**NIGERIA’S CONTRIBUTIONS REGARDING THE REVIEW PROCESS OF THE UNITED NATIONS HUMAN RIGHTS TREATY BODY SYSTEM**

**Introduction**

Since the adoption of the United Nations Charter in 1945 and the Universal Declaration of Human Rights in 1948, the international community progressively developed and defined international human rights law. As a result, core international human rights treaties were negotiated by States and adopted, with a view to ensuring the promotion and protection of human rights and fundamental freedom across the world. These core human rights treaties, together with the Universal Declaration of Human Rights, have provided key definitions of human rights. States that are signatories (ratification and accession are voluntary) to each of these treaty bodies are under an international obligation to ensure the effective implementation of such treaties.

2. The human rights treaty bodies, which are committees of independent experts, were therefore established to monitor the implementation of each of the treaties. States, in line with the treaty obligations, periodically report to the United Nations, through the committees, on efforts being made towards the implementation of the treaties. While the role and activities of these treaty monitoring bodies have steadily evolved over the years, there is indeed the need to ensure more effectiveness, efficiency, transparency and accountability in keeping with the treaties that established them.

**Treaty Body Activities**

3. The treaty bodies are generally tasked with considering and, as appropriate, making general comments or recommendations on States parties reports; considering and adopting views on individual complaints, subject to acceptance by States; and receiving inter-state communications. Broadly speaking, the central role for which the treaty bodies (committee) was created is for compliance-oversight functions. Originally, such ‘general comments’, ‘suggestions’ or ‘recommendations’ were no exception to this understanding. They were characterized as ‘largely descriptive’ and ‘determinedly general’, and – more importantly – they were strictly built upon, and related to, the examination of reports and information received from states parties. However, as treaty bodies began reviewing their rules of procedure in the exercise of their operational independence, they also tended to expand their authority by issuing – through “general comments” or “general recommendations” – often-revisionist interpretations of treaty provisions, based on increasingly specific and intrusive concluding observations, as well as on the views (i.e. decisions) arising from individual communications.

4. Having regard to the extent of the competences vested in the treaty monitoring bodies, it is evident that – regardless of their normative validity – these hermeneutical undertakings represent a major departure from the intended purpose of the “general comments” and “general recommendations” provided for/referred to under their constitutive instruments. Empirical evidence shows that, rather than being guidance documents aimed at clarifying the reporting duties of state parties and suggesting approaches to implementing treaty provisions, they have been sometimes used to arbitrarily alter the scope of the treaty rights and the corresponding obligations of states parties, in violation of the very same instruments that established them. In recent years however, some, if not all the treaty bodies, have decided to mainstream controversial and non-consensual notions of human rights (such as same-sex relationships) into their work and the global human rights agenda.

5. Same-sex relationships and LGBT rights are not recognized in any of the international human rights treaties, as well as the Universal Declaration of Human Rights. All human rights have been explicitly defined in international human rights instruments, which were negotiated through an inter-governmental process. Therefore, the treaty bodies have gone beyond their mandates in trying to redefine human rights, by consistently recommending to States to ensure the protection of such so-called rights. For instance, after the presentation of Nigeria’s periodic report before the Human Rights Committee, which is mandated to monitor States’ implementation of the International Covenant and Civil and Political Rights (ICCPR), the Committee in its concluding observations, raised concerns over Nigeria’s criminalization of what it called consensual same-sex sexual activity and same sex marriage (LGBT), and recommended that Nigeria should decriminalize consensual same-sex relationships between consenting adults and ensure that arrest, prosecution and punishment based on actual or perceived sexual orientation or gender identity or advocacy of the right of lesbian, gay, bisexual and transgender persons are prohibited. This is against the backdrop of Nigeria’s enactment of the Same-Sex Marriage (Prohibition) Act.

6. Such recommendations by the Human Rights Committee and similar others are seen as an attempt to broaden the scope of ICCPR (as such rights were not explicitly provided for in the ICCPR), without any multilateral negotiations by States. It is therefore imperative that treaty bodies should refrain from this mendacity, as the introduction of these new notions of human rights will continue to have negative effects on multilateral engagements, as well as polarize the international system, as we have witnessed in recent years. The Vienna Declaration and Programme of Action has factored in the significance of national and regional particularities and various historical, cultural and religious backgrounds in states’ pursuit for the promotion and protection of human rights and fundamental freedoms. Despite the Universality of human rights, States have a duty to ensure that the family, religious and cultural values of their citizens are protected.

7. Furthermore, the Human Rights Committee, in paragraph 8 of its General Comment No. 36 on the right to life, stated that, pursuant to Article 6 of the ICCPR “States parties must provide safe, legal and effective access to abortion where the life and health of the pregnant woman or girl is at risk, or where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or is not viable. In addition, States parties may not regulate pregnancy or abortion in all other cases in a manner that runs contrary to their duty to ensure that women and girls do not have to undertake unsafe abortions, and they should revise their abortion laws accordingly.” It was on the basis of this General Comment that the Committee in 2019, after the review of Nigeria’s report, requested Nigeria to review its abortion legislation and ensure unimpeded access to sexual and reproductive health services.

8. This practice has now turned the periodic reporting process into an inquisitorial machinery, whereby treaty implementation is measured against the committees’ own understanding of relevant obligations, as opposed to what is explicitly provided in the treaties. Similarly, within the framework of the periodic reporting process, States’ sovereignty is, to an increasing extent, being exposed to patronizing pressure from treaty monitoring bodies through the so-called follow-up procedures. According to these procedures, at the outcome of the periodic review process/country reviews, states parties are urged to report back within a given timeframe on measures taken to give effect to selected, particularly urgent recommendations identified as such by the committees in their concluding observations, and subjected to a compliance assessment on the basis of the information provided. While the stated goal of these procedures is to enhance states parties’ engagement with these mechanisms and the overall effectiveness of the treaty body system, in practice they are often misused to aggressively intrude into their domestic policy space. This was the case with Nigeria, where the Human Rights Committee requested the government to submit, within a year, a follow-up report on the implementation of its recommendations to, inter alia, review abortion legislation and ensure unimpeded access to sexual and reproductive health services. The follow-up procedure should be an opt-out process, just like the simplified reporting procedure.

9. The uncontrolled activism of these treaty bodies has, to a large extent, compromised their very function to monitor and report on the implementation of their respective human rights instruments. As a result of such manifest deviation, general comments have now become a critical benchmark in assessing states' compliance with their human rights obligations, as well as in deciding on individual complaints brought against them under the various/relevant communications procedures. This adverse evolution of the treaty body system, which stemmed from decades of unchecked, pervasive overreaching, illustrates the urgency of in-depth political reflection and reform in this area. The above findings have shown that the overreaching practices engaged in by treaty monitoring bodies are not the result of an expressed conferral of competence by the States parties.

10. While it is debated whether the general acquiescence of States parties with regards to legally questionable outputs such as ‘expansive’ general comments and concluding observations should be regarded as indicative of States practice in the application of a treaty, it is clear that such a practice has not yet solidified into a binding rule of custom and may therefore be legitimately and validly departed from by any willing State. The overreaching interpretation often provided in general comments have been criticized as demonstrating indifference to the precise wording of carefully negotiated international instruments. General comments remain expert’s opinion and do not render any definitive or binding interpretation of Covenants, and therefore, States are not under any obligation to give effect to any such interpretation.

**Recommendations**

11. Given the importance of monitoring treaty implementation, and in the interest of effectiveness, efficiency, transparency, accountability and fidelity to the provisions of the relevant treaties, Nigeria would like to make the following recommendations for the review of the United Nations human rights treaty body system:

1. Treaty bodies should operate strictly within the ambits of the clear provisions of each treaty as carefully negotiated and adopted by States;
2. Treaty bodies should refrain from adopting general comments attempting to redefine States’ obligations under relevant international human rights instruments;
3. Treaty bodies should refrain from the practice of advancing treaty interpretations based on concluding observations and views on individual complaints;
4. Treaty bodies should refrain from the practice of cross-referencing among treaty monitoring bodies, whose mandate and scope are not interrelated;
5. Treaty bodies should refrain from citing case law from regional human rights courts as a basis for formulating concluding observations;
6. Treaty bodies should consider changing their working methods to allow States to opt-out of the follow-up procedure, where it is used.

**Permanent Mission of Nigeria**

**New York**

5th July, 2020