Berne, July 7 2020

**Questionnaire on the process of the consideration of the state of the UN human rights treaty body system – Response of Switzerland**

**General comment**

Switzerland fully supports the work of the human rights treaty bodies. The effective protection of human rights do not only require normative codification at the international level, but also solid mechanisms, which accompany the implementation of human rights norms and their integration into national legislations. The treaty bodies play a crucial role in the human rights system, a role that should be further strengthened, including through the harmonization of their working methods.

General Assembly resolution 68/268 (A/RES/68/268), entitled "Strengthening and enhancing the effective functioning of the human rights treaty body system", provides a solid basis for enhancing the performance of the system and avoiding duplication, as well as for assisting the treaty bodies in discharging their mandates in an independent manner and enhancing their impact on the human rights situation at the national level. Consequently, this resolution should be confirmed and not reopened.

For many years, Switzerland has been supporting efforts aimed at strengthening and improving the functioning of the human rights treaty body system. In this respect, it also attaches great importance to the independence and impartiality of the members of the treaty bodies. As such, Switzerland was actively involved in the negotiations of A/RES/68/268.

**Questions**

1. **The functioning of the treaty body system: its efficiency, effectiveness, strengths and weaknesses; suggestions for its further improvement**

The sole codification of norms at international level is not enough to ensure the effective protection of human rights. Equally vital are reliable mechanisms to monitor both the embedding of these human rights standards in national law and States’ application of them. The treaty bodies play a decisive role in the human rights system and the work undertaken by the different treaty bodies is essential. For decades, they have constituted a fundamental pillar of the universal human rights system, and continue to do so to this day.

Despite the progress achieved and the measures already being implemented and further discussed by the treaty bodies (see in particular the chairs’ position paper of July 2019 on the future of the treaty body system, A/74/256, Annex III) - efforts that enjoy Switzerland’s full support - there are still fundamental challenges.

We identify five major areas as presenting a challenge to the treaty body system:

1. **State reporting**: First, there is a serious lack of compliance with the legal obligation to submit State reports in due course (only around 16% of States fully meet their reporting obligations). Second, the overall backlog of un-reviewed reports is growing (e.g. for the CRPD, review takes place only 3-4 years after submission of the report). Adequate additional resources have clearly not been made available to cope with the increased workload. At the same time, overlap in questions addressed to States by different treaty bodies exacerbate the already heavy reporting workload for states. Stronger collaboration, coordination and harmonization is thus needed for a more efficient reporting. While we continue to strive for a more efficient set-up, we are equally convinced that more resources are needed at UN level to respond effectively to the increasing volume of work handled by the treaty body system.
2. **Individual communications**: The petitions team is doing very valuable work in the complaints procedures and is showing strong commitment. However, the treaty body system lacks a proper ‘registry’ to prepare, filter and process individual complaints in an effective way. Consequently, no up-to-date information is available on the outstanding complaints, and a backlog of over 1,600 complaints exists. Excessive delays and/or errors in the transmission of observations and in the adoption of decisions are likely to undermine the credibility of the work undertaken.
3. **Independence / Composition of the treaty bodies**: The independence of the treaty body members is crucial for a credible and functioning treaty body system. However, candidates that do not seem sufficiently qualified and/or independent from their respective governments are sometimes put forward and elected. Possibilities should be explored to allow for more transparent nomination and election processes that place more emphasis on independence, qualifications and experience. Nevertheless, a code of conduct (or similar measure) prescribing how treaty body members were to fulfil their duties would undermine the independence of the treaty bodies, a key condition for their proper functioning.
4. **Financing / Ressources:** The treaty body system lacks the necessary financial resources from the UN regular budget. However, sufficient regular budget resources and adequate staffing support for all the mandated activities are vital for the continued viability of the treaty body system (see also the third report on the status of the human rights treaty body system, A/74/643, paras. 55 ff.).Moreover, the concept of part-time volunteer experts no longer corresponds to the current tasks and functions which have arisen as a result of the further development of the treaty body system and the increase in ratifications. Hence, adequate resources also need to be made available to cope with this increasing workload.
5. **Working methods**: Given the diverging rules and practices of the different treaty bodies, it is often difficult for States parties, non-governmental organisations (NGOs), victims' representatives, and especially for the victims of human rights violations themselves, to find their way around. This applies both to the processing of individual complaints and to the State’s reporting framework. Moreover, as outlined in above point 1 on State reporting, overlapping in questions addressed to States contribute to increasing the reporting workload, highlighting the need for a strengthened coordination / harmonisation. The quality and relevance of the recommendations that the treaty bodies address to the States parties are equally crucial. Clearly formulated and pertinent recommendations facilitate targeted implementation and help to make measurable progress within the framework of an adequate follow-up. Consequently, the harmonisation of working methods and processes across the treaty body system is a necessity for all actors.
6. **Implementation of UNGA resolution 68/268 and views on the biennial report of the UN Secretary-General on the status of the treaty body system**

The goal of a potential 2020 GA resolution, depending on the outcome of the current process, should be to enhance the efficiency and effectiveness of the treaty body system, and to provide it with the resources it needs to function. However, such a resolution should be as minimalist as possible in terms of addressing the working methods of the treaty bodies. In particular, it should recognise that many of the working methods can and should be adopted by the treaty bodies themselves and should not be addressed in a GA resolution. However, in the context of the GA resolution it is the duty and responsibility of States, as parties and ‘masters of the treaties’, to encourage and enable the treaty bodies to find the best solutions to fulfil their mandates.

In this sense, Switzerland firmly believes that resolution 68/268 was an important step towards the long-term strengthening of the system. Our goal is to make the system as accessible and effective as possible. Switzerland is convinced that further practical improvements can and should be achieved in the short and medium term to increase the efficiency and effectiveness of the treaty body system and optimise its benefits without amending the existing treaties. Switzerland therefore believes that the resolution A/RES/68/268 should be confirmed and not reopened.

1. **Good practices and methodologies in relation to working methods and procedural matters, including harmonisation and alignment of working methods**

The committees have – within their existing capabilities and available resources –already started to align their working methods (e.g. common guidelines on the drafting of concluding observations have been adopted by the treaty body chairs). However, more needs to be done. The treaty bodies should be encouraged to adopt an aligned methodology for constructive dialogue between States parties and treaty bodies, bearing in mind the specificities of the committees (see the chairs’ position paper of July 2019 on the future of the treaty body system, A/74/256, Annex III).

Such guidelines could contain the following elements:

* The dialogue for periodic reports could focus on the most significant human rights issues in the State under review and the follow-up by States parties to the previous concluding observations. Chairpersons should continue to exercise their power to lead the dialogue effectively so as to ensure a balanced exchange between treaty body members and the State party delegation.
* In order to reduce the backlog, a review in chambers with a reduced composition of members from the committees could be a way of addressing the insufficient capacity of the treaty bodies.

The secretariat has an important role in this regard. It could carry out a mapping of all the different working methods and identify room for further alignment. It is of particular importance to Switzerland that the simplified reporting procedure, which we fully support, is harmonised and that the same criteria for adherence apply across the board.

1. **Coordination and predictability in review cycles and reporting;**

The predictability of future reviews and deadlines is of central importance to Switzerland. It is vital that States receive timely notification of the deadlines and dates of reviews, i.e. at least 2 years before the review, and that this information is made available on the website.

Paragraph 34 of Resolution 68/268 “invites the human rights treaty bodies and the Office of the High Commissioner, within their respective mandates, to continue to work to increase coordination and predictability in the reporting process, including through cooperation with States parties, with the aim of achieving a clear and regularized schedule for reporting by States parties”. In this regard, there is still considerable room for improvement, also with regard to the intervals between individual reviews. Digital tools could be used to optimise the calendar (see chairs’ position paper of July 2019 on the future of the treaty body system, A/74/256, Annex III).

Switzerland welcomes the possibility of simultaneous or combined consideration of reporting on the International Covenant on Civil and Political Rights and on the International Covenant on Economic, Social and Cultural Rights by the respective committees. In June 2020, it informed OHCHR of its interest in combining the preparation and presentation of the reports in question.

1. **Current reporting system, including common core document, and ways to further improve reporting for states parties whilst ensuring the substantive quality of the national reports**

To move towards greater uniformity, all treaty bodies should offer simplified reporting procedures to all States parties for periodic reports and, where appropriate, initial reports, with a list of issues prior to reporting (LOIPR) as standard. In order to avoid unnecessary overlaps and to enhance the complementarity of the reviews, it is of utmost importance to Switzerland that the treaty bodies coordinate their LOIPR to ensure that their dialogues with States parties are comprehensive and do not raise similar questions in the same time period.

The coordination of LOIPRs would necessarily require some additional secretariat resources, in addition to the cooperation of the State party and greater predictability in reporting cycles. However, prioritisation and coordination in the drafting of LOIPRs is essential to enhance the efficiency, consistency and ultimately the effectiveness of the system, and should be facilitated by the secretariat and the treaty body member rapporteur assigned to the country in question. The prioritisation of issues and coordination of the LOPIRs would increase focus on the specificity of each convention and reduce unnecessary overlap in States’ responses to the LOIPR, in the dialogue, and in concluding observations. The LOIPRs must be better targeted and focus more on essential issues. Above all, they should be fewer in number if there is to be a truly simplified procedure, and to allow States to respect the stipulated word limit. Duplication should be avoided wherever possible, as should very general questions or questions asking for a list of all new developments in legislation or practice, progress, obstacles, etc.

1. **Dialogue between states and treaty bodies both in preparation for and during states’ reviews as well as in follow-up to the review**

Concerning the format of dialogues in Geneva, all treaty bodies should follow the same general format for the consideration of reports during their Geneva sessions. Alternatively, the dialogue could also take place by videoconference.

The format of concluding observations should follow the same aligned methodology endorsed by the chairs in their concluding observations to the 2014 meeting (HRI/MC/2014/2) in order to ensure that they are short, focused, concrete and prioritised, and balance immediate with longer terms priorities and objectives.

With regard to the follow-up procedure, the committees should consider moving towards an integrated system to follow-up on concluding observations. Efforts could be made through a comprehensive, long-term solution to diminish the need for treaty body follow-up by including it as part of States’ periodic reviews. Previous concerns, questions and recommendations should be the point of departure for the list of issues (LOIPR) and the new concluding observations addressed to a State party, so as to ensure a clear assessment of the progress made by the State party since the previous review. However, the details of the follow-up should be organised by the treaty bodies themselves using resources allocated for general activities. The follow-up should be thought of as part of a system of mutually reinforcing reviews by the treaty bodies and as part of a move by some committees to longer review cycles. There are a number of possible approaches, including the ones formulated by NGOs and academia in the form of ‘focused reviews’ or a ‘technical review of implementation progress – TRIP’ (see point 11).

1. **Assessment of the concluding observations and recommendations**

Switzerland encourages treaty bodies to formulate concluding observations that contain concrete and achievable recommendations. States parties and other stakeholders need more precise concluding observations that place greater focus on the issues of greatest concern regarding the country under review . Short, focused, specific concluding observations can be more easily translated into concrete improvements to legislation, policy, programmes and institutions, which facilitates national implementation. The treaty bodies should therefore be encouraged to adopt more focused concluding observations, and to set out common guidelines to this end, bearing in mind the specificities of each committee.

The concluding observations should reflect the issues raised by the treaty body in question during the constructive dialogue. Recommendations of a general nature should be avoided. Instead, concrete guidance on the steps needed towards implementing treaty obligations should be provided. It is also recommended to separate the concluding observations between immediate and longer-term priority issues based on a balance between the urgency of the issue at hand and the feasibility of addressing these different issues.

To increase credibility and effectiveness, the treaty bodies should immediately interpret unclear concluding observations at the request of the State under review, or withdraw observations that prove to be not relevant or outdated.

1. **Strengthening engagement with civil society and other relevant stakeholders**

Switzerland attaches utmost importance to the participation of civil society, including NGOs and human rights defenders, in international human rights mechanisms, including in the treaty body system and its reviews. All treaty bodies currently receive alternative reports and organise private meetings with stakeholders, including national human rights institutions (NIHR), NGOs and others. Well-coordinated collaboration among all actors (treaty bodies, States parties, OHCHR, NHRIs, civil society) will continue to be imperative after 2020 to ensure an effective and credible system of international human rights protection. In this context, the independence of the members of the committees is crucial for a credible and functioning treaty body system. Possibilities should be explored to allow for more transparent nomination and election processes that place more emphasis on independence, qualifications and experience. With regard to remote meetings, all treaty bodies should convene NGO meetings through video and audio conferencing services, prior to any country review pursuant to the modalities of the NGO meetings held by the Committee against Torture. Finally, all harmonisation efforts should include the issue of reprisals (as defined in the San José directives against intimidation or reprisals by all treaty bodies and their coordinated and coherent implementation). Indeed, Switzerland strongly condemns any act of intimidation and reprisal against civil society representatives, human rights defenders, victims of human rights violations and other stakeholders, who cooperate with the UN human rights system.

1. **The capacity-building programme, experiences and its impact in terms of reporting and in terms of national implementation of recommendations**

No specific comments.

1. **Use of new information and communications technologies and their potential to further increase efficiency and accessibility**

The COVID-19 crisis has demonstrated the need to keep pace with new technological developments and to exploit their potential where sensible and possible. In particular, the potential of innovative ways of working must be assessed, e.g. whether the dialogues would benefit from the use of new technologies either temporarily or as a longer-term measure. Their potential in terms of efficiency, cost-savings and environmental preservation is considerable. Online collaboration would have to ensure accessibility for all participants, especially for people with a disability, speakers of different languages as well as NGOs, other civil society representatives and victims of human rights violations.

1. **Opportunity of reviews in countries or in regions**

The prospect of reviews covering regions could be interesting and beneficial for individual regions (see example of CRC in Samoa), but would heavily depend on the financial resources and capacities of the treaty bodies. Specifically, any such review should be funded by the UN budget.

1. **Preserve and strengthen the independence and impartiality of treaty body members and ensure diversity in terms of gender, geography, background, expertise, representation of different forms of civilisation and principal legal systems, as well as the participation of persons with disabilities**

There is potential for further improvement in the process of nominating and electing experts. First, Member States should be encouraged to adopt processes in respect to the nomination of experts as candidates for treaty body membership at national level that are capable of attracting the best-suited candidates for the position (qualifications, experience and independence). Second, the OHCHR should prepare an information note explaining practical aspects of the role, e.g. listing the duties of members. In the run-up to elections, this note should be distributed to all respective State parties and to potential candidates. The note should also be made publicly available. Third, the secretariat should provide information on the current composition of the respective committee before each election. This information should include the current distribution of experts by region, gender and professional background. Additionally, it should state how long the current experts have served as members on the committee. Fourth, the way in which ECOSOC elects experts to the CESCR should be reconsidered, since the current format permits non-state parties to elect experts. The election of experts to the CESCR should only take place at a meeting of States parties.

For Switzerland, the priority is the appointment and election of independent experts of high moral character who are competent and experienced in the field of human rights. Switzerland supports candidates primarily based on qualification for the role in question. Wherever possible, Switzerland takes care to ensure equitable representation in terms of geographical distribution, different social and legal systems, gender and disability.

1. **Enhancement of the coordinating role of treaty bodies’ chairpersons**

One way to increase capacity could be to make more consistent use of new information and communications technologies (ICTs). Online collaboration could allow for more intersessional (informal) exchanges among chairs and/or members of the committees, encourage the mutual exchange of new ideas and practices and help fostering well-coordinated working methods. To further advance the alignment of working methods, treaty bodies might organise remote inter-sessional meetings between the committees to discuss practices, e.g. an informal meeting of chairs, perhaps with a troika from each committee (chair focal point +1).

1. **Overall coherence of the treaty body system and the collaboration among treaty bodies as well as within the UN system and with regional monitoring bodies**

With regard to engagement with regional human rights mechanisms, there are various ways to forge awareness and enhance synergies with regional human rights institutions. Collaboration with regional bodies could facilitate access to comparative jurisprudence and the sharing of information, and encourage direct meetings and exchanges. However, in our view these issues could be addressed independently from this ongoing consideration of the state of the treaty body system and should thus not strictly be considered as part of the review of the treaty body system.

* **Access to comparative jurisprudence and information sharing**: To improve the quality of their legal analysis and harmonise their jurisprudence with other human rights mechanisms, it is crucial that the treaty bodies are able to draw on the body of legal interpretation in human rights cases. Whereas the European and Inter-American Commission and Courts have access to comparative jurisprudence from the treaty bodies and other international, regional and domestic jurisdictions, the treaty bodies do not currently benefit from any formal avenues for the provision of this information. The secretariat and/or third-party interventions (amicus curiae) could fulfil this function.
* **Periodic meetings with regional human rights institutions**: Based on previous positive experiences, dialogue at regular intervals at institutional level is to be encouraged in the form of periodic meetings between treaty body members and their counterparts in regional human rights commissions and courts. The Human Rights Committee has already held meetings with judges from the European Court and the Inter-American Court of Human Rights. The treaty body chairpersons have also met with the President of the Inter-American Commission. Such meetings have proven extremely useful but have only taken place on an ad hoc basis. To promote coherence and best practice, the treaty bodies and regional human rights mechanisms would all benefit from more regular meetings to discuss shared experiences and procedural and jurisprudential developments.
1. **Funding of the treaty bodies systems to ensure that treaty bodies have an adequate allocation of financial and human resources for all their mandated activities**

One of the main challenges the system faces is a lack of resources: The members of the committees work on a voluntary basis. Harmonisation requires coordination, which entails more meeting time and resources. The secretariat must be allocated sufficient staff if the committees are to make full use of the session time allocated to them. Other measures that do not need GA approval include e.g. the use of technologies (review via Skype), stronger collaboration with regional mechanisms, improved databases, a better calendar (to increase the predictability of the reviews), and measures to strengthen membership in the treaty bodies (the nomination and election of strong candidates are necessary to have strong treaty bodies).

1. **Current system of processing individual communications, inter-state communications and urgent actions: its efficiency, effectiveness, strengths and weaknesses; suggestions for its further improvement**

Improvements are needed within the scope of existing resources. Procedural and administrative/technical possibilities exist to this end. The reforms at the European Court of Human Rights (ECHR) could serve as inspiration.

A first important improvement could be the standardisation and centralisation of communications management. A case management system and clear admissibility guidelines would enhance the efficiency and transparency of the system.

Other ways to strengthen the quality and accessibility of the system could include:

* Exploring the potential of good offices for friendly settlement;
* Coordinated follow-up of reviews;
* Allowing third-party interventions and oral hearings in all treaty bodies concerned in order to strengthen the consistency of case law across treaty bodies;
* Making a rule of dealing with e.g. simple cases in chambers, as was already done to handle the backlog in certain committees.
1. **Accessibility for persons with disabilities and wider accessibility and visibility of the work of treaty bodies**

It is clear that the specific needs of people with disabilities must be taken into account consistently across the board. Any approach to online collaboration must address issues of language interpretation and ensure accessibility for people with disabilities, particularly sign language and captioning on webcasts, in addition to accessibility for persons with visual impairments using remote meeting platforms.

1. **Efficient and effective use of the meetings of states parties**

Various organisational measures could be put in place to operationalise the recommendation in OP7 of GA resolution 68/268 on more efficient and effective use of the regular meetings of States parties. This should be done within the framework of the treaties and using existing resources, e.g. within the current biennial meeting of States parties to elect treaty body experts. Those meetings could also offer an opportunity for an exchange of views between treaty body experts, for example between the chair and vice-chair and the states parties. Discussions could be held on issues under the purview of State parties such as the reporting obligation of States parties, relevant best practices and a question and answer session with members of the respective committee or with the chair of the committee. The Convention on the Rights of Persons with Disabilities could constitute a model here. This is the only treaty that explicitly stipulates the ongoing role of its States parties.