20of%20positions.pdf (accessed 4 January 2022).

52   Australia, Bahamas, Barbados, Bolivia, Dominican Republic, Estonia, Fiji, Gambia, Haiti, Malawi, Maldives, Marshall Islands, Mauritius, Netherlands, Solomon Islands, Spain, Sweden, Switzerland, Thailand, Turkey, Vanuatu.

rights institutions'.[53] Although not solely due to limited digitalisation, those fundamental challenges could nonetheless be addressed through better use of tech tools, for instance, the issue of limited visibility which is notably due to the absence of a proper communication or media strategy across the UNTBs, and the very limited use of social media.

UNTB members ahead of the 2020 review themselves recognised the need to 'increase the visibility and accessibility of the treaty body system, including through a much-needed improvement of the OHCHR website' as well as the need 'to increase the capacity of treaty bodies to consider individual communications'[54] – two challenges that also could be partially addressed through the use of suitable tech tools.

In their final report on the 2020 review of GA Resolution 68/268, the co-facilitators Morocco and Switzerland acknowledged the 'considerable potential of digitalization towards an increased efficiency of the treaty bodies and the interaction with all relevant stakeholders'.[55] The co-facilitators called for a 'dedicated project' on digitalisation of the work of UNTBs,[56] which resulted in a proposal of the Chair of UNTB chairs[57] that focuses on three main topics: adoption of fixed and predictable cycles of reviews; harmonisation of working methods and digital shift.

The Chair's proposal constitutes one of the most elaborate and detailed vision by UNTB members about what a digital transformation should entail. The move is significant given that it is the first time that a Chair of UNTB chairpersons has been on the initiative to develop an ambitious vision, and such move should primarily come from the UNTBs themselves, given that they have the prerogative to define their own working methods.

The proposal acknowledges that 'there are areas of Treaty Body work that could benefit from moving on-line and be enhanced by advanced, integrated digital platforms'[58] and 'transferring current Treaty Body practice to online modes, such as holding regional online consultations'.[59] The proposal envisages the development of a 'digital toolkit' which

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53   International Service for Human Rights (38 above) at 9.

54   International Service for Human Rights (38 above).

55   The President of the General Assembly 'Report on the process of the consideration of the state of the UN human rights treaty body system'; secs 13 https://www. un.org/pga/74/wp-content/uploads/sites/99/2020/09/2HRTB-Summary-report. pdf (GA President report) (accessed 20 December 2021).

56   GA President report (n 55) 17.

57   'Proposal of the Committee on the Rights of Persons with Disabilities – 2020 Review for Treaty Body strengthening' 3 August 2021 https://www.ohchr.org/Documents/ HRBodies/Annual-meeting/Proposal-CRPD-3August2021.docx (CRD 2020 review) (accessed 20 December 2021).

58   CRPD 2020 review (n 57) secs 3 at 5.

59   CRPD 2020 review (n 57) 6.

should be able to operate as a 'communities of practice' platform to support stakeholder engagement, working groups of Treaty Bodies and joint work undertaken by the Treaty Bodies. It will require a video conferencing/web-casting platform that is accessible and sustainable across the digital divide.

The OHCHR hired an expert consultant to work on the development of a digital tool across the office and the mechanisms it hosts, including UNTBs, in 2021, an assignment which was ongoing at the time of writing. The development of the tool presents a significant opportunity, given the glaring gap, the scope of needs, and the potential to make a range of gains by adopting the most suitable tech tools. In her address to the UNGA in October 2021, the CRPD chair mentioned that she believed there was 'still an opportunity for consensus' and that her proposal 'acknowledges that remote or virtual work needs to be recognised as part of the core mandate of UNTBs. This requires recognition of the time and effort that this additional work represents, through the provision of an honorarium.'

Any new digital tool designed for members and users of the systems, such as States and civil society, will only be a success insofar as the needs, views and perspectives of users are integrated in the formulation process.

Despites the various missed opportunities in taking the perspectives of users in the designation of new UNTB tools for users, such as online submission platforms, or requirements for petitioners, it is hoped that the OHCHR will undertake a robust consultation process to guarantee maximum ownership of the future digital platform or toolkit.

A game changer: COVID-19

The global COVID-19 pandemic affected nearly each and every individual on the planet. In the human rights world, and despite the obvious challenges, some people saw the crisis as a provider of new opportunities,[60] including in relation to better use of technology.[61]

For UNTBs, the pandemic revealed the fundamental and deep vulnerabilities of the system, which have been exposed time and again across the five decades since the first treaty body was established. Many, arguably most, of the inherent challenges identified by Philip Alston in his 1989 report[62] on UNTBs have persisted, and sometimes

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60   D Petrasek 'Imagining our post-pandemic futures: COVID-19 is challenging the human rights movement to adapt, transform, and look ahead-so as to meet urgent demands now while laying the groundwork for a better future' (2020) https://www.openglobalrights.org/up-close/pandemic-futures/#up-close   (accessed 20 December 2021).

61   Biegon (n 13).

62   United Nations General Assembly 'Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights' forty-fourth session 8 November 1989. UN Doc A/44/ 668.

considerably worsened since then. Faced with a radical challenge such as a global pandemic, the system collapsed: UNTBs were not able to adapt to the new normal, and reviews of states parties were suspended for months, resulting in a backlog of hundreds of periodic reports awaiting review across the system.[63] For example, at an average rate of six reports reviewed per session, and three sessions per year, it will take over 11 years for the Committee on the Rights of Persons with Disabilities (CRPD Committee) to review all reports currently pending review, excluding new periodic reports submitted in the meantime. That situation, which following the emergence of COVID, has become a reality for all UNTBs, constitutes in and of itself an expression of deep failure of the system.

The inability of UNTBs to adapt to COVID-19 and undertake reviews of states parties online is an expression of the profound weakness of the system and the related absence of institutional resilience. In the words of a CAT member, the system simply proved itself incapable of adaptation.[64]

Unlike regional human rights mechanisms such as the Council of Europe or the African Commission on Human and Peoples' Rights,[65] the UNTBs were only able to undertake a few periodic reviews,[66] only starting in 2021. The Committee on Enforced Disappearances (CED) was celebrated[67] as the first UNTB to carry out an online review of a state party in October 2020,[68] which was the only online review carried out across all UNTBs in 2020.[69]

Many actors, including civil society[70] and states, expressed their frustration with the inability of UNTBs to adapt to the situation and

63   428 periodic reports of states parties were awaiting review as at 6 October 2021, including a record 71 reports to CRPD; 6 October 2021.
64   United Nations Convention against torture and other cruel, inhuman or degrading treatment or punishment, committee against torture 'Summary record of the 1823rd meeting' 13 July 2020. UN Doc CAT/C/SR.1823 secs 17 (CAT Summary record).
65   Ochoa & Reinsberg (n 12).
66   List as at June 2021 available in 'Joint NGO submission to the ten UN human rights Treaty Bodies' chairpersons and their respective Secretariats' https://www.ohchr.org/Documents/HRBodies/Annual-meeting/Geneva_chair_meeting_ENG_ESP_FRE_final.docx (accessed 20 December 2021).
67   United Nations Human Rights, Office of the High Commissioner 'Enforced disappearances: UN Committee to hold special online dialogue with Iraq' 3 September 2020 https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26205&LangID=E (accessed 20 December 2021).
68   For a detailed account of the pioneering review of Iraq by CED, see Frouville (n 22).
69   United Nations General Assembly 'Audit of the activities, performance and results of staff support provided to the human rights treaty body system by the office of the United Nations High Commissioner for Human Rights' Seventy-sixth session 17 August 2021. UN Doc A/76/197 secs 33.
70   Joint NGO letter dated 2 October 2020 and endorsed by over 500 organisations from all world regions, available at https://imadr.org/wordpress/wp-content/uploads/2020/10/Joint-civil-society-letter_2021-UNTBs-reviews-in-the-COVID19-context_02.10.2020.pdf. Joint NGO letter dated 11 May 2020 and endorsed by over 40 organisations, https://www.ishr.ch/sites/default/files/documents/joint_

carry on with their work. A joint NGO submission ahead of the 2020 review noted the following:[71]

> We are aware that some treaty bodies have held civil society consultations through remote participation ... these practises are still ad hoc, and we consider that the treaty bodies could and should make more frequent use of technologies to ensure remote participation for civil society representatives who may not be able to travel.

A joint submission of 46 states emphasised the following:[72]

> We appreciate that seven treaty bodies have held -- or will hold -- State party dialogues during online sessions in 2021. In this new working environment in which we all find ourselves, we recognize that a discussion is required on how to appropriately support, including financially, the participation of experts in remote meetings for the good functioning of the treaty body system in the future and to continue to ensure highly qualified independent and impartial experts from diverse geographical backgrounds.

The scheduling of online reviews gave rise to additional challenges as some argued that reviews could only take place in person,[73] and UNTBs had to identify which countries to prioritise for review, and they adopted a problematic policy of asking permission from states parties to review them online.

NGOs raised concern about the lack of clarity in the identification of countries scheduled for online reviews and the predominance of Western countries.[74]

An in-depth legal advice commissioned by the ISHR to a leading international law firm[75] found that the core UN treaties empower UNTBs 'to undertake periodic reviews online, with or without the presence or consent of the state concerned' and to 'accord genuine, meaningful consideration' to all UNTB directives, 'including any requests or invitations to attend review meetings convened online'. However, just

ngo_letter_un_human_rights_treaty_bodies_during_the_covid-19_pandemic_11may2020.pdf (accessed 20 December 2021).

71   'Joint NGO submission to the co-facilitators of the General Assembly review of resolution 68/268 on the human rights treaty body system' 7 July 2020, https://www.ohchr.org/Documents/HRBodies/TB/HRTD/CoFacilitationProcess/OtherStakeholders/CSOSubmission.pdf (accessed 20 December 2021).

72   Letter from a group of 46 states to the 33rd meeting of UNTB Chairpersons (7-11 June 2021) available at https://www.ohchr.org/Documents/HRBodies/Annual-meeting/Letter-group-46-States-2June2021.pdf (accessed 20 December 2021).

73   See the arguments developed by CAT members, including the affirmation that the Committee is 'unable to carry out its core activities online' see CAT Summary record (n 64). CAT was the most reluctant Committee to embrace online reviews of states parties, which gave rise to tensions notably with civil society, including a private joint NGO letter to the Committee submitted in March 2021.

74   'Joint NGO submission coordinated by race & equality and ISHR to the 33rd meeting of UNTB chairpersons' June 2021 available at https://www.ohchr.org/Documents/HRBodies/Annual-meeting/Geneva_chair_meeting_ENG_ESP_FRE_final.docx (accessed 20 December 2021).

75   Legal advice dated July 2021 (ISHR Legal advice).

like the general obligation to attend and participate in the review of state report review process, this obligation is not 'absolute'.

It was not until September 2021, after an interruption of 18 months, that UNTBs were able to return to a regular schedule of reviews, thanks to the resumption of in person sessions in Geneva.

As rightly noted by the co-facilitators of the 2020 review of UNTBs, 'the COVID-19 pandemic has drawn everyone's attention to the need to strengthen the capacity of the treaty bodies to engage and interact online. It also constitutes a momentum to tackle longstanding issues regarding a digital shift in the work of the treaty body system'.[76]

At the time of writing, one could not help but see that many, but not all, of the opportunities provided by the pandemic to transform the UNTB system and move it into the 21st century were being lost, leaving a deep sense of frustration to those who thought that the crisis would contribute to speed up the long awaited reforms to the system. It is hoped that the ongoing process at OHCHR and in the UNTBs of digital shift will lead to the urgently needed improvements in the adoption of technological tools.

Focus on social media

The emergence and explosion of social media in the last two decades constitutes one of the most visible features of the digital revolution. The use of social media has played a critical role in major societal changes, as illustrated by the Arab Spring revolutions,[77] or the election of Donald Trump in the United States. Online surveillance, and freedom of association online have become topics of exacerbated scrutiny during the COVID pandemic.[78]

As mentioned above, UNTBs have struggled to establish a robust online presence. Complaints about 'the website' have been recurring from the UNTBs themselves, as well as state and non-state users. A review of joint NGO recommendations to the UNTB chairpersons in 2018 found that several recommendations had been suggested to the Chairs in previous years in relation to visibility and social media, all of which had been either partially implemented or not implemented.[79] None of the ten UNTBs at that time had a presence on Twitter, for

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76   The President of the General Assembly (n 55) 13.
77   S Joseph 'Social media, political change and human rights' (2012) 35(3) 145.
78   Including from UNTBs, See statement of the Chairpersons 'UN human rights treaty bodies call for human rights approach in fighting COVID-19' 24 March 2020 https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews. aspx?NewsID=25742&LangID=E (accessed 20 December 2021).
79   Assessment of NGO recommendations to the UNTB chairs 2015-2017 https:// tbinternet.ohchr.org/Treaties/CHAIRPERSONS/Shared%20Documents/1_Global/ INT_CHAIRPERSONS_NGO_30_27299_E.xlsx (accessed 20 December 2021).

instance, while the UN Human Rights Council had already been on Twitter since September 2009.[80]

For years, individual NGOs tweeted during public sessions of the UNTBs. The first Committee to establish a presence on Twitter was CMW in September 2018 (@UN_CMW), followed by CRC Committee in February 2021.[81] The UNTBs opened a dedicated collective twitter account[82] in November 2020, when the UN Special Procedures already had theirs[83] since July 2018. To date, the CMW and CRC Committees are the only two UNTBs with a dedicated presence on twitter, where most 56 UN Special Procedures have a dedicated presence on twitter. Although it has significantly progressed in recent years, the proportion of UNTB members with a presence on twitter is significantly lower than Special Procedures mandate holders: as at March 2020, 39 of the 173 UNTB members (or 23 per cent of them) were on twitter. Ironically, the CRC Committee is not present on Tik Tok, one of the social media most currently used by the youth.

Going forward: key priorities, needs and opportunities

Making the most of the digital shift

Overall, one can draw a thread of chronically dysfunctional digitalisation in the work of UNTBs over recent years and decades. Some of the most recurring impediments, as mentioned above, have come from resistance from the UNTB members themselves, either due to lack of understanding or lack of consideration for the need to function as a system rather than isolated bodies, or because of vested interests, such as with the issue of compensation for online work. Since the failure of the 2006 Arbour proposal for a unified UNTB,[84] which sent a lasting chilling effect across the board, High Commissioners and UN Secretary Generals have carefully avoided the 'hot potato' of UNTB reform, except for the 2012 Pillay proposal, which identified practical and welcome avenues for reform, and contributed to the enactment of some of them. Both the current and previous High Commissioners (Bachelet

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80   UN Human Rights Council https://twitter.com/UN_HRC (accessed 20 December 2021).

81   UN Child Rights https://twitter.com/unchildrights1?lang=en (accessed 20 December 2021).

82   UN Treaty Bodies https://twitter.com/UNTreatyBodies (accessed 20 December 2021).

83   UN Special Procedures https://twitter.com/UN_SPExperts (accessed 20 December 2021).

84   United Nations International Human Rights Instruments 'Concept paper on the High Commissioner's proposal for a unified standing treaty body' 22 March 2006 UN Doc HRI/MC/2006/2.

and Al Hussein),[85] and current Secretary General Antonio Guterres[86] have avoided getting involved in the UNTB strengthening process. Yet, leadership at the highest UN level in any meaningful reform of the system is critical.[87] Unless and until a top leader within the UN machinery decides to deal with the issue, and decision makers stop hiding behind the window-dressing excuse of leaving the UNTBs to decide for themselves, meaningful reforms will continue to lag behind,[88] and the system will continue to fail the rights holders it is meant to serve. The status quo tends to benefit those with an interest in a weak and dysfunctional system.

In addition to the need for clear and courageous leadership, a related challenge that will have to be overcome is the need to meaningfully involve and consult with concerned actors, namely UNTB members, as well as state and non-state users. Failing to involve beneficiaries and users in any process of change can only contribute to stir resistance and opposition. It will be crucial for the ongoing process of 'digital shift' conducted by OHCHR to meaningfully engage with and broaden those constituencies.

Any digital shift reform must ensure security of communications, especially with victims and their representatives. OHCHR and the UNTBs are under the influence of powerful states, and it is imperative that steps and procedures be taken to ensure that the confidentiality of communications between victims, their representatives and the UNTBs and their Secretariat be guaranteed. This requires for instance using encrypted tools whenever necessary, which has not always been the case thus far, and more broadly applying the do no harm principle across the board. Other practical measures may include anonymising names of individuals when they are at risk. Accessibility for persons with disabilities must also be guaranteed. As suggested during an October 2021 panel on digitalisation, considerable inspiration could also be drawn from the private sector.[89]

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85 See Frouville (n 22) 'throughout the four years of his mandate, Zeid not only completely disregarded these independent organs' potential, but actively participated in their weakening' 12 September 2018, https://www.universal-rights. org/blog/is-zeid-raad-al-hussein-really-the-prince-of-human-rights/ (accessed 20 December 2021).

86 V Ploton 'António Guterres, please reform the UN's human rights tools' 20 November 2017 https://www.passblue.com/2017/11/20/antonio-guterres-please-reform-the-uns-human-rights-tools/ (accessed20 December 2021).

87 International Service for Human Rights 'Treaty bodies – Leadership and innovation from chairs needed to strengthen the system' 5 July 2017 https://ishr.ch/latest-updates/treaty-bodies-leadership-and-innovation-chairs-needed-strengthen-system/ (accessed 20 December 2021).

88 V Ploton 'More ambition required to reform UN treaty bodies' 10 July 2014 https://www.opendemocracy.net/en/openglobalrights-openpage/more-ambition-required-to-reform-un-treaty-bodies/ (accessed 20 December 2021).

89 Verbal intervention of Ashley Bowe and other speakers during the panel entitled 'The digital shift and the role of new technologies towards comprehensive human

Applying the digital shift across the board will also mean ending the cycle of fragmented processes and piecemeal approaches which have tended to be applied across UN human rights mechanisms as illustrated by the adoption of tech tools by some UNTBs, and not others. The ongoing process at OHCHR in a very welcome move acknowledged the need to avoid looking at different parts of the system in isolation, and the imperative for a holistic approach.[90] Quite clearly, a number of digital shift measures could not only benefit the UNTBs, but also other mechanisms, especially the UPR and Special Procedures.

One practical example of how technology could help the work of UNTBs, as well as other mechanisms such as UPR and even Special Procedures, is the need for a good OHCHR database of civil society contacts per country. Although OHCHR receive thousands of email communications from national level NGOs every year, such contacts are not integrated into a centralised database. The absence of such a database means, for instance, that the OHCHR does not in advance inform national level NGOs of an upcoming review opportunity. Although major reviews such as a UPR review may receive considerable advance notice from the OHCHR, states, NGOs and others, many UNTB reviews do not receive comparable attention. This is particularly the case for follow up reviews, many of which do not receive sufficient if any inputs from civil society[91] due to lack of adequate prior notice.[92] It should be relatively easy for the OHCHR to have databases of NGO contacts per country and send them targeted information in advance of adoptions of lists of issues, periodic reviews and follow up assessments. Such databases could avoid situations where UNTBs may adopt grades reflecting states parties' compliance with their COs on the sole basis of information provided by the state, and no alternative sources. Under the current scenario, NGOs are in most instances not made aware of an upcoming follow up review, which has resulted for instance in CEDAW finding that China had complied with a recommendation to enhance the independence of the judiciary,[93] with no alternative source of information than China's self-assessment.

rights monitoring and implementation at the national level' – 2021 Annual Conference of the Geneva Human Rights Platform 12 October 2021 https://www.geneva-academy.ch/joomlatools-files/docman-files/Plenary%20Panel%202.pdf (accessed 20 December 2021).

90   P Hicks, speaking at (n 89).

91   On the importance of NGO contributions to UNTB follow up reviews, see Ploton (n 37) and MVJ Kran 'Comments on the follow-up procedure of the UN Human Rights Committee' 3 February 2021 https://ccprcentre.org/ccprpages/marcia-v-j-kran-answering-questions-about-the-follow-up-procedure-of-the-human-rights-committee (accessed 20 December 2021).

92   In Cambodia; C Rollet & V Sokheng 'Rights review process has little NGO input', 27 August 2015 https://www.phnompenhpost.com/national/rights-review-process-has-little-ngo-input (accessed 20 December 2021).

93   Committee on the Elimination of Discrimination against Women follow up letter to

The elephant in the room:[94] compensation for online work and sessions

Aside from technical glitches such as faulty online platform tools, issues with interpretation, difficulties for common hours for members based across different world regions or accessibility for persons with disabilities,[95] much of the fierce opposition to online work expressed by UNTB members during the COVID crisis related to the absence of compensation for online work. UNTB members are not remunerated but they are nevertheless generously compensated during their presence in Palais Wilson or Palais des Nations in Geneva. Their signing a paper registry of presence in Geneva is conditional on receiving generous UN rate per diems (called DSA). For reasons that can be easily understandable, the frustration of members being unable to travel to Geneva was expressed primarily in private[96] and publicly it was often euphemistically framed as concerns for lack of adequate funding[97] or the imperative necessity to ensure that sessions should be held in person, rather than remotely.[98]

UNTB members are not paid for their work. Yet, the amount of commitment required for members to carry out their functions, including both during sessions and outside sessions, is considerable. With at least three regular sessions of four weeks on average together with pre sessions and the work required to prepare for sessions or review individual communications, the requirements to UNTB members is estimated to the near equivalent of a full-time job. The brutal and

China, DB/follow-up/China/67 21 September 2017 https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CHN/INT_CEDAW_FUL_CHN_28950_E.pdf (accessed 20 December 2021).

94 The expression 'elephant in the room' to illustrate the issue of compensation for UNTB members' online work was first publicly expressed by a Belgian diplomat on the occasion of an online informal consultation on UNTB strengthening hosted by the co-facilitators of the 2020 review on 28 August 2020.

95 'Discussion paper of the Informal working group on COVID-19' August 2020 secs 3 https://www.ohchr.org/Documents/HRBodies/TB/HRTD/CoFacilitationProcess/outcomes/Discussion-paper-informal-WG-COVID-19.docx (COVID discussion paper) (accessed 20 December 2021).

96 One exception is the COVID discussion paper (n 95) of the informal working group on COVID which addressed in detail the issue of compensation for members (secs 3.e at 4-5) and arguably contributed to the ad-hoc payment of a symbolic compensation to all UNTB members in December 2020.

97 See United Nations Human Rights, Office of the High Commissioner 'Work of human rights treaty bodies at risk, warn UN Committee chairs' 4 August 2020 https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26147&LangID=E (accessed 20 December 2021).

98 'It is important to emphasize that work on line is a supplementary tool, it cannot replace in person meetings which is an essential requirement to implement the mandate of treaty bodies' 'Written contribution of the Chairs of human rights treaty bodies on the treaty body system review in 2020' 4 August 2020https://www.ohchr.org/Documents/HRBodies/TB/HRTD/CoFacilitationProcess/outcomes/Written-contribution-co-facilitators.docx (accessed 20 December 2021).

unexpected halt to in person sessions in Geneva brought a major challenge to a number of UNTB members who rely on the compensation received during sessions for a living. Members cannot reasonably be expected to fulfil their mandate without a due form of compensation. In addition to UNTB members and chairs,[99] several actors pointed to the problem of compensation, including NGOs[100] states,[101] and the High Commissioner herself.[102] A review of the OHCHR UNTB Secretariat undertaken by the UN Office of Internal Oversight Services (OIOS) in 2021 at the request of the General Assembly acknowledged that

> there were still some lingering challenges associated with online meetings such as ... concern regarding lack of compensation to help experts to offset the costs associated with online meetings.[103]

The COVID crisis should have provided an opportunity to envisage a new form of compensation for UNTB members for their online work. At a time when the planet is struggling to counter the looming climate catastrophe, continuing to fly in more than 170 UNTB experts from all corners of the world to Geneva several times per year is not only anachronistic, but also blatantly incompatible with any sensible objective of greenhouse gas reduction. The model needs to be revamped, and that does require a new method for the compensation of members. Some initial ideas were developed by the UNTB chairs[104] and the UNTB working group on COVID-19.[105] Suggestions to think outside of the box were also formulated, such as envisaging that the members would be remunerated. Whatever option will be considered going forward will need to consider the perspective of the obvious actors – UNTB members, states and civil society users. It should also be emphasised that the perspective and interests of victims and users should be the main compass for any reform that would deal with compensation of members. Although praised publicly by many, that perspective has been

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99   In a letter to the UN General Assembly of 7 December 2020, the UNTB chairs mentioned that 'Another issue of concern is the issue of financial support for on-line work … we have been informed that compensation for the time and effort treaty bodies devote to on-line work cannot be addressed within the current United Nations rules, which envisage allowances only in case of travel. However, we take this opportunity to request that other possible approaches be considered'.

100 The undersigned raised it on a number of closed meetings with OHCHR and UNTB members throughout 2020-21, including an information meeting with OHCHR on 28 September 2020; https://indico.un.org/event/34992/overview (accessed 20 December 2021).

101 Belgium on 28 August 2020, Hicks (n 90); Japan on 28 September 2020 (n 96).

102 International Service for Human Rights 'UNGA75 Impact of pandemic on human rights and UN's budget crisis loom large in third committee discussion with UN human rights chief' High Commissioner's yearly dialogue with the General Assembly's Third Committee, October 2020 https://ishr.ch/latest-updates/unga75-impact-pandemic-human-rights-and-uns-budget-crisis-loom-large-third-committee-discussion/ (accessed 20 December 2021).

103 United Nation General Assembly (n 69) 34.

104 Discussion paper of the Informal working group on COVID-19 (n 95).

105 COVID discussion paper (n 95).

too often ignored in the past due to the prevailing vested interests of stakeholders. Of course, reflections and proposals about compensation for UNTB members should look beyond the UNTBs and encompass Special Procedures as well as other UN-mandated pro-bono actors.

Digitalisation left behind: case study on digital case management system for individual communications

The need for a modern, robust and user-friendly digital tool, database or portal for UNTB individual communications has been highlighted for years, including most recently in the OIOS review of the OHCHR unit hosting the Secretariat of UNTBs.[106] Complaints about the current platform or absence thereof are unanimous amongst OHCHR Secretariat, UNTB members,[107] states[108] and petitioners.[109] It has been reported that a number of communications are only available in paper format, which obviously became problematic during the COVID-19 pandemic when staff did not have access to OHCHR premises. The most recurring complaints relate to the obsolescence of the OHCHR case management tools, unnecessary compartmentalisation and fragmentation of data and information, and the absence of an online tool for submission and follow up to the communications. State and non-state users also complain about the absence of a clear timeline for the review process, which often takes years,[110] with no visibility as to where the process is at any given moment.

The report of the co-facilitators of the 2020 review articulated the need for change:[111]

> There should be investment to set up a digital case management system for individual communications and urgent actions for the parties to submit,

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106   United Nation General Assembly (n 103).

107   United Nations General Assembly 'Implementation of human rights instruments' Seventy-fifth session 14 September 2020. UN Doc A/75/346 §25.

108   See joint submission endorsed by 43 states to the 2020 review 'Non-paper on the 2020 review of the UN human rights treaty body System' at 5 https://tbinternet. ohchr.org/Treaties/CHAIRPERSONS/Shared%20Documents/1_Global/INT_ CHAIRPERSONS_CHR_31_28571_E.pdf (accessed 20 December 2021).

109   Joint NGO submission to the co-facilitators of the General Assembly review of resolution 68/268 on the human rights treaty body system 7 July 2020, (n 71) secs 16.

110   International Service for Human Rights 'Treaty bodies | backlog in individual complaints must be addressed now' 26 November 2018 https://ishr.ch/latest-updates/treaty-bodies-backlog-individual-complaints-must-be-addressed-now/ (accessed 20 December 2021).

111   'Report of the co-facilitators on the process of the consideration of the state of the UN human rights treaty body system' https://www.ohchr.org/Documents/ HRBodies/TB/HRTD/HRTB_Summary_Report.pdf (accessed 20 December 2021).

access and track relevant information, including on the status of the case. An online platform, such as those available in other regional systems,[112] could enable users to see where the communication currently sits in the review process, through a secure individual access.

As for the rest of digitalisation effort for UNTBs, which should not be looked at in isolation, but should be considered holistically together with other UN human rights mechanisms, the digitalisation of individual communications should also be part of broader reform efforts to address the other well documented challenges in the processing of UNTB individual communications.[113]

Further research into the extent to which digitalisation has been applied by other bodies such as regional human rights institutions and fellow international human rights bodies and judicial organs could contribute to the identification of good practices and practical tips which could potentially be replicated by the UNTBs.

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112 Such as the Inter American system, see Callejon, Kemileva & Kirchmeier (n 30) secs 3.A.1 at 23.

113 K Kemileva 'UN inefficiencies undermine effective handling of individual petitions' 29 October 2019 https://www.openglobalrights.org/UN-inefficiencies-undermine-effective-handling-of-individual-petitions/ see also, AS Galland 'Treaty bodies | human rights victims' complaints to UN not treated effectively' March 2020 https://ishr.ch/latest-updates/treaty-bodies-human-rights-victims-complaints-un-not-treated-effectively/ (accessed 20 December 2021).