**CUBAN CONTRIBUTIONS**

**REVIEW OF THE STATUS OF THE HUMAN RIGHTS TREATY BODY SYSTEM**

**GENERAL INFORMATION**

The treaty bodies are essential components of the United Nations human rights system. The activity they perform contributes to the implementation of the obligations undertaken by States pursuant to the ratification of the international human rights instruments in this area.

In this treaty body strengthening process, it is necessary to avoid taking up the approaches that were rejected in the previous process due to their negative essence; and it is necessary to focus on those proposals that are sufficiently rational, viable and attached to the spirit of international cooperation and legality, that deserve their application.

Any attempt to improve the functioning of treaty bodies presumes that each one respects the specific mandate it received from the international human rights instrument that created it.

The continuous work to enhance the effectiveness and efficiency of these bodies, while of great importance, cannot be performed to the detriment of, or in violation of or contradiction to, the above-mentioned principles and guidelines for international cooperation. This process is not conceivable without the active, broad, transparent and deliberate participation of Member States.

Similarly, based on the functioning of the treaty bodies after the previous process, we highlight the following elements, which should be taken into account in the discussion:

* There are various mandates, specificities and membership in each body; therefore, there is no absolute equality between bodies for any joint action.
* The treaty bodies cannot be equated with the special procedures and the Universal Periodic Review.
* The treaty body chairpersons and the inter-committee meetings do not have an intergovernmental mandate to take on functions beyond coordination.
* Any decision relative to the functioning or the working methods of each treaty body must be approved by Member States, which have obligations under the treaty. These are not prerogatives of the experts or the Secretariat.

The earthshaking impact that is intended to be achieved with the proper functioning of these bodies cannot be attained at the cost of violating or breaching the international instruments that give rise to them, or the intergovernmental principles, guidelines and guidance previously established on this matter.

The improvement of these bodies cannot be achieved under any kind of imposition, and has to be accomplished through appropriate discussion and intergovernmental agreements. It cannot be realized under approaches that disregard the specificities and the concrete reality of each body.

**FUNCTIONING**

For their effective function, it becomes critical to steer the activities of these bodies in accordance with the most genuine principles established in the UN for international cooperation in this field. Thus, the work of the treaty bodies must be based on objectivity, impartiality and non-selectivity, within an atmosphere of dialogue and cooperation with the States Parties.

Furthermore, in carrying out their work of reviewing the fulfilment of the specific national obligations under each treaty, they must start from the respect for the principles of sovereign equality and territorial integrity of States, and the self-determination of the peoples.

For Cuba, this process should make it possible to address certain constraints and limitations that continue to impact on the better functioning of the treaty bodies.

**COMPOSITION**

One of those limitations can be seen in the application of the respect toward the diversity of political, economic and legal systems, the difference in historical and cultural heritage, and the great variety of religions. This situation is due to the lack of balance in the geographical distribution of the treaty body members. It is therefore proposed:

* The establishment of quota systems by geographical region or other procedures, on a flexible basis, for the election of the treaty body members, in order to ensure the paramount objective of equitable geographical distribution in the membership of these human rights bodies;
* To include, in the agenda of all meetings and conferences of States Parties to the respective instruments, a discussion on the need to achieve an equitable geographical distribution.

**USE OF INFORMATION**

Another limitation that needs to be addressed is the favorable environment in some committees that is conducive to the use of manipulated, biased, non-objective information as well as information from questionable sources about certain countries whose specific obligations are being assessed, an element that undermines the credibility of those bodies. It is therefore proposed:

* To base the country analyses, primarily, on the information provided in their national reports and on the supplementary information provided by these States in addition to the aforementioned reports. Any other information to be used (in accordance with the guidelines of the treaty to which it relates) would require the State under review to provide its perspective and limit this information to the specific areas of the treaty mandate.
* For those committees that envision the use of lists of issues prior to the submission of reports, lay down that these lists should only include specific aspects of national reports requiring some clarification and update, and not allow issues outside the specific mandates of those bodies to be addressed. All other information would have to be excluded, as it would divert the delegations' attention from the actual issues to be dealt with in accordance with the obligations undertaken, and thus contribute to possible manipulations and politicization of these exercises.
* The Secretariat needs to give higher priority to facilitating the conditions for States Parties to provide all the necessary information for its consideration.
* Experts, when receiving information from other actors, should always seek to establish the facts, based on objective and reliable information emanating from relevant and credible sources, that they have duly cross-checked to the best extent possible.

**COMMITTEE MEMBERS**

While the work of most of the members of the various bodies is professional and attached to objectivity, some experts have sometimes taken an openly politically motivated stance against Member States, based on completely politicized information and without considering the official information emanating from these countries even when it is available.

In light of this reality, and with full respect for the independent nature of these experts, a proposal is put forward in order to assess the establishment of general intergovernmental guidelines to create a Code of Conduct applicable to the committee members, which would make it possible to address any politicized attitudes that any member of such bodies may assume.

Experts should be required to bear in mind the need to ensure that their personal political opinions are without prejudice to the performance of their mission, and base their conclusions and recommendations on objective assessments. Similarly, in implementing their mandate, they should also show restraint, moderation and discretion so as not to undermine the recognition of the independent status of their mandate or the environment necessary to properly discharge the said mandate.

**FINANCING**

Another situation that stirs up tension is the increase in budgetary pressure to finance the activity of these bodies, based on the growth in committees and the expansion of the supervisory functions of some of them; therefore, it is proposed:

* Limit as much as possible meetings involving the different committees and their members and chairpersons, in particular when issues that go beyond coordination are to be discussed and are outside the intergovernmental mandates created by the treaties, the conferences of States parties, or resolutions of the UN specialized human rights bodies.
* Discourage all measures and actions outside the relevant intergovernmental guidelines and the specific mandate of the respective treaty bodies, which result in an increase of the functioning costs of these bodies.

**MEMBER STATES REVIEWS**

In connection with the reviews of States, a proposal is made to take the following issues into account:

* Subdividing the bodies into chambers or groups for the examination of reports further affects the poor geographical balance of the bodies and the universality of each State´s review.
* Reviewing States in absentia is not acceptable and contravenes the most basic principles of constructive dialogue and cooperation.
* Selectivity, which is sometimes seen in the lists of issues and recommendations, prioritizing some elements over others, is contrary to the meaning of each treaty. A State's obligations are bound by the treaty as a whole, not by the parties or articles favored by a particular Committee or experts.
* While there are issues of a cross-cutting nature between the treaties and other human rights mechanisms, reviews should focus primarily on the implementation of the obligations of the treaty under which the State is being reviewed.
* Concluding observations should be prepared on the basis of the dialogue conducted during the reviews. The preparation of such a document by the Secretariat before the end of the review may indicate a preconceived view of the outcome.
* The reviews should be conducted in person. Resorting to virtual meetings should be the last resort and used upon request of the State under review.

**INTERACTION WITH EXPERTS**

Experts’ independence must be respected. At the same time, they should be able to hold individual meetings with States under review, if requested by the latter prior to the submission to the Committee, as they do with civil society organizations.

Interaction with States both before and during the presentation should be guided by the highest standards of professionalism and mutual respect.

The participation of non-governmental organizations and other actors in the review process should be governed by the methods approved by the Member States of each treaty body. Experts should not take into account the information provided by said actors and which is evidently unfounded or based on political motivations.

**SECRETARIAT**

The Office of the United Nations High Commissioner for Human Rights should carefully assign the Secretariat supporting each treaty body. Geographical distribution should also be taken into account in its selection.

The role of the Secretariat should be limited to supporting the functioning of each treaty body. Any action that interferes with the independence of the experts should be avoided.

When preparing documents for each review, the Secretariat should act in an impartial manner and focused on the treaty body it supports. Political biases or any kind of selectivity in the preparation of such documents should be avoided.