



July 7, 2020

## **RECOMMENDATIONS FOR TREATY BODY REVIEW**

As a civil society stakeholder organization, we welcome the opportunity to contribute to the discussion regarding the strengthening and reform of the human rights treaty body system. The previous review of the treaty bodies' work, which concluded in 2014, did not review the substantive output of UN treaty bodies or raise key concerns about the treaty bodies' working methods or the politicization of human rights. Instead, member states expanded the resources available to UN treaty bodies and increased the range of activities of treaty bodies supported by the UN secretariat. It is essential that this current review address the unfinished work of the prior iteration.

We therefore make two general recommendations which encompass several more detailed suggestions.

### **1. Strengthen and enhance treaty body independence and impartiality**

- The independence of treaty bodies is at the service of an authentic and rigorous interpretation of the treaties they monitor, as for example laid out in the interpretative canons in the Vienna Convention on the Law of Treaties. It is not a license to rewrite treaties that have taken years to negotiate through interpretations that impose new obligations that were never negotiated nor adopted by States.
- The guiding principle of the interpretation of treaties is that they should be read “in good faith” and “in accordance with the ordinary meaning” of the terms contained in the treaty. The creation of treaty bodies did not displace this basic framework for interpreting international treaties.
- The activism of UN treaty bodies and the OHCHR on politically sensitive topics outside the scope of human rights treaties, such as LGBT and abortion issues, calls into question the independence and impartiality of treaty bodies and raises the possibility of corruption and self-dealing. Many experts who sit on treaty bodies, moreover, have professional and personal ties to the well-funded organizations and activists who promote these causes. Therefore, a mechanism should be put in place to investigate the background of candidates to the treaty bodies further in order to ensure their independence and impartiality.

- The reform process should also establish a code of conduct to hold experts on treaty bodies accountable, including for political bias, conflict of interests, and other unethical practices, and institute a mechanism whereby Member States, UN agencies, civil society organizations, and individuals may raise questions and concerns about UN treaty body members based on the code of conduct, so that treaty bodies and the Conferences of States Party may take action on such reports.
- It must be emphasized that there is no inherent conflict between independence and accountability. Far from undermining the independence of treaty bodies, an accountability mechanism, based on a code of conduct adopted by States, would enhance the independence and impartiality of the treaty bodies. The groups that increasingly co-opt treaty bodies for their causes are a part of complex network of organizations, governmental actors, and private philanthropists that escape the normal channels through which governments are held accountable. Therefore, increased accountability will help guarantee independence.

## **2. Limit OHCHR support for treaty bodies to mandated activities only**

- The working methods of UN treaty bodies are entirely up to the bodies themselves according to the treaties that establish them. However, the working methods chosen by each treaty body must be in furtherance of the mandate of the treaty body.
- As a matter of law, States party fulfill their reporting obligations under each human rights treaty by submitting their reports to the treaty bodies. Any discussion of the State party's report thereafter through either general comments, concluding observations or a follow-up procedure to concluding observations, such as the ones some of the treaty bodies are already experimenting with, merely supplements the requirements of the treaty. Member states are not required to participate in such interactions as a matter of law.
- Aside from specific working methods that extend and enhance the reporting requirements beyond what is foreseen by human rights treaties, non-mandated activities of treaty bodies also include participation by NGOs in the reporting process, periodic interference in inter-governmental negotiations between States, press communiques on internal political debates within countries, and press communiques disseminating the views of treaty bodies during the reporting cycles.
- Non-mandated activities artificially aggrandize the authority of UN treaty bodies and politicize the treaty bodies. The General Assembly should evaluate whether it is opportune to end all OHCHR support for non-mandated activities for each treaty body in order to ensure the dialogue between member states and treaty bodies remains a constructive dialogue as opposed to an antagonistic and politicized one.
- The working methods of the treaty bodies have a large impact on the cost of the UN treaty body system overall and have contributed to both rising costs and the difficulties of treaty bodies in carrying out their mandated activities in a timely manner. For example, discussions on the general comments issued by treaty bodies

are lengthy and costly affairs. The resources used for these activities could be dedicated instead to mandated treaty body tasks. The same is true of the concluding observations process.

Again, we appreciate the opportunity to contribute to this important process. Increasing the transparency and accountability of treaty bodies will help to elevate the legitimacy of the UN human rights framework as a whole, and keep the important work of advancing human rights from becoming distorted and politicized, and restore it to its purpose of upholding the dignity and worth of every human being.