

Fundamental pillars of the UN human rights system: Expertise, Independence, and Impartiality of UN Human Rights Treaty Body Members

Briefing Paper
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1. Introduction and overview

A fundamental premise of all United Nations (UN) human rights treaties is that the Treaty Bodies elected to monitor States' Parties compliance are independent and impartial experts in relevant fields of international human rights. For more than three decades, discussions and reports of UN bodies, States, and non-governmental organizations (NGOs) have affirmed the importance of ensuring the expertise, independence, and impartiality of each Treaty Body.²

a. Purpose of this paper

This briefing paper is written for persons seeking a summary overview of existing commentary and recommendations for ensuring independence, impartiality, and expertise of the Treaty

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² See links to the numerous reports and consultations at the webpage of the UN Office of the High Commissioner for Human Rights (OHCHR) Treaty Body Strengthening Process, available at: <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBSConsultations.aspx>. Also see <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/FirstBiennialReportbySG.aspx#treaty>. Only key reports cited in this paper were reviewed.

Bodies as required by the human rights treaties. The timing of this paper coincides with a UN General Assembly (GA) review of the Treaty Bodies pursuant to GA Resolution 68/268, as well as preparations for elections of members of several Treaty Bodies in 2020.³

b. What is the UN Treaty Body system?

Each of the core UN human rights treaties (listed in section 3 of this paper) contains provisions for periodic election of members of a “Committee” by the States Parties to the treaty. The Committees are known as “Treaty Bodies.” The treaties set out the duties of the Treaty Bodies, the qualifications of Treaty Body members, including independence and expertise, and the overall composition of the Treaty Bodies, which, in general, call for inclusion of persons from diverse regions and legal systems.

c. Summary of issues

Since June 2020, UN consultations have been taking place⁴ as part of a UN Treaty Body Strengthening Process that has been ongoing for more than a decade. The 2020 review process is mandated by GA Resolution 68/268 adopted in 2014.⁵ Resolution 68/268 also mandates biennial reports by the UN Secretary-General on the status of the Treaty Body system.

The effectiveness of the Treaty Bodies in improving States Parties human rights performance has been documented for States that regularly engage with the Treaty Bodies’ processes.⁶ However, numerous reports have raised concerns about chronic backlogs, complexity of working methods, spotty State compliance with Treaty Body recommendations, underfunding, and understaffing.⁷ Over the years, persistent concerns about Treaty Body independence, expertise, gender balance, and adequacy of resources have increased in volume and intensity.

While the UN’s formal Treaty Body Strengthening Process commenced in 2009, review of the effectiveness of Treaty Bodies has been ongoing since the 1980s.⁸ The work has been voluminous.⁹ Much of the work has focussed on:

- Simplification, alignment, and synchronization of Treaty Body working methods;
- Simplification of States’ reporting requirements;
- Capacity and resources of Treaty Bodies to handle increasing workloads;
- States’ compliance with Treaty Body recommendations; and

³ See the list of upcoming elections at <https://www.ohchr.org/EN/HRBodies/Pages/upcomingelections.aspx>.

⁴ “Strengthening the Treaty Bodies, guardians of the world’s human rights covenants and treaties,” Press release, 2 June 2020, available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25917&LangID=E>. See the consultations online at: <http://webtv.un.org/search/part-1-virtual-informal-consultations-to-launch-the-review-of-the-united-nations-human-rights-treaty-body-system/6161187987001/?term=treaty%20body&sort=date>

⁵ General Assembly, Strengthening and enhancing the effective functioning of the human rights treaty body system, Resolution 68/268, 9 April 2014, available at: https://www.ohchr.org/Documents/HRBodies/TB/HRTD/A-RES-68-268_E.pdf

⁶ Cosette D. Creamer, and Beth A. Simmons. “The Proof is in the Process: Self-Reporting Under International Human Rights Treaties.” *American Journal of International Law* 114(1)(2020): 1-50, available at: https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3147&context=faculty_scholarship.

⁷ E.g. 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>

⁸ See the SG’s first biennial report, 2016, at:

<https://www.ohchr.org/EN/HRBodies/HRTD/Pages/FirstBiennialReportbySG.aspx#treaty>

⁹ *Supra* note 2.

- Gender and geographical balance.¹⁰

All these factors are critical to the effectiveness and credibility of the Treaty Bodies. However, this paper has its focus on Treaty Body independence and expertise.

The momentum for Treaty Body strengthening accelerated in 2012 when a report¹¹ of the UN High Commissioner for Human Rights (High Commissioner), then Navi Pillay, created impetus for guidelines established by the Treaty Body chairs at their June 2012 meeting in Addis Ababa (Addis Ababa Guidelines), which included attention to issues of independence and impartiality of Treaty Body members.¹²

In 2014, GA Resolution 68/268 encouraged implementation of the Addis Ababa Guidelines, which, Resolution 68/268 noted, “are aimed at ensuring objectivity, impartiality and accountability within the treaty body system, in full respect for the independence of the treaty bodies, and in this regard encourages the treaty bodies to implement the guidelines in accordance with their mandates.”¹³ Resolution 68/268 requested biennial reports by the Secretary-General and a review of progress in 2020. The Secretary-General’s reports and many other statements of States Parties and NGOs have emphasized the necessity of Treaty Body competence, independence, and impartiality.

The Secretary-General’s 2020 report¹⁴ placed particular emphasis on the current critical concern about lack of resources for UN Treaty Bodies. States Parties are collectively responsible for ensuring that the members of the Treaty Bodies have adequate resources, including for independent determination of priorities and activities to fulfil their mandates.¹⁵ Adequate resources are important for ensuring both competence and independence of the Treaty Bodies.

Despite the treaty requirements, resolutions, guidelines, and reports, States Parties often continue

¹⁰ Anna-Karin Holmlund, Gender parity in the United Nations Treaty Bodies: A Historical Overview, GQual Campaign, 2018, available at: <http://www.gqualcampaign.org/wp-content/uploads/2018/01/Gender-parity-in-the-United-Nations-Treaty-Bodies-final-for-publication1.pdf>. Also see the 2019 election results at:

<http://www.gqualcampaign.org/2019-election-results-the-path-to-full-gender-equality-in-international-justice/>

¹¹ UN Office of the High Commissioner for Human Rights (OHCHR), *Strengthening the United Nations human rights treaty body system : A report by the United Nations High Commissioner for Human Rights*, June 2012, available at: <https://www.refworld.org/docid/4fe8291a2.html>.

¹² UN General Assembly, Guidelines on the independence and impartiality of members of the human rights treaty bodies (“the Addis Ababa guidelines”), A/67/222 and Corr.1, annex I, para 36, 37, available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=A/67/222_&Lang=en.

¹³ GA Resolution 68/268, *supra* note 5, para 36.

¹⁴ UN SG, Report on the status of the treaty body system, A/74/643, 10 January 2020, available at:

<https://undocs.org/A/74/643>. See <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/3rdBiennialReportbySG.aspx>

¹⁵ Jan Lhotský, Human Rights Treaty Body Review 2020: Towards an Integrated Treaty Body System. Geneva Academy, 2017, p. 7, (Lhotský, Geneva Academy, 2017), available at: <https://www.geneva-academy.ch/joomlatools-files/docman-files/Jan%20Lhotsk%C3%BD%20-%20Towards%20an%20Integrated%20Treaty%20Body%20System.pdf>. See, e.g. UN Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, available at:

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>. Also see UN General Assembly, Principles relating to the Status of National Institutions (The Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993, available at: <https://www.un.org/ruleoflaw/files/PRINCI~5.PDF>

to nominate diplomats, government officials, or members of parliament to Treaty Bodies.¹⁶ The Treaties provide that the nomination of persons to Treaty Bodies is the purview of the States themselves. States Parties' nomination processes are generally non-transparent,¹⁷ and States Parties' election processes are noted for "political horse-trading."¹⁸

The report of the Secretariat to the May 2020 meeting of the Chairs of the Treaty Bodies pointed out that:

Open and competitive national policies or processes to select candidates before they are nominated for election, as also encouraged by the Assembly in the resolution, remain the exception... There is currently no transparent process to evaluate the merits of the nominated candidates (emphasis added).¹⁹

During the 2020 review consultations, these themes continue to be at the forefront. Independence of the Treaty Bodies established was one of the major themes of discussion during the 27 July 2020 informal consultations in New York²⁰ and 28 August 2020 in Geneva.²¹

2. Treaty requirements for States parties' election of treaty body members

During the 2020 consultations, a number of States have emphasized that the treaties give States Parties the responsibility to make nominations. The treaties themselves do not stipulate particular

¹⁶ See Jan Lhotský, "Human rights treaty body review 2020: towards an integrated treaty body system." PhD diss., EIUC, 2017, at 27-28, (Lhotský, PhD Diss., 2017), available at: https://repository.gchumanrights.org/bitstream/handle/20.500.11825/675/Lhotsky_EMA_aw.th.2016-17.pdf; Also see Lhotský, Geneva Academy, 2017, *Ibid* note 15; Suzanne Egan, Strengthening the United Nations Human Rights Treaty Body System Human Rights Law Review 13:2 (2013) 209-243, at 211 (Egan), available at: <https://pdfs.semanticscholar.org/1945/aa96d8d7d1d2130cf35950bbeca59da6d436.pdf>

¹⁷ The UK is viewed as an exception. Valentina Carraro, Electing the experts: Expertise and independence in the UN human rights treaty bodies, European Journal of International Relations, 4 January 2019, available at: <https://journals.sagepub.com/doi/full/10.1177/1354066118819138>.

¹⁸ Amnesty International et al, Position Paper on Strengthening the Human Rights Treaty Bodies in 2020 and Beyond, October 2019, available at: <https://www.amnesty.org/download/Documents/IOR4012182019ENGLISH.pdf>. Also see Geneva Academy, An overview of Positions Towards the 2020 Treaty Body Review by States, NGOs, Treaty Body Members, Academia, OHCHR, n.d. (2019), available at: <https://www.geneva-academy.ch/joomlatools-files/docman-files/Overview%20of%20positions.pdf>

¹⁹ Note by the Secretariat, Mapping the practices of treaty bodies on the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines): key challenges and further steps to operationalize the guidelines, para. 13, HRI/MC/2020/3, 6 May 2020, prepared for the Thirty-second meeting of Chairs of the human rights treaty bodies, New York, 1–5 June 2020, available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=FhOD6sgqgzAhFXD9F%2FeKaHS27qvpChe6dsIpF%2FUJwxm8YHdht%2BqNO5yVzwSe2tBdU9mV6%2FOeCR%2Fo5rY3Hxnps%2BAckSQFEs6cBYv0Gn%2BkPRD1IweS4v9HEpR0%2BIoPSgwz>.

²⁰ UN OHCHR, The virtual informal consultations on the review of the United Nations human rights treaty body system, UN Web-TV, 27 July 2020, available at: <http://webtv.un.org/watch/the-virtual-informal-consultations-on-the-review-of-the-united-nations-human-rights-treaty-body-system/6175758704001/?term=>

²¹ UN OHCHR, The virtual informal consultations on the review of the United Nations human rights treaty body system, UN Web-TV, 28 August 2020, available at: <http://webtv.un.org/meetings-events/human-rights-treaty-bodies/watch/morning-session-informal-consultations-on-the-state-of-un-human-rights-treaty-body-system/6185390451001> (morning), and <http://webtv.un.org/meetings-events/human-rights-treaty-bodies/watch/afternoon-session-informal-consultations-on-the-state-of-un-human-rights-treaty-body-system/6185503852001> (afternoon).

nomination processes. This has led a number of States Parties to resist recommendations to develop transparent national nomination processes. However, the nomination rights of States' Parties are constrained by their obligations under the treaties, all of which stipulate that Treaty Bodies members are to be independent experts with recognized competence in the field of international human rights. It follows that nomination processes should guarantee that only qualified persons are nominated. States Parties' nomination processes are also guided by the Addis Ababa Guidelines referenced in Resolution 68/268, which Resolution was negotiated and adopted by consensus of all the members of the General Assembly.

While the States Parties to each treaty nominate and elect the relevant Treaty Body members, all the treaties require that Treaty Body members act solely in their personal capacities and not as representatives of States. Each treaty has its own specific wording.²² The ten Treaty Bodies are listed below in chronological order of GA adoption of the relevant treaties. The treaty language regarding Treaty Body membership is set out in footnotes 23-33 below.

- Committee on Elimination of Racial Discrimination (CERD), elected pursuant to the *International Convention on Elimination of All Forms of Racial Discrimination* (ICERD), Article 8;²³
- Committee on Economic, Social and Cultural Rights (CESCR), elected pursuant to the *International Covenant on Economic Social and Cultural Rights* (ICESCR),²⁴ Part IV, and Economic and Social Council (ECOSOC) Resolution 1985/17.²⁵
- Human Rights Committee (HRCttee), elected pursuant to the *International Covenant on Civil and Political Rights* (ICCPR), Article 28;²⁶

²² This briefing paper covers only the core treaties and not the optional protocols, with the exception of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) which establishes the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (SPT), *infra* note 29.

²³ UN GA, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, available at:

<https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>, Article 8 states:

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems (emphasis added).

Article 6 provides that “States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.”

²⁴ UN GA, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

²⁵ Economic and Social Council, ECOSOC Resolution 1985/17 of 28 May 1985, available at:

<http://ap.ohchr.org/documents/E/ECOSOC/resolutions/E-RES-1985-17.doc>. Article (b) states: (b) The Committee shall have eighteen members who shall be experts with recognized competence in the field of human rights, serving in their personal capacity... (emphasis added).

²⁶ UN GA, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. Article 28 states:

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity (emphasis added).

- Committee on the Elimination of Discrimination against Women (CEDAW), elected pursuant to the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) Article 17;²⁷
- Committee against Torture (CAT), elected pursuant to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (UNCAT), Article 17;²⁸
- Committee on the Rights of the Child (CRC), elected pursuant to the *Convention on the Rights of the Child*, Article 43;²⁹
- Committee on Migrant Workers (CMW), elected pursuant to the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (ICRMW), Article 72;³⁰
- Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (SPT), elected pursuant to the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT), Articles 2 and 5;³¹
- Committee on Enforced Disappearances (CED), elected pursuant to the *International Convention for the Protection of All Persons from Enforced Disappearance* (ICPPED), Article 26.³²

²⁷ UN GA, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at:

<https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>. Article 17 states the Committee be composed of:
 1. [...] twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

²⁸ UN GA, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at:

<https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>. Article 17 states:
 The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience (emphasis added).

²⁹ UN GA, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>. Article 43 states:

2. The Committee shall consist of eighteen experts of high moral standing and recognized competence in the field covered by this Convention. 1/ The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems (emphasis added).

³⁰ UN GA, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 18 December 1990, A/RES/45/158, available at:

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>. Article 72 states the Committee shall consist of “fourteen experts of high moral standing, impartiality and recognized competence in the field covered by the Convention. [...] due consideration being given to equitable geographical distribution, including both States of origin and States of employment, and to the representation of the principal legal systems.”

³¹ UN GA, *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment*, 9 January 2003, A/RES/57/199, available at:

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>. Article 2.3 states that the SPT “shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity. Article 5 states:

2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty (emphasis added).

³² UN GA, *International Convention for the Protection of All Persons from Enforced Disappearance*, 20 December 2006, available at: <https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx>. Article 26.1 states:

- Committee on the Rights of Persons with Disabilities (CRPD Committee), elected pursuant to *Convention on the Rights of Persons with Disabilities* (CRPD), Article 34.³³

3. Affirmation of independent and expert Treaty Bodies as the cornerstone of the UN human rights system: 1988-2020

This section of the briefing paper discusses some key resolutions and reports aimed at strengthening the human rights treaty system since 1988. In GA Resolution 43/115 of 1 December 1988, the GA reaffirmed without a vote (by consensus) the “independent expert character of the treaty bodies”³⁴ and requested the Secretary-General to appoint an independent expert to prepare a study on long term approaches for effective supervision of the treaties. Philip Alston was appointed as the independent expert. His major reports were issued in 1989,³⁵ 1993,³⁶ and 1997.³⁷ Prof. Alston’s reports were undergirded by the treaties’ fundamental premise that independent and impartial Treaty Bodies³⁸ are the “cornerstone”³⁹ of the UN human rights system.

1. [...] The Committee shall consist of ten experts of high moral character and recognized competence in the field of human rights, who shall serve in their personal capacity and be independent and impartial. [...] Due account shall be taken of the usefulness of the participation in the work of the Committee of persons having relevant legal experience and of balanced gender representation (emphasis added).

³³ UN GA, *Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106, available at:

<https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>. Article 34 states:

3. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence and experience in the field covered by the present Convention. When nominating their candidates, States Parties are invited to give due consideration to the provision set out in article 4.3 of the present Convention.

4. The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representation of the different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities.

³⁴ UN General Assembly, Reporting obligations of States parties to international instruments on human rights and effective functioning of bodies established pursuant to such instruments, A/RES/43/115, 8 December 1988, Preamble, available at: <https://undocs.org/en/A/RES/43/115>.

³⁵ UN Secretary General, *Effective Implementation of International Instruments on Human Rights, Including Reporting Obligations Under International Instruments on Human Rights*, Initial report on enhancing the long-term effectiveness of the United Nations human rights treaty system, by the independent expert, Mr. Philip Alston, A/44/668, 8 November 1989 (Alston 1989), available at: <https://www.ohchr.org/EN/HRBodies/Pages/DocumentsSystem.aspx> (scr oll down).

³⁶ Interim Report on Updated Study by Mr Philip Alston, 22 April 1993, A/CONF.157/PC/62/Add.11/Rev 1, see, e.g. para 11, available at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/CONF.157/PC/62/Add.11/Rev.1&Lang=E>, or at: http://www.bayefsky.com/expertreport/expertreport_1993.pdf.

³⁷ Final Report on Enhancing the Long Term Effectiveness of the United Nations Treaty System, 27 March 1997, E/CN.4/1997/, para 75, 84, 106, 121, 122, available at: http://www.bayefsky.com/expertreport/expertreport_1997.pdf.

³⁸ Alston 1989, *supra* note 34, paras 69, 72, 74, 77, 87, 106, 124, 147, etc.,

³⁹ Interim Report on Updated Study by Mr Philip Alston, 22 April 1993, A/CONF.157/PC/62/Add.11/Rev 1, available at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/CONF.157/PC/62/Add.11/Rev.1&Lang=E>, or at: http://www.bayefsky.com/expertreport/expertreport_1993.pdf. See Alston’s other reports at <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/FirstBiennialReportbySG.aspx#Alston>.

In 1990, the CERD had adopted a short General Recommendation on the independence of experts on the Committee, expressing alarm about “the tendency of the representatives of States, organizations and groups to put pressure upon experts, especially those serving as country rapporteurs;” however, the focus of the General Recommendation was to “strongly” recommend that States Parties “respect unreservedly the status of its members as independent experts of acknowledged impartiality serving in their personal capacity.”⁴⁰

After the UN Human Rights Council with its Universal Periodic Review (UPR) mechanism was established in 2006, there was marked acceleration of States’ ratification of core treaties.⁴¹ This created additional pressure on the workload of the Treaty Bodies, resulting in intensified actions to ensure the capacity of the Treaty Bodies to fulfil their treaty mandates.

a. Treaty Body Strengthening since 2009 leading to the 2012 Addis Ababa Guidelines

In 2009, the UN High Commissioner for Human Rights (High Commissioner), then Navi Pillay, launched a process of reflection with a view to strengthening the Treaty Body system. The reports of the Treaty Body Strengthening Process⁴² have increasingly emphasized the importance of nominating and electing persons well-qualified to ensure the independence and expertise of Treaty Bodies along with gender and geographical balance.⁴³

The 2012 report of the High Commissioner, Navi Pillay, made several recommendations including that the Treaty Body chairs establish guidelines at their upcoming June 2012 meeting in Addis Ababa.⁴⁴ Included in the High Commissioner’s report were recommendations to ensure the independence and impartiality of Treaty Body members, including strengthening the processes for nominating and electing qualified Treaty Body members. The High Commissioner emphasized the importance of Treaty Body independence, expertise, geographical composition, and gender balance, pointing out that:

Since 1997, at the eighth Annual Meeting of Chairpersons of treaty bodies have repeatedly recommended that “States parties to human rights treaties should refrain from nominating or electing to the treaty bodies persons performing political functions or occupying positions which were not readily reconcilable with the obligations of

⁴⁰ UN Committee on the Elimination of Racial Discrimination (CERD), *CERD General Recommendation IX Concerning the Application of Article 8, Paragraph 1, of the Convention Independence of Experts*, 23 August 1990, A/45/18, available at: <https://www.refworld.org/docid/453882fd22.html>.

⁴¹ For a discussion, see Egan, *supra* note 16.

⁴² See the key reports listed on the UN website on Treaty Body Strengthening, available at: <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx>.

⁴³ UN General Assembly, Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights: Note by the Secretary-General, A/52/50721, October 1999, Para 67-68, available at : <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N97/281/38/PDF/N9728138.pdf?OpenElement>. Para 68 stated:

68. States parties to human rights treaties should refrain from nominating or electing to the treaty bodies persons performing political functions or occupying positions which were not readily reconcilable with the obligations of independent experts under the given treaty. The chairpersons also urged that consideration be given to the importance of expertise in areas related to the mandate of the treaty body, the need for balanced geographical composition, the desirability of an appropriate gender balance and the nominee's availability in terms of time to discharge the responsibilities of an expert member of a treaty body.

⁴⁴ UN Office of the High Commissioner for Human Rights (OHCHR), *Strengthening the United Nations human rights treaty body system : A report by the United Nations High Commissioner for Human Rights*, June 2012, available at: <https://www.refworld.org/docid/4fe8291a2.html>.

independent experts under the given treaty. The chairpersons also urged that consideration be given to the importance of expertise in areas related to the mandate of the treaty body, the need for balanced geographical composition, the desirability of an appropriate gender balance and the nominee's availability in terms of time to discharge the responsibilities of an expert member of a treaty body” (emphasis added).⁴⁵

The High Commissioner also recommended that States adopt merit-based, transparent national policies and processes for nomination of expert candidates for Treaty Body membership, and that Treaty Bodies “adopt guidelines to bolster the independent and impartial exercise of functions by their members” (emphasis added).

The ensuing Addis Ababa Guidelines⁴⁶ developed by the Treaty Body Chairs in June 2012, emphasized that Treaty Body members “shall not only be independent and impartial, but shall also be seen by a reasonable observer to be so (emphasis added).⁴⁷ The Guidelines cautioned against “[r]eal or perceived conflicts of interest, stating that:

... challenges to the requirements of independence and impartiality may be generated by many factors, such as a member’s nationality, place of residence, current and past employment, membership of or affiliation with an organization, or family and social relations. In addition, conflicts of interest may also arise in relation to the interest of a State of which a member is a national or resident... (emphasis added).⁴⁸

While the Addis Ababa Guidelines provide guidance on the practices of elected Treaty Body members, this briefing paper is limited to issues related to their nomination and election.

b. General Assembly Resolution 68/268 on the Addis Ababa Guidelines

GA Resolution 68/268 of April 2014 on the Addis Ababa Guidelines encouraged Treaty Bodies to implement the Guidelines,⁴⁹ reaffirming that independence and impartiality of members of the human rights Treaty Bodies “is essential for the performance of their duties and responsibilities in line with the respective treaties, and recalling the requirement that they be individuals of high moral standing serving in their personal capacity...⁵⁰

The Resolution also:

Encourages States parties, in the election of treaty body experts, to give due consideration, as stipulated in the relevant human rights instruments, to equitable geographical distribution, the representation of the different forms of civilization and the principal legal systems, balanced gender representation and the participation of experts with disabilities in the membership of the human rights treaty bodies...⁵¹

⁴⁵ Ibid, p. 76

⁴⁶ Addis Ababa Guidelines, supra note 12,

⁴⁷ Ibid, Addis Ababa Guidelines, para. 2, 3.

⁴⁸ Ibid, Addis Ababa Guidelines, para. 3.

⁴⁹ Ibid, Addis Ababa Guidelines, para 34,

⁵⁰ Ibid, Addis Ababa Guidelines, preamble.

⁵¹ GA Resolution 68/268, supra note 5, para 13.

Resolution 68/268, paragraph 10, also encourages States Parties “to consider adopting national policies or processes with respect to the nomination of experts as candidates for human rights treaty bodies.”

c. 2015 OHCHR Handbook for Human Rights Treaty Body Members

In 2015, the OHCHR published a Handbook for Human Rights Treaty Body Members,⁵² which set out the full text of the Addis Ababa Guidelines. The Handbook’s pages on nomination and election of Treaty Body members set out the treaty provisions, adding emphasis on GA Resolution 68/268 encouragement that during Treaty Body elections States parties consider “equitable geographical distribution, the representation of the different forms of civilization and the principal legal systems, balanced gender representation and the participation of experts with disabilities in the membership of the treaty bodies...”⁵³

d. UN Secretary-General biennial reports: 2016-2020

The Secretary-General issued reports in 2016, 2018, and 2020 pursuant to Resolution 68/268. The Secretary General’s 2016 report’s discussion of independence and impartiality of Treaty Body members reiterated GA Resolution 68/268’s encouragement regarding nominations of experts, and reported that all Treaty Bodies except the CESCR and the CERD had adopted the Addis Ababa Guidelines.⁵⁴

While the Secretary-General’s 2018 report did not emphasise the issue of independence or expertise of Treaty Body members, its Annex reported that as of 31 January 2018, “out of 172 treaty body members, 44 per cent were women. Without CEDAW, the representation of women in the membership of the treaty bodies is 36 per cent. The CRC is the only committee that has achieved parity.”⁵⁵

Prior to the Secretary-General’s 2018 report, the Secretariat had sought States’ comments on Treaty Body strengthening, including comments on the implementation of GA Resolution 68/268. A joint statement of 34 States, submitted by Belgium on 20 December 2017, urged that the 2020 review of treaty body system be based on key principles including “preserving the integrity and independence the treaty bodies.” A key concern of those States was reprisals against persons cooperating with Treaty Bodies.⁵⁶

On 17 December 2018, GA Resolution 73/162⁵⁷ reiterated GA Resolution 68/268’s request that the Secretary-General submit a report on the status of the human rights treaty body system in January 2020 in advance of the 2020 review of the human rights treaty body system. Prior to the

⁵² OHCHR, Handbook for Human Rights Treaty Body Members, 2015, https://www.ohchr.org/Documents/Publications/HR_PUB_15_2_TB%20Handbook_EN.pdf

⁵³ Ibid, p. 13.

⁵⁴ UN SG, Status of the human rights treaty body system, A/71/118, 18 July 2016, para. 66, available at: https://www.ohchr.org/Documents/HRBodies/TB/TBS/A-71-118_en.pdf.

⁵⁵ UN SG, Status of the human rights treaty body system, A/73/309, 6 August 2018, available at: https://www.un.org/en/ga/search/view_doc.asp?symbol=A/73/309. See Annex XXIV, available at: https://www.ohchr.org/Documents/HRBodies/TB/TBS/Biennial/A.73.309_Annexes.docx

⁵⁶ Belgium, on behalf of

<https://www.ohchr.org/Documents/HRBodies/TB/TBS/Status/2018/JointStatementByBelgium.pdf>

⁵⁷ GA resolution 68/268, *supra* note 5, para 40.

Secretary-General's January 2020 report, a group of 55 States issued a June 2019 non-paper that discussed membership of Treaty Bodies among the key issues, saying that:

Independent, competence, and impartiality of the members of the treaty bodies are not only indispensable prerequisites for an effective treaty body system, but further improvement of these aspects, including the prevention of conflicts of interest, is required.⁵⁸

The Secretary-General's January 2020 report emphasised that:

71. It is critical to ensure that Committee experts meet the highest level of recognized competence and expertise in the field of human rights and that they be of high moral standing and independent. Due consideration must also be given to equitable geographic distribution, the representation of different forms of civilization and the principal legal systems, balanced gender representation, and the participation of experts with disabilities. National competitive selection processes for the nomination of Committee experts, and/or other independent vetting processes, would be a major step towards ensuring that nominated candidates best fulfil the highest standards of competence, expertise and independence that are necessary for the treaty bodies to best discharge their protection functions. The practice of States to present "clean slates" should be strongly discouraged in order to increase the likelihood of candidates being elected on their own merits (emphasis added).⁵⁹

In addition, Annex XXII of the Secretary-General's 2020 report noted that: "On 31 October 2019, out of 172 treaty body members, 45.3 per cent were women. Without CEDAW, the representation of women in the membership of the treaty bodies is 38.3 per cent."

e. NGO statements: Insistence on merit-based nominations and elections to ensure Treaty Body expertise, independence, and diversity

In 2017, a group of eight international NGOs set out a check list of criteria for membership on the CAT⁶⁰ which elaborated on the treaty requirements in Article 17 of the UNCAT. In advance of the Secretary-General's 2018 report, a group of more than two dozen NGOs issued an open letter which, among other recommendations, suggested that the Secretary-General's report call on States to ensure that "further initiatives for treaty body strengthening adhere to key principles and objectives," including:

Ensuring expertise, independence and diversity in the treaty body membership by promoting open, transparent and merit-based nomination processes at the national level

⁵⁸ Costa Rica, on behalf of 44 States, Non-paper regarding the 2020 review of the United Nations human rights treaty bodies system, Ref. MPCR-ONUG/2019-231, 20 June 2019, p. 4, available at: https://tbinternet.ohchr.org/Treaties/CHAIRPERSONS/Shared%20Documents/1_Global/INT_CHAIRPERSONS_CHR_31_28571_E.pdf.

⁵⁹ UN SG, Status of the human rights treaty body system, A/74/643, 10 January 2020, para. 71.

⁶⁰ Amnesty International et al, Checklist - Criteria For Membership Of The Committee Against Torture, June 2017, available at: <https://www.amnesty.org/download/Documents/IOR4065302017ENGLISH.pdf>.

and by voting only for candidates that fulfil the criteria set out in the respective treaties and resolution 68/268 (para. 10 and 13).⁶¹

In 2018⁶² and 2019,⁶³ NGOs, including Amnesty International and the International Commission of Jurists emphasized that:

Very few States have acted on the call to improve the expertise and competence of membership by establishing national selection procedures. These continue to be the exception and, in the few instances where they have been put in place, they are rarely open and transparent. Elections to the treaty bodies continue to be subjected to political horse-trading, where the election of human rights experts is subservient to States' political ambitions.⁶⁴

4. Conclusions

Despite decades of continual affirmation that the quality of treaty body members “is the main virtue of the whole system”⁶⁵ the processes for their selection are acknowledged to be “far from” perfect.⁶⁶ In order to fulfil States' Parties binding legal obligations to uphold the treaties, States Parties need to implement the following recommendations noted in the above-mentioned reports:⁶⁷

- Ensure that nominees are experts in the field of international human rights with substantial experience in the subject matter of the relevant treaty.
- Ensure that nominees are selected by States in transparent processes with input from all relevant stakeholders in the State in question.

⁶¹ Open letter regarding the 2018 biennial report by the UN Secretary-General on the state of the treaty body system, 26 February 2018, available at:

<https://www.ohchr.org/Documents/HRBodies/TB/TBS/Status/2018/JointOpenLetter.pdf>

⁶² TB-Net et al, Summary Report “TB-NET Event on Treaty Body Elections,” 9:00 am -12:30 pm, Thursday 15 November 2018, Centre International de Conférence de Genève (CICG), December 2018, available at:

<https://www.amnesty.org/download/Documents/IOR4096082018ENGLISH.pdf>.

⁶³ Amnesty International et al, Position Paper on Strengthening the Human Rights Treaty Bodies in 2020 and Beyond, October 2019, available at”

<https://www.amnesty.org/download/Documents/IOR4012182019ENGLISH.pdf>

⁶⁴ Amnesty International et al, Position Paper on Strengthening the Human Rights Treaty Bodies in 2020 and Beyond, October 2019, available at”

<https://www.amnesty.org/download/Documents/IOR4012182019ENGLISH.pdf>

⁶⁵ See Jan Lhotský, "Human rights treaty body review 2020: towards an integrated treaty body system." PhD diss., EIUC, 2017, at 27-28, available at:

https://repository.gchumanrights.org/bitstream/handle/20.500.11825/675/Lhotsky_EMA_aw.th.2016-17.pdf; Also

see Jan Lhotský, Human Rights Treaty Body Review 2020: Towards an Integrated Treaty Body System. Geneva Academy, 2017, available at: <https://www.geneva-academy.ch/joomlatools-files/docman-files/Jan%20Lhotsky%20-%20Towards%20an%20Integrated%20Treaty%20Body%20System.pdf>; Egan, *supra* note 16, at 231-33.

⁶⁶ See Jan Lhotský, "Human rights treaty body review 2020: towards an integrated treaty body system." PhD diss., EIUC, 2017, at 27-28, available at:

https://repository.gchumanrights.org/bitstream/handle/20.500.11825/675/Lhotsky_EMA_aw.th.2016-17.pdf; Also see Egan, *supra* note 16, at 231-33.

⁶⁷ The Geneva Human Rights Platform, and Geneva Academy An overview of Positions Towards the 2020 Treaty Body Review by States, NGOs, Treaty Body Members, Academia, OHCHR, Geneva Academy, n.d., available at: <https://www.geneva-academy.ch/joomlatools-files/docman-files/Overview%20of%20positions.pdf>

- Ensure that nominees are independent, and seen to be, independent. This means avoiding nominations of diplomats, government officials, persons with ties to governments, or other persons who are not independent or not perceived to be independent.⁶⁸
- Encourage States Parties' voluntary compliance with Resolution 268/68, para 10, by promoting the adoption of "national policies or processes with respect to the nomination of experts as candidates for human rights treaty bodies."⁶⁹
- Actively seek gender balance⁷⁰ and participation of experts with disabilities in all elections of Treaty Body members.
- Establish an accessible online platform that sets out transparent and well-substantiated information about the relevant qualifications and affiliations of each Treaty Body candidate, measured against specific treaty-based criteria.
- Encourage all States' Parties to ensure that their contributions are sufficient to ensure and enable the fulfilment of the Secretary General's obligations set out in the treaties "...provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant."⁷¹

Since GA Resolution 68/268 has not been fully implemented, it is also important that the General Assembly renew the Resolution with strong emphasis on nomination and election procedures that will ensure independence, impartiality, and expertise of the Treaty Bodies as required by the Treaties.

⁶⁸ In 2012, 20% of the treaty body members were diplomats, government officials or members of a parliament. See also Rodley, 'Duplication and Divergence in the Work of the United Nations Human Rights Treaty Bodies: A Perspective from a Treaty Body Member' (2011), 105 American Society of International Law Proceedings 512

⁶⁹ Open letter regarding the 2018 biennial report by the UN Secretary-General on the state of the treaty body system, 26 February 2018, available at:

<https://www.ohchr.org/Documents/HRBodies/TB/TBS/Status/2018/JointOpenLetter.pdf>

⁷⁰ In the same year, there were 107 male experts(62%)and 65 female experts(38%)in the committees.1818, Ibid. at 77 and 78.

⁷¹ E.g. Art 36 ICCPR. The other treaties contain similar paragraphs.