

**ACADEMY IN-BRIEF No. 1**

# The Independence of UN Human Rights Treaty Body Members

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# Key findings and recommendations

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The independence of their members is integral to the credibility of United Nations (UN) human rights treaty bodies. This In-Brief report analyzes their composition and membership. This section summarises the key findings and recommendations of the analysis.

- Taken together, the treaty bodies have 172 members. Analysis of their composition shows: (a) frequent affiliation to the executive branch in members' professional backgrounds; (b) gender imbalance; and (c) uneven geographic representation. Fifty-five members have an affiliation to the executive in their state of origin and one quarter of those also occupy official functions — Chairperson, Vice-Chairperson, or Rapporteur — in their respective treaty body.
- Only 39% of the elected members are women. The highest rates of gender imbalance are found in the Committee on the Elimination of Discrimination against Women (22 out of 23 members are women) and the Committee on Enforced Disappearance (nine out of ten members are men).
- Members from European states occupy 35% of all the seats. All other regions have a significantly lower proportion.
- Overall, if the number of states parties to a particular treaty is compared to the representation of that region in the membership of the treaty bodies, states from Africa and Asia and Pacific are under-represented, while states from Europe and the Middle East and North Africa are over-represented.
- Only the 2002 Optional Protocol to the Convention against Torture and the 2006 Convention on Enforced Disappearances explicitly require their treaty body members to be independent. The Committee on the Elimination of Racial Discrimination is the only treaty body that has dedicated a General Recommendation to the question of the independence of its members.
- Not all the rules of procedure adopted by treaty bodies address the question of the independence of their members. Those that do, foresee that where a potential conflict of interest occurs, members must not participate in certain activities or attend certain meetings.

- *The Addis Ababa Guidelines on the independence and impartiality of members of the treaty bodies, adopted in June 2012, need to be discussed by each of the treaty bodies during their sessions. The Committee on the Rights of Persons with Disabilities adopted the Guidelines at its Eighth Session in September 2012. First steps were also taken by the Committee on the Rights of the Child, which discussed the Guidelines at its 61<sup>st</sup> Session in September–October 2012. Other treaty bodies should be encouraged to discuss these Guidelines in their next sessions.*
- *Based on the results of the analysis, membership of the treaty bodies should be revised progressively in accordance with the terms of their current mandates. To this end, when they nominate new members or re-elect existing members, states parties should take account of the Addis Ababa Guidelines and the conditions set out in the rules of procedure of each treaty body.*

# Introduction

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This In-Brief analyzes the standards for the independence of UN human rights treaty body members and the extent to which their current composition reflects these standards. The report was prepared in the context of an intergovernmental process, endorsed by the UN General Assembly, to strengthen the effectiveness of the treaty body system. This In-Brief aims to contribute to that debate by reviewing key issues and setting out some facts and figures on each treaty body and on their overall situation.

The In-Brief is divided into three main sections. Section I analyzes standards that refer to the independence of treaty body members in the human rights treaties and the treaty bodies' rules of procedure. It identifies standards that seek to ensure that nominated members are independent and also discusses clauses that govern the election of members and termination of mandates, recognising their relevance for the faithful discharge of members' responsibilities.

Section II describes the current composition of the treaty bodies in order to assess the extent to which they respect the minimum standards for membership. The analysis of membership considers three criteria: professional status at national level; gender; and geographic representation. This section draws essentially on information that is available on the website of the Office of the UN High Commissioner for Human Rights.

Section III discusses current developments, notably the *Guidelines for the independence and impartiality of the treaty body members* which the Chairs of the treaty bodies adopted in Addis Ababa in June 2012, and the proposals that have been made for strengthening the treaty bodies in the context of the intergovernmental reform process.

A set of conclusions and recommendations complete the In-Brief. An Annex contains the Addis Ababa Guidelines.



# 1. Standards regarding the independence of treaty body members

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The treaty bodies are mandated to monitor the implementation of UN human rights treaties by the states parties. Each treaty establishes the mandate of its monitoring body, except for the Committee on Economic, Social and Cultural Rights, whose mandate was instituted by a resolution of the UN Economic and Social Council (ECOSOC).<sup>1</sup> All but one of the Committees are mandated to carry out a combination of the following functions: to consider periodic reports submitted by states parties, review inter-state complaints, take decisions on individual communications, and conduct missions of inquiry. The Sub-Committee on the Prevention of Torture, set up by the 2002 Optional Protocol to the Convention against Torture (OP-CAT),<sup>2</sup> is tasked to visit places of detention.

The fulfilment of these activities is entrusted to the members of the treaty bodies, who are expected to meet a number of requirements.

- i) They are nationals of states that are party to the human rights instrument in question.
- ii) They have been elected by states that are party to the instrument in question (with the exception of the Committee on Economic, Social and Cultural Rights, whose members are nominated by the states parties and appointed by ECOSOC<sup>3</sup>).
- iii) They are of high moral standing and are recognized to have competence in the field of human rights.
- iv) They serve in their personal capacity.
- v) They are appointed in a manner that ensures equitable geographic representation and the representation of different legal systems.

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<sup>1</sup> UN Economic and Social Council Resolution 1985/17.

<sup>2</sup> Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 18 December 2002 (hereafter, OP-CAT), in *UN Treaty Series*, Vol. 2375, p. 237.

<sup>3</sup> The Committee on Economic, Social and Cultural Rights is a subsidiary body of ECOSOC. ECOSOC Resolution 1985/17 (§C) stipulates that the members of the Committee are experts in the field of human rights and serve in their personal capacity.

Alongside these common elements, points of divergence exist. Each human rights instrument mentions certain specific points about the membership of its treaty body. For instance, the 1966 Covenant on Civil and Political Rights (ICCPR)<sup>4</sup> and the 1984 Convention against Torture (CAT)<sup>5</sup> indicate the desirability of members having legal experience, while the 2002 Optional Protocol to the Convention against Torture recommends that members of the Sub-Committee for the Prevention of Torture should have proven professional experience in the administration of justice, in particular criminal law, prison and police administration, or in a field relevant to the treatment of persons deprived of their liberty.<sup>6</sup> The 1989 Convention on the Rights of the Child (CRC),<sup>7</sup> the 1990 Convention on Migrant Workers (CMW)<sup>8</sup> and the 2006 Convention on the Rights of Persons with Disabilities (CRPD)<sup>9</sup> require expertise in the fields covered by the respective Conventions.<sup>10</sup> According to OP-CAT, decisions on the composition of treaty bodies need to consider gender balance, based on principles of equality and non-discrimination.<sup>11</sup> Regarding the possibility that experts might cumulate mandates in different treaty bodies, Article 17, paragraph 2, of CAT refers to the usefulness of including experts who serve on the Human Rights Committee in the Committee against Torture.

## Independence of treaty body members

Two main guarantees seek to ensure that the implementation of human rights treaties is monitored in a consistent manner: they address respectively the *independence* and the *impartiality* of treaty body members. These guarantees are stipulated both in treaty provisions and the rules of procedure that guide the work of each treaty body.

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4 International Covenant on Civil and Political Rights, New York, 16 December 1966 (hereafter, ICCPR), in *UN Treaty Series*, Vol. 999, p. 171.

5 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984 (hereafter, CAT), in *United Nations Treaty Series*, Vol. 1465, p. 85.

6 OP-CAT, Art 5(2).

7 Convention on the Rights of the Child, New York, 20 November 1989 (hereafter, CRC), in *UN Treaty Series*, Vol. 1577, p. 3.

8 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, New York, 18 December 1990 (hereafter, CMW), in *UN Treaty Series*, Vol. 2220, p. 3.

9 Convention on the Rights of Persons with Disabilities, New York, 13 December 2006 (hereafter, CRPD), in *UN Treaty Series*, Vol. 2515, p. 3.

10 CRC, Art. 43; CMW, Art. 72; and CRPD, Art. 34.

11 OP-CAT, Art. 5(4). A similar provision is included in the Convention for the Protection of All Persons against Enforced Disappearance, Art. 26(1).

## Treaty-based guarantees of treaty body members' independence

The guarantees of independence and impartiality are laid down either as a condition of membership in the treaty bodies or as undertakings in the solemn declaration that precedes a member taking up his or her mandate. Only the OP-CAT and the Convention for the Protection of All Persons against Enforced Disappearance (CED)<sup>12</sup> expressly set independence and impartiality as a condition of membership, while the CMW requires only impartiality.<sup>13</sup> The ICCPR, on the other hand, is the only treaty that obliges appointed members to make a solemn declaration whereby they commit themselves to fulfil the mandate impartially and conscientiously.<sup>14</sup>

There is little other emphasis on the importance of independence or interpretation of what that concept means. The only treaty body that has dedicated a General Recommendation to the notion of the independence of its membership is the Committee on the Elimination of Racial Discrimination.<sup>15</sup> This Committee stated that the independence of experts is essential 'to secure full observance of human rights and fundamental freedoms'.<sup>16</sup> For this reason, the Committee called on states parties to the Convention on the Elimination of Racial Discrimination (CERD)<sup>17</sup> 'to respect unreservedly the status of its members as independent experts of acknowledged impartiality serving in their personal capacity'.<sup>18</sup> Additionally, OP-CAT requires that the members of the Sub-Committee for the Prevention of Torture respect the laws and regulations of the states where the Sub-Committee is conducting its visits, and refrain from any action or activity incompatible with the impartial and international nature of their duties.<sup>19</sup>

The treaties do not establish any procedure to oversee compliance with the principle of independence or any other requirement for membership in the monitoring bodies they have established. This suggests that treaty body members are not

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<sup>12</sup> International Convention on the Protection of All Persons from Enforced Disappearance, New York, 20 December 2006 (hereafter, CED), in UN doc. A/61/488, C.N.737.2008.

<sup>13</sup> OP-CAT, Art 5(6); CED, Art 26; and CMW, Art. 72(1)(b).

<sup>14</sup> ICCPR, Art. 38.

<sup>15</sup> CERD, General Recommendation No. 9: Independence of experts (Art. 8, para. 1), UN doc. A/45/18, 23 August 1990.

<sup>16</sup> *Ibid.*

<sup>17</sup> International Convention on the Elimination of All Forms of Racial Discrimination, New York, 7 March 1966 (hereafter, CERD), in *UN Treaty Series*, Vol. 660, p. 195.

<sup>18</sup> CERD, General Recommendation No. 9: Independence of experts, *op. cit.*

<sup>19</sup> OP-CAT, Art. 36.

necessarily dependent on any other organ for assessment of their independence or potential conflicts of interest. Except for the Committee on Economic, Social and Cultural Rights and the Sub-Committee on the Prevention of Torture, the only occasion when the treaty bodies appear before another organ of the UN is when they report to the General Assembly.<sup>20</sup> The report consists in giving an overview of the activities undertaken by each treaty body and recommendations addressed to states parties during the consideration of periodic reports, the decisions made on individual complaints, and the reports received from UN bodies.

Lastly, several treaties afford treaty body members the facilities, privileges, and immunities of experts on mission for the UN, as laid down in the Convention on Privileges and Immunities of the United Nations.<sup>21</sup> This Convention provides the following:

Experts [...] performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded:

Immunity from personal arrest or detention and from seizure of their personal baggage;

In respect of the words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. The immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;

Inviolability for all papers and documents.<sup>22</sup>

Immunity is granted as long as the experts act in the interests of the United Nations and in accordance with the mandate they solemnly undertook to fulfil.<sup>23</sup> As the International Court of Justice stated in its Advisory Opinion in the case concerning the *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, the UN Secretary-General 'has the primary responsibility and authority to protect the interests of the Organization

<sup>20</sup> ICCPR, Art. 45; CERD, Art. 9(2); CEDAW, Art. 21; CAT, Art. 24; CRC, Art. 44(5); CMW, Art. 74(7); CRPD, Art. 39; and CED, Art. 36.

<sup>21</sup> ICCPR, Art. 43; CAT, Art. 23; OP-CAT, Art. 35; CMW, Art. 72(6); CRPD, Art. 34(10); CED, Art. 26(8).

<sup>22</sup> Convention on the Privileges and Immunities of the United Nations (hereafter, 1946 UN Convention on Privileges and Immunities), adopted by UN General Assembly Resolution 22 A (I), 13 February 1946, Section 22.

<sup>23</sup> *Ibid.*, Section 23.

and its agents, including experts on mission',<sup>24</sup> by upholding their immunity in all situations except when immunity would impede the course of justice.<sup>25</sup> Granting treaty body members the same immunity vested in experts on mission for the UN therefore constitutes a protection that reinforces the independence of the treaty body members. Although they act in their personal capacity, treaty body members fulfil a mandate that was authorized by the organs of the UN, and, as such, they need to rely solely on the protection of the UN for all actions undertaken in relation to that specific mandate.<sup>26</sup>

## Guarantees of independence in the treaty bodies' rules of procedure

Aside from the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>27</sup> all other human rights treaties prescribe that the competence to establish rules of procedure remains with each treaty body.<sup>28</sup> Few treaty body rules of procedure explicitly set independence as a criterion for membership, although an undertaking to that effect is included in the solemn declaration of appointed members under which members pledge to perform their duties honourably, faithfully, impartially, and conscientiously.<sup>29</sup>

Only the Rules of Procedure of the Committee against Torture and the Committee against Enforced Disappearance include explicit provisions on members'

<sup>24</sup> International Court of Justice (ICJ), *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion, ICJ Reports, 1999, p. 62.

<sup>25</sup> UN Convention on Privileges and Immunities 1946, *supra* 14, Section 23.

<sup>26</sup> This point was also stressed by the ICJ in *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, ICJ Reports, 1949, p. 183.

<sup>27</sup> International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966 (hereafter, ICESCR), in UN Treaty Series, Vol. 660, p. 195.

<sup>28</sup> ICCPR, Art. 37(2); CERD, Art. 10(1); CEDAW, Art. 19(1); CAT, Art. 18(2); OP-CAT, Art. 10(2); CRC, Art. 43(8); CMW, Art. 75(1); CRPD, Art. 34(10); CED, Art. 26(6).

<sup>29</sup> Human Rights Committee, Rules of Procedure, UN doc. CCPR/C/3/Rev.10, 11 January 2012, Rule 16; Committee against Torture, Rules of Procedure, UN doc. CAT/C/3/Rev.5, 21 February 2011, Rule 14. See also Committee on Economic, Social and Cultural Rights, Rules of Procedure, CESCR, UN doc. E/C.12/1990/4/Rev.1, 1 September 1993, Rule 13; Committee on the Elimination of Discrimination against Women, Rules of Procedure, UN doc. A/56/38 (SUPP), as amended by UN doc. A/62/38 (SUPP), Rule 15; Rules of Procedure of the Committee on the Elimination of Racial Discrimination, 1989, Rule 14; Rules of Procedure of the Committee on Migrant Workers, UN doc. HRI/GEN/3/Rev.1/Add.1, 7 May 2004, Rule 11; Rules of Procedure of the Committee on the Rights of the Child, UN doc. CRC/C/4/Rev.2, 2 December 2010, Rule 15; Rules of Procedure of the Committee on the Rights of Persons with Disability, UN doc. CRPD/C/4/2, 13 August 2010, Rule 14; Rules of Procedure of the Committee on Enforced Disappearances, UN doc. CED/C/1/R.1/Rev.1, 27 February 2012, Rule 11; Rules of Procedure, Sub-Committee on the Prevention of Torture, UN doc. CAT/OP/12/3, 5 January 2011, Rule 9.

independence.<sup>30</sup> A close connection is established between independence and the effective performance of the activities of the respective treaty body. Independence is closely linked to the fact that members serve in their personal capacity, and as such are bound not to seek or accept instructions from anyone concerning the performance of their duties.<sup>31</sup> In the case of the rules of procedure of the remaining treaty bodies,<sup>32</sup> the wording of the solemn declaration may provide further insights into the meaning of the notion of independence.

Performing duties and exercising powers incumbent on treaty body experts impartially and conscientiously is the general requirement prescribed by the solemn declaration. Only the Rules of Procedure of the Sub-Committee for the Prevention of Torture and the Committee against Enforced Disappearance provide that the solemn declaration include the members' undertaking to act independently.

Clearly, independence is closely connected with the impartiality and integrity of members, as well as with their ability to apply the provisions of the respective human rights instruments 'equally to all States and all individuals without fear or favour and without discrimination of any kind'.<sup>33</sup> The requirement to discharge activities 'independently, objectively, honourably, faithfully, conscientiously and without prejudice'<sup>34</sup> strengthens the guarantee of independence. The phrase 'fear or favour' refers to possible intrusion by states parties into the activities of any of the members of the Committee either by way of intimidation or by way of providing benefits.

Thus, members' independence should not be assessed in the abstract, but rather in relation to concrete situations that may constitute conflicts of interest. As such, Rules 73, 109, and 110 of the Rules of Procedure of the Committee against Torture address conflicts of interests based on nationality or contract established between the member of this Committee and the nominating state party. Similarly, the rules of procedure of the Sub-Committee for the Prevention of Torture do not deal with the notion of independence in relation to the mandates of the treaty body

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**30** Committee against Torture, Rules of Procedure, Rule 15; Committee on Enforced Disappearance, Rules of Procedure, Rule 10 (1).

**31** *Ibid.*

**32** This is the case of the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child, the Committee on Migrant Workers, and the Committee on the Rights of Persons with Disabilities.

**33** Committee against Torture, Rules of Procedure, Rule 15(2); Committee on the Elimination of Discrimination against Women, Rules of Procedure, Rule 60.

**34** Committee on Enforced Disappearance, Rules of Procedure, Rule 10(2).

members, offering instead an understanding of what may constitute a conflict of interest in the exercise of the members' duties.

### **Defining potential conflicts of interest**

One can discern a common approach among the treaty bodies to circumstances likely to give rise to conflicts of interest. Although there are variations,<sup>35</sup> two circumstances typically define a conflict of interest in the rules of procedure: a) when a treaty body member has the nationality of the state party under review; or b) when the treaty body member was nominated by the state party under consideration. Aside from these situations, other sources of conflicts of interest are: c) an employment relationship with the state party concerned; d) a personal interest of the member in the case or situation under consideration; e) the direct involvement of the expert in a distinct capacity in the drafting and adoption of any previous decision relevant to the case discussed before the respective treaty body; or f) any other conflict of interest.<sup>36</sup> The threshold for determining the existence of a conflict of interest is very low, as the mere perception of a potential conflict of interest may be considered sufficient to undermine the independence of the member in question.<sup>37</sup>

The envisaged solution to conflicts of interest does not exclude from membership experts who find themselves in one of the circumstances mentioned above. Instead, the rules establish a regime whereby the risks of interference with the independence of the treaty body and of the mandate-holder are mitigated. This approach is common for all treaty bodies with the exception of the Committee on Economic, Social and Cultural Rights.<sup>38</sup> The rules of procedure of several treaty bodies give the respective Committee competence to evaluate the possibility

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**35** The Rules of Procedure of the Committee against Torture and of the Committee for the Elimination of Discrimination against Women replace the condition that the mandate holder was elected by a state party to the communication with the condition whether he/she is a national of the state party concerned or is employed by that country. The Rules of Procedure of the Committee on the Elimination of Racial Discrimination consider that a member of the committee should not participate in a session reviewing communications against a state party where he or she is a national of that state.

**36** Committee on Enforced Disappearance, Rules of Procedure, Rule 47(1); Human Rights Committee, Rules of Procedure, Rule 90(1).

**37** Sub-Committee on the Prevention of Torture, Rules of Procedure, Rule 28.

**38** Human Rights Committee, Rules of Procedure, Rule 91; Committee on the Elimination of Racial Discrimination, Rules of Procedure, Rules 89 and 90; Committee on the Elimination of Discrimination against Women, Rules of Procedure, Rules 60 and 61; Committee against Torture, Rules of Procedure, Rules 109 and 73; Sub-Committee on the Prevention of Torture, Rules of Procedure, Rule 28; Committee on the Rights of the Child, Rules of Procedure, Rule 14; Committee on the Rights of Persons with Disabilities, Rules of Procedure, Rules 43, 60 and 61; Committee on Migrant Workers, Rules of Procedure, Rule 32; Committee on Enforced Disappearance, Rules of Procedure, Rules 47 and 67.

of a conflict of interest, and state that evaluations should take place in the absence of the member concerned.<sup>39</sup> The fact that the treaty bodies decide when a circumstance may hinder the independence of a member re-emphasizes the Committee's independence as a body. The members of the Committee are required to be accountable only to the Committee and to their own conscience.<sup>40</sup>

### **Ensuring independence during the consideration of periodic reports**

The approach common to several treaty bodies is, as a matter of course, to exclude the member under suspicion of conflict of interest from the examination of relevant periodic reports. The Rules of Procedure of the Committee against Torture and the Committee on Enforced Disappearance specifically require that a member who finds himself or herself in a potential conflict of interest should not participate in such examinations or attend relevant meetings.<sup>41</sup> Members of the Committee on the Rights of Persons with Disabilities are not allowed to take part in the examination.<sup>42</sup>

The prohibition on participation extends to taking part in the activities of any subsidiary bodies. The obligation of non-presence implies that the member shall not be present during all non-public consultations or meetings between the Committee and national human rights institutions, non-governmental organizations (NGOs), or other entities. The member shall also be excluded from participation in the discussion and adoption of the respective concluding observations.<sup>43</sup>

### **Ensuring independence during the consideration of communications**

The mandatory non-participation of members in the consideration of complaints is expressly mentioned with respect to the following treaty bodies: the Committee on the Elimination of Racial Discrimination,<sup>44</sup> the Committee on the Elimination of Discrimination against Women,<sup>45</sup> the Committee against Torture,<sup>46</sup> the Committee

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<sup>39</sup> Human Rights Committee, Rules of Procedure, Rule 90(2); Committee against Torture, Rules of Procedure, Rule 109(2); Committee on the Rights of Persons with Disabilities, Rules of Procedure, Rule 43(2), 60(2).

<sup>40</sup> Committee against Torture, Rules of Procedure, Rule 15(1).

<sup>41</sup> Committee against Torture, Rules of Procedure, Rule 73; Committee on Enforced Disappearance, Rules of Procedure, Rule 47; Committee on the Rights of Persons with Disabilities, Rules of Procedure, Rule 43.

<sup>42</sup> Committee on the Rights of Persons with Disabilities, Rules of Procedure, Rule 43.

<sup>43</sup> Committee against Torture, Rules of Procedure, Rule 73(2).

<sup>44</sup> Committee on the Elimination of Racial Discrimination, Rules of Procedure, Rule 89.

<sup>45</sup> Committee on the Elimination of Discrimination against Women, Rules of Procedure, Rule 60.

<sup>46</sup> Committee against Torture, Rules of Procedure, Rule 109.

on the Rights of Persons with Disabilities<sup>47</sup> and the Committee on Enforced Disappearance.<sup>48</sup>

The voluntary withdrawal of members is stated as an option in the Rules of Procedure of the Human Rights Committee,<sup>49</sup> the Committee on the Elimination of Discrimination against Women,<sup>50</sup> the Committee on the Elimination of Racial Discrimination,<sup>51</sup> and the Committee against Torture.<sup>52</sup> In some cases, the rules of procedure also give members the option to withdraw from certain activities of their respective treaty bodies without express reference to the consideration of communications. This is the case of the Committee on the Rights of Persons with Disabilities<sup>53</sup> and the Committee on Enforced Disappearance.<sup>54</sup>

## Election of treaty body members and termination of their mandates

States parties to a human rights treaty nominate persons from among their nationals for membership of the treaty's monitoring body. The nominations are compiled by the Secretary-General who submits them for consideration to all the states parties to a specific treaty. A meeting of states parties is the forum that elects the members of a given treaty body, provided the decision is taken by a quorum of two-thirds of the states parties. Experts are elected by secret ballot on the basis that they not only obtain the largest number of votes but also an absolute majority of the votes of the states parties present and voting.

This procedure is common to all treaty bodies with the exception of the Committee on Economic, Social and Cultural Rights. Additionally, slight variations are noticeable with regard to the number of candidates a state party can nominate. Most treaty bodies stipulate that each state party may nominate one candidate,<sup>55</sup> except for the ICCPR and OP-CAT, which allow up to two nominations per

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<sup>47</sup> Committee on the Rights of Persons with Disabilities, Rules of Procedure, Rule 60.

<sup>48</sup> Committee on Enforced Disappearance, Rules of Procedure, Rule 47.

<sup>49</sup> Human Rights Committee, Rules of Procedure, Rule 91.

<sup>50</sup> Committee on the Elimination of Discrimination against Women, Rules of Procedure (amended), Rule 61.

<sup>51</sup> Committee on the Elimination of Racial Discrimination, Rules of Procedure, Rule 90.

<sup>52</sup> Committee against Torture, Rules of Procedure, Rule 110.

<sup>53</sup> Committee on the Rights of Persons with Disabilities, Rules of Procedure, Rule 61.

<sup>54</sup> Committee on Enforced Disappearance, Rules of Procedure, Rule 67.

<sup>55</sup> CERD, Art. 8; CEDAW, Art. 17; CAT, Art. 17; CRC, Art. 43; CMW, Art. 72.

state party,<sup>56</sup> and the CRPD and the CED, which do not refer to the number of nominations a state party may submit.<sup>57</sup> The members of the Committee on Economic, Social and Cultural Rights are elected by the Economic and Social Council upon nomination by states parties to the ICESCR.<sup>58</sup>

The mandate of a treaty body member ends upon the expiry of the term for which he or she was appointed. Death, resignation, or a cause that is not temporary and which is unanimously viewed by the other members to impede the member in question from carrying out his/her duties, are justifications for early termination of a treaty body member's mandate.<sup>59</sup> OP-CAT states that if it is impossible for members of the Sub-Committee for the Prevention of Torture to perform their duties, this will lead to the termination of their mandates.<sup>60</sup> For the ICCPR, the early termination of a member's mandate may occur when the member interrupts the performance of his/her duties for a period of time which is not temporary.<sup>61</sup> The Rules of Procedure adopted by the Committee on Economic, Social and Cultural Rights take a similar approach.<sup>62</sup>

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<sup>56</sup> ICCPR, Arts. 29-31; OP-CAT, Art. 7.

<sup>57</sup> CRPD, Art. 34; CED, Art. 26.

<sup>58</sup> ECOSOC Resolution 1985/17, Review of the composition, organization and administrative arrangements of the Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights, para. c.

<sup>59</sup> ICCPR, Art. 33; CAT, Art. 17(6); OP-CAT, Art. 8; CRC, Art. 43(7); CMW, Art. 72(6); CRPD, Art. 34(9); and CED, Art. 26(5).

<sup>60</sup> OP-CAT, Art. 8.

<sup>61</sup> ICCPR, Art. 33(1).

<sup>62</sup> Committee on Economic, Social and Cultural Rights, Rules of Procedure, Rule 11(1).

## Box 1. Proposed criteria to safeguard the independence of treaty body members

Based on the provisions of the relevant treaties and the rules of procedure of the treaty bodies, the following criteria are proposed to help safeguard the independence of treaty body members.

### Procedural criteria

- The treaty body members serve in their personal capacity.
- At the commencement of their mandate, the treaty body members make a solemn declaration to carry out their duties and activities in the respective Committee independently, impartially, objectively, efficiently, honourably, faithfully, and conscientiously.
- There is no procedure to remove the mandate of an elected treaty body member.
- The Committee to which the member in question belongs is responsible for determining the circumstances that should give rise to an early termination of a mandate.
- There is no procedure to oversee compliance with the principle of independence of treaty body members. The treaty bodies are the guardians of their members' independence.
- Treaty body members enjoy the facilities, privileges, and immunities afforded to experts on mission for the UN, under the Convention on Privileges and Immunities of the United Nations.
- The treaty bodies are the organs that decide whether a member has a conflict of interest. Treaty body members are accountable to the Committee of which they are a member and to their own conscience.

### Functional criteria

- Treaty body members shall refrain from any action or activity that is incompatible with the impartial and international nature of their duties.
- Treaty body members shall abstain from requesting or accepting instructions or directions from anyone in the discharge of their duties.
- Treaty body members shall not hold political or other functions that would hamper their independence or impair perceptions of their independence.
- Treaty body members shall not have personal or professional interests in any matter which they consider as treaty body members.
- In the discharge of certain activities and duties, treaty body members with the same nationality as the state party undergoing the procedure in question should avoid participation in the discussion.



## 2. Analysis of the composition of the human rights treaty bodies

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This section examines the current composition of the treaty bodies, in order to assess the extent to which existing standards relating to the independence of their members have been met.

### Methodology of the analysis

The present analysis is based on the membership of the treaty bodies as of September 2012. The analysis reflects the latest changes in the composition of the treaty bodies, especially following elections held by the Human Rights Committee. The study proceeds in three steps: it looks first at the professional background of the treaty body members; then assesses the composition of the treaty bodies from a gender perspective; and finally reviews whether membership of the treaty bodies is representative, both in terms of treaty body membership, and of states parties to each instrument. The analysis uses biographical information on treaty body members and information on ratification of each human rights treaty taken from the website of the Office of the High Commissioner for Human Rights (OHCHR).

The following professional categories have been employed: academic, legislative, judicial, executive, members of national human rights institutions, members of NGOs, and the private sector. The analysis took into consideration those situations where experts cumulate various professions. For this reason, the number of professions may not always correspond to the number of members in a given TB. The gender analysis refines these results. To answer the question regarding geographic representation, the study uses six regions: Africa, Asia and Pacific, Europe, the Middle East and North Africa, Latin America, and North America. In this regard the In-Brief speaks about the over-representation or under-representation of states parties from a certain geographic region in the membership of treaty bodies. Over-representation occurs when the proportion of members appointed to a treaty body exceeds the proportion of states parties to the respective treaty in the same geographical region. Under-representation occurs in the opposite case.

## The composition of membership of the treaty bodies

The Human Rights Committee is composed of 18 members, of whom five (28% of the total) are women. The Africa region is represented by two members (11%), while the Asia and Pacific region and North America region each have one (6%). The Middle East and North Africa region has four members (22%) and the Latin American region has three (17%). The largest proportion of members of the Human Rights Committee, namely seven (39% of the total) are from European states (see *Figure 1*). From the point of view of professional categories, 15 members (68%) are from academia, five (23%) from the judiciary, one (5%) from the executive, and one (5%) from the legislative branch.

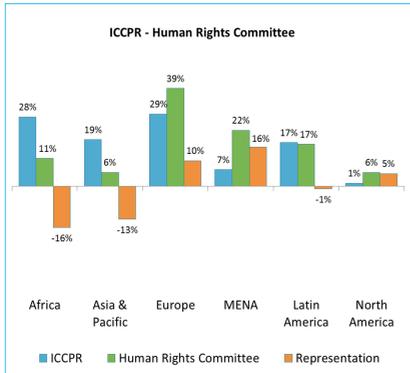


Figure 1

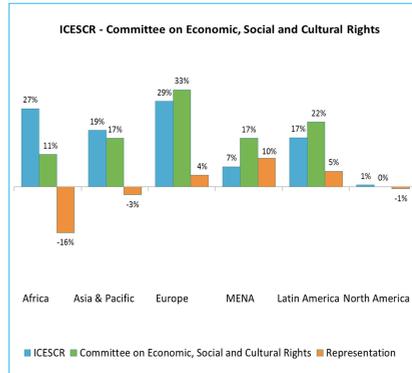


Figure 2

The Committee on Economic, Social and Cultural Rights has 18 members, of whom only three (17%) are women. Here again, most members (six: 33%) are from European countries (see *Figure 2*). Four members (22%) come from the Latin American region. Asia and the Pacific, and the Middle East and North Africa regions are each represented by three members (17%), while only two members (11%) come from African nations. There are no members from North America. Professionally, the Committee draws equally from academia and the executive branch of government (eight members each, 44%). The three remaining members are from the judiciary.

The Committee on the Elimination of Racial Discrimination has 18 members, of whom three (17%) are women. Members from European countries are most heavily represented, holding six seats (33%) (see Figure 3). African countries are the second most represented region with four members (22%). The regions of Asia and the Pacific, and Latin America are represented by three members each (17%), while the Middle East and North Africa, and North America, have one member (6%). This Committee has members from each of the professional categories, as follows: seven (39%) have an academic background; five (28%) are from the executive; two (11%) have an NGO background; and the legislative, the judiciary, national human rights institutions, and the private sphere categories each has one member (6%).

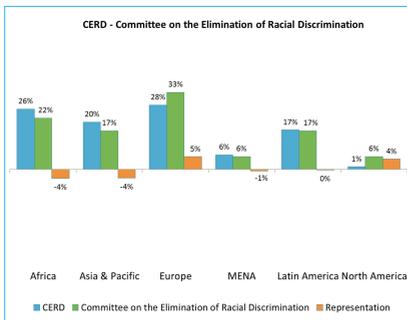


Figure 3

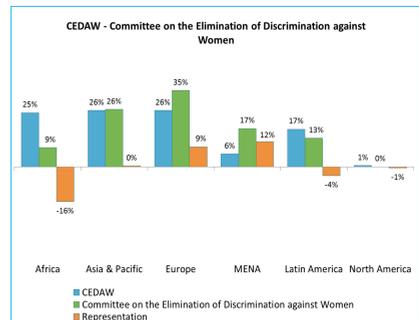


Figure 4

The Committee on the Elimination of Discrimination against Women is composed of 23 members, of whom only one is a man (4%). Eight members (35%) of the Committee come from Europe but only two from Africa (9%) (see Figure 4). The Asia and Pacific region is represented by six members (26%), the Middle East and North Africa by four (17%), and Latin America by three (13%). There is no member from North America. From a professional point of view, the highest number of members comes from the executive branch (12). This means that more than half the membership of the Committee is occupied by experts with functions in the government of their states. The other half of members are divided among academics (nine members, 39%); the legislative branch (one, 4%); the judiciary (two, 9%); and the NGO sector (one, 4%).

The Committee against Torture is composed of 10 members, of whom three (30%) are women. The composition of this Committee also reveals a high prevalence of members from European countries (four, 40%). Two members are from Africa (20%), while Asia and the Pacific, the Middle East and North Africa, North America, and Latin America have one member (10%) each (see Figure 5). From a professional perspective, academia and the judiciary are represented by three members (30%) each, while the executive and the NGO sector each has two (20%).

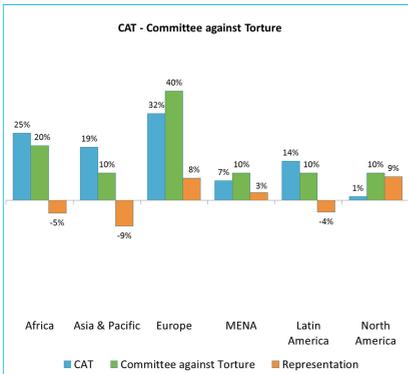


Figure 5

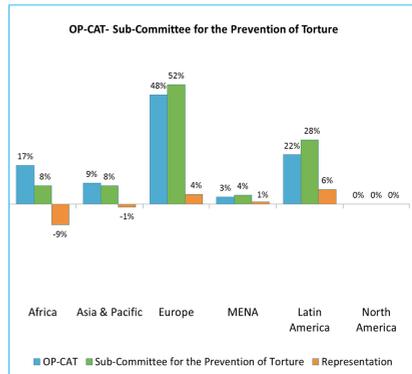


Figure 6

The Sub-Committee for the Prevention of Torture has 25 members, of whom eight (32%) are women. Half the membership comes from European countries, while the other half is divided among the various regions as follows: seven members (28%) from Latin America, two (8%) from African countries and from Asia and the Pacific, and one (4%) from the Middle East and North Africa (see Figure 6). Since no state from North America is a party to OP-CAT, this region has no seats on the Sub-Committee. The distribution of professional categories among members of the Sub-Committee is as follows: 11 members (44%) are academics, six (24%) are from the executive branch, four (16%) have a judicial background, and four (16%) come from the NGO sector.

Of the 18 members of the Committee on the Rights of the Child, 10 (56%) are women. The region with the largest number of members is Europe (six, 33%) (see Figure 7). The Middle East and North Africa region has four members (22%). Africa and the Asia and Pacific regions have three representatives each (17%), while Latin America has 2 members (11%). There are no members from North America. Experts with an academic background occupy the highest proportion of the professional categories (seven, 39%), followed by the executive branch (five, 28%), the NGO sector (three, 17%), the private sector (two, 11%), and national human rights institutions (one, 6%).

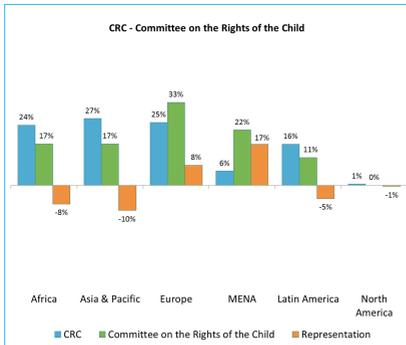


Figure 7

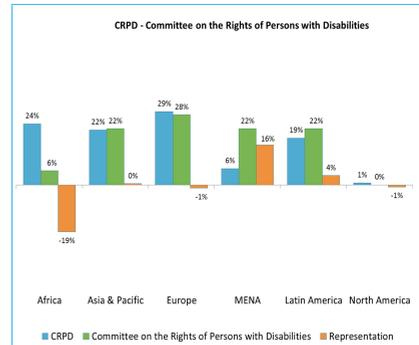


Figure 8

The Committee on the Rights of Persons with Disabilities counts 18 members, of whom eight (44%) are women. Although the composition of this Committee indicates a more balanced geographic distribution (see *Figure 8*), the number of experts coming from European nations remains the highest (five, 28%). The African region has one expert on the Committee (6%). Experts from Asia and the Pacific, Latin America, and the Middle East and North Africa have four members (22%) each. The North American region has no members. The majority of members (10, 56%) are academics, and only two (11%) come from the executive branch. The NGO sector is represented by three members (17%), while one member (6%) is from the legislative branch and one from national human rights institutions.

The Committee on Migrant Workers is composed of 14 members, of whom only four (29%) are women. This is the only Committee where the proportion of European experts is not the highest (see *Figure 9*). In this case, two members (14%) come from the Europe region. Two also come from countries in the Asia-Pacific region. The highest number of experts comes from Latin America (four, 29%). Three (21%) come from African countries, and from the Middle East and North Africa region. No states from North America are parties to the CMW. From a professional perspective, nine experts (64%) belong to the executive of their respective states. Two members (14%) are from the academic sector, while the judiciary and NGO sectors are each represented by one member (7%).

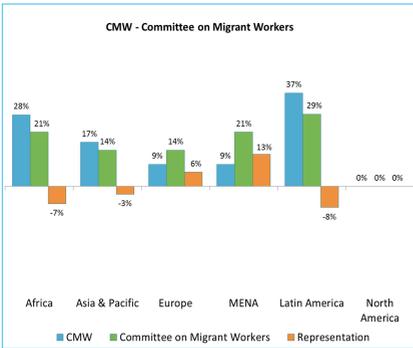


Figure 9

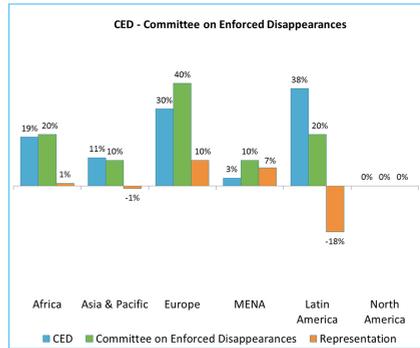


Figure 10

The Committee on Enforced Disappearances is composed of 10 experts, of whom only one is a woman. Four come from the European region (40%). The African and Latin American regions each have two members (20%), while Asia and the Pacific, and the Middle East and North Africa, each have one (10%) (see Figure 10). At present, no state from the North American region is a party to the CED. Professionally, the number of experts with an academic background is equal to the number of experts from the executive (three or 30% each). The judiciary and the national human rights institutions categories have two members each (20%), while the NGO sector has one member (10%).

## General observations

A total of 172 experts sit on UN human rights treaty bodies. Among the professional categories, most experts come from an academic background (72, 42%), closely followed by the executive branch (55, 32%). The judiciary numbers 20 experts (12%), and the NGO sector 17 (10%). Four experts (2%) have a background in the legislative branch and three (2%) are from the private sector (see Figure 11). Figure 12 provides an overview of the representation of professions in each treaty body.

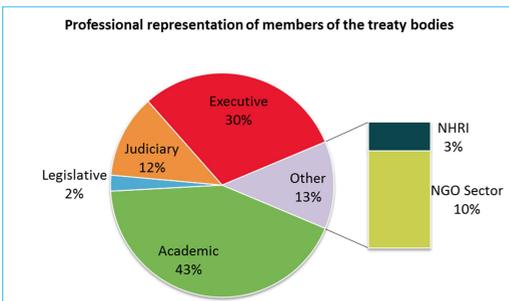


Figure 11

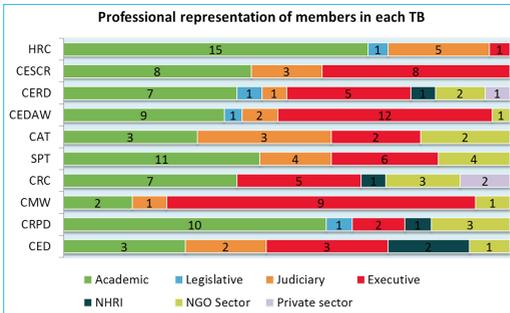


Figure 12

The rules of procedure of treaty bodies provide that each body shall elect its officers (Chairperson, Vice-Chairperson, and Rapporteur) and regulate their specific functions in coordinating the good functioning of the Committee’s activities. The Human Rights Committee appoints four officers from among its members, of whom, presently, only one is a woman. The Committee on the Elimination of Racial Discrimination does likewise. One of the five elected officers in the Committee on Migrant Workers is a woman. The Committee on Economic, Social and Cultural Rights appoints five officers from its membership, and none is currently a woman. The Committee on the Elimination of Discrimination against Women appoints five officers, all of whom are currently women. Five officers are appointed also by the Committee against Torture and the Sub-Committee on the Prevention of Torture, and currently two in each body are women. The Committee on the Rights of the Child appoints six officers, of whom four are women. Four women officers have also been appointed by the Committee on the Rights of Persons with Disabilities, from a total of five. The Committee on Enforced Disappearances has not yet appointed its officers. Overall, approximately half the officers of treaty bodies are women. While, overall, gender balance has been achieved, at the level of the individual treaty bodies large discrepancies remain (see Figure 13 for an overview).

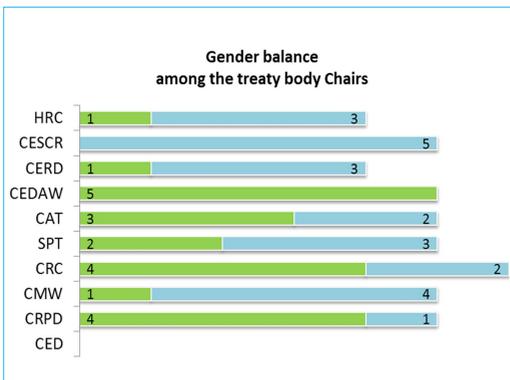


Figure 13

Another observation is that, 10% of all the officers of treaty bodies (Chairpersons, Vice-Chairpersons, Rapporteurs) are experts affiliated with the executive branch of their state (see *Figure 14*). Three officers in the Committee on Economic, Social and Cultural Rights are members of the executive. Two of the five officers of the Committee on the Elimination of Discrimination against Women, of the Committee against Torture, and of the Committee on Migrant Workers, are members of the executive. One officer of the Committee on the Elimination of Racial Discrimination is a member of the executive.



Figure 14

From a gender point of view, only 66 women (39%) are elected members of the treaty bodies (see *Figure 15*). All the treaty bodies show gender imbalance, including the Committee on the Elimination of Discrimination against Women, where only one man is an elected member (of 23 members). Had it not been for the high number of women appointed to this Committee, the proportion of women members would barely reach one-quarter of the treaty body membership (see *Figure 16*).

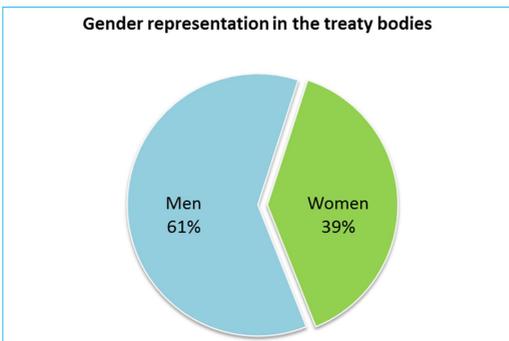


Figure 15

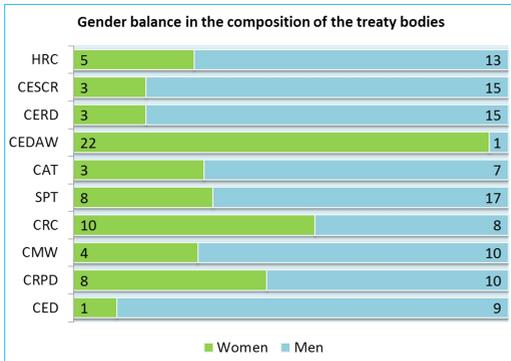


Figure 16

Geographic representation is analysed from two perspectives: (a) the number of members from each region compared with the total number of experts in a given treaty body; and (b) the number of members from each region compared with the number of states from the same region who are party to the treaty in question. The first perspective was presented in the previous section. The observations below concern representation from the second perspective (see *Figure 17*).

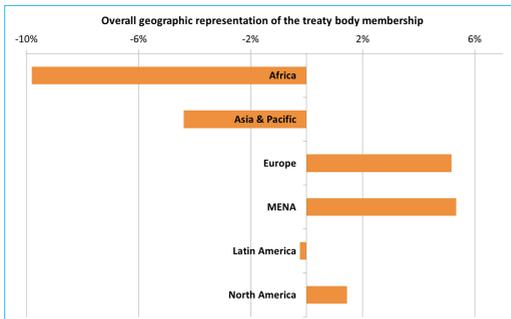


Figure 17

Europe holds the largest number of seats and is also the region where the largest number of states have ratified the human rights treaties. Overall, 61 seats on the treaty bodies are occupied by members from European states. This represents 35% of the total treaty body membership and exceeds by only 5% Europe’s proportion of ratifications. European states are most over-represented on the Human Rights Committee.

The least represented region is Africa, considering the rate of ratifications of human rights instruments by states in this region. From this point of view, African states are under-represented in every Committee. They are most under-represented in the Committee on the Rights of Persons with Disabilities, followed closely by the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, and the Committee on the Elimination of Discrimination against Women.

The Asia and Pacific region is also under-represented when considering proportionate geographic representation. States parties from this region are most under-represented on the Committee against Torture and the Committee on the Rights of the Child. A good balance is achieved in the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of Persons with Disabilities. The treaty bodies that achieve the fairest representation of states parties are the Committee on Enforced Disappearance and the Sub-Committee on the Prevention of Torture.

States parties from the Middle East and North Africa region are almost as over-represented as European states. The highest concentration of members from states parties in the Middle East and North Africa region is found in the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, followed by the Committee on Migrant Workers. A fair balance is achieved in the Committee on the Elimination of Racial Discrimination.

Generally, states parties from Latin America are fairly represented in the treaty bodies. They are most strongly represented on the Sub-Committee for the Prevention of Torture, and most starkly under-represented on the Committee on Enforced Disappearance, followed by the Committee on Migrant Workers. A fair balance is achieved in the Human Rights Committee and the Committee on the Elimination of Racial Discrimination.

With a total number of 10 ratifications of human rights treaties, three experts appointed in the treaty bodies come from states from North America. These are members in the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, and the Committee against Torture.

### 3. Debates concerning the independence of treaty body members

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Improving the functioning of the treaty body system was again taken up by the UN High Commissioner for Human Rights in 2009.<sup>63</sup> The High Commissioner invited states parties, treaty body members, civil society, and national human rights institutions to contribute to finding adequate solutions to the challenges faced by the treaty body system. Subsequently, a series of informal consultations took place around the world with the participation of various stakeholders.<sup>64</sup> In support of the efforts undertaken by the High Commissioner and the UN Secretary-General to elaborate measures to improve the effectiveness, harmonization and reform of the treaty body system, the General Assembly opened an intergovernmental process. So far, this has included a series of informal meetings with states, bilateral consultations, thematic discussions, video conference with the Chairs of the treaty bodies, and a civil society forum. To contribute to the process, the Chairs of the treaty bodies adopted a new instrument for regulating the standards that safeguard members' independence and impartiality.

#### Proposals on the independence of treaty body members developed during informal consultations led by the UN High Commissioner for Human Rights

The question of improving the processes for nominating and electing members of treaty bodies, to ensure their independence, availability and competence at

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<sup>63</sup> Proposals to reform the treaty body system were first put forward in 2005 by the former High Commissioner for Human Rights, Louise Arbour. See also: Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body, UN doc. HRI/MC/2006/2, 14 March 2006.

<sup>64</sup> Strengthening the United Nations human rights treaty body system. A report by the United Nations High Commissioner for Human Rights, June 2012, pp. 8–11 (hereafter, HCHR Report 2012).

election and during the term of their mandate was raised in Dublin in 2009<sup>65</sup> and again in Poznan in 2010.<sup>66</sup> The Poznan statement asserted that experts should be elected on the basis of their proven expertise in relevant areas and their willingness to undertake duties associated with the mandate of treaty body members. With regard to independence, the stakeholders who met in Poznan were of the view that persons exercising political functions or occupying positions that might interfere with the treaty body mandate should not be nominated.<sup>67</sup> This approach was also supported at a Civil Society Consultation in Seoul in 2011.<sup>68</sup> A consultation in Dublin in 2011 added that, when determining the composition of a treaty body, consideration should be given to gender, geography, professional expertise in relevant fields, and knowledge of legal systems.<sup>69</sup> The meeting also drew states parties' attention to their obligation to respect fully the independence of treaty body members and avoid any act that would interfere with the exercise of experts' mandates.<sup>70</sup>

At a consultation for states held in New York in April 2012, several opinions were voiced with regard to the membership of the treaty bodies and their independence. Many states stressed that nominated experts should have expertise in the areas covered by the respective treaty. It was also stressed that government officials should not be appointed treaty body members. Certain states suggested creating a platform in the Conference of States Parties for candidates to share their views on the work they expected to accomplish.<sup>71</sup> Many appeals were made to the OHCHR to play a role in supporting states parties in the nomination process by proposing a common format for candidates' CVs, sharing information on the candidates, and compiling good practices. A few states called for gender balance, the promotion of persons with disabilities in the membership of all treaty bodies, and the introduction of quotas to ensure balanced geographic representation. Another proposal suggested the creation of a code of conduct addressed to treaty body members.

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**65** The Dublin Statement on the Process of Strengthening of the United Nations Human Rights Treaty Body System, 2009, para. 19.

**66** The Poznan Statement on the Reforms of the United Nations Human Rights Treaty Body System, Poznan, 2010, para 19.

**67** *Ibid.*, para. 20.

**68** Seoul Statement on Strengthening the United Nations Human Rights Treaty Body System, 2011, para. 2.

**69** Dublin II Statement on Strengthening the United Nations Human Rights Treaty Body System, 2011, para. 19.

**70** *Ibid.*, para. 20.

**71** Report, Consultation for States on Treaty Body Strengthening, New York, 2–3 April 2012, para. 34.

In a report issued in June 2012, the High Commissioner compiled the proposals for strengthening the treaty body system. The report emphasised that ensuring the independence and expertise of the treaty body members would influence the level of compliance by states parties with treaty body recommendations.<sup>72</sup> It also welcomed the adoption of the *Guidelines on the independence and impartiality of members of the human rights Treaty Bodies* (see below) and elaborated a number of recommendations for states parties on the nomination of experts. These recommendations recognized the prerogative of states parties to nominate experts and referred to three principles: (a) nomination of candidates should be via an open and transparent selection process; (b) individuals should not be nominated if they hold political functions or occupy positions that are not reconcilable with principles of independence and impartiality; and c) the terms of service of experts should be limited (noting that two terms are permitted by some human rights treaties).<sup>73</sup>

From an institutional point of view, the report of the High Commissioner called for the adoption of policies and processes at national level for the nomination and election of experts to ensure transparency. It also supported the proposal to create an open public space where states parties could present their candidates for treaty body membership. In the view of the High Commissioner, this platform should be moderated by five former treaty body members with different professional backgrounds, mindful of gender balance, geographical representation, and different legal systems.<sup>74</sup> Finally, the High Commissioner's report suggested that the selection of candidates should be delegated to the meetings of Chairpersons of the treaty bodies.<sup>75</sup> In support of these initiatives, the High Commissioner expressed readiness to develop a handbook containing the conditions and requirements for membership of treaty bodies.<sup>76</sup>

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72 HCHR Report 2012, p. 74.

73 *Ibid.*, p. 75.

74 *Ibid.*, p. 76.

75 *Ibid.*

76 *Ibid.*, pp. 74–9.

## Proposals on the independence of treaty body members advanced during the intergovernmental process

The inter-governmental process for strengthening the treaty body system began with the adoption of Resolution 66/254 by the General Assembly in February 2012.<sup>77</sup> The Preamble of this resolution reaffirms the importance of ensuring the independence of the treaty bodies. An informal meeting of the General Assembly dedicated to the treaty body strengthening process in July 2012 provided an opportunity to reiterate a number of proposals regarding the election process, such as the exclusion of serving government officials from the nomination lists, the development of a handbook setting out what is expected from treaty body members, the development of a centralized treaty body election website, the introduction of fixed regional quotas, and achievement of gender balance. Proposals to create an open public space where states parties could present candidacies, and to adopt national policies and processes were criticised by a number of states, who invoked their exclusive competence in this regard.

The suggestion to elaborate a code of conduct for the treaty bodies was complemented by a proposal to create an accountability mechanism that would address breaches of it. The code of conduct would contain ethical and professional rules and requirements for treaty body experts, and would be developed by states parties.<sup>78</sup> Those opposed to this proposal argued that such an initiative would prejudice the independence of treaty body members. It would also affect the competence of the treaty bodies to adopt their own rules of procedure and working methods. Furthermore, to provide a legal basis for the code of conduct would require amendments to the treaties themselves.<sup>79</sup>

The consultations acknowledged the adoption of the Guidelines on the independence of treaty body members. Concerns were raised about the mandate of Chairpersons of treaty bodies to initiate the development of the Guidelines, and the importance of preserving the prerogative of states parties to elect the members

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<sup>77</sup> UN General Assembly Resolution 66/254 on the Intergovernmental process of the General Assembly on strengthening and enhancing the effective functioning of the human rights treaty system, 15 May 2012.

<sup>78</sup> Statement issued by the Cross-Regional Group of States at the Informal meetings of the General Assembly on strengthening and enhancing the effective functioning of the human rights treaty body system, 16-18 July 2012.

<sup>79</sup> Statement to the Civil Society Forum on the Intergovernmental Process on the Strengthening of the Human Rights Treaty Bodies, International Commission of Jurists' Statement on the Independence of the UN Human Rights Treaty Bodies, August 2012, para. 6.

of treaty bodies,<sup>80</sup> taking account of the principles of expertise, independence and availability.<sup>81</sup> Certain states sought clarification on the scope of the independence of experts and proposed a narrow interpretation that focused on interference by governments.

During a Civil Society Forum organized in September 2012, held to allow NGOs to participate in the intergovernmental process, several organizations expressed strong opposition to the proposal for a code of conduct.<sup>82</sup> It was suggested that debates on the adoption of a code of conduct exceeded the mandate of the intergovernmental process of the General Assembly,<sup>83</sup> and failed to comply with treaty provisions that regulated the functioning of the respective Committees.<sup>84</sup>

## Guidelines on the independence and impartiality of treaty body members, Addis Ababa, 2012

In June 2012, in Addis Ababa, Chairpersons of all the Committees adopted *Guidelines on the independence and impartiality of members of the human rights treaty bodies* (the Addis Ababa Guidelines, included in the Annex).<sup>85</sup> These Guidelines stress the fact that the human rights treaties are the legal basis for the requirements of independence and impartiality of the treaty body members. The Preamble of the Guidelines also reiterates that the competence to guarantee the independence of the treaty body members rests with the Committees themselves because the treaties entrust them to decide on their working methods and rules of procedure.

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**80** Statement issued by the Cross-Regional Group of States at the Informal meetings of the General Assembly on strengthening and enhancing the effective functioning of the human rights treaty body system, 16–18 July 2012.

**81** *Ibid.*

**82** Statement to the informal hearing for civil society – Intergovernmental process on the strengthening of the Human Rights Treaty Bodies, 4 September 2012, International Rehabilitation Council for Torture Victims, p. 4.

**83** Statement to the informal hearing for civil society – Intergovernmental process on the strengthening of the Human Rights Treaty Bodies, 4 September 2012, Amnesty International, p. 2; Statement to the Civil Society Forum on the Intergovernmental Process on the Strengthening of the Human Rights Treaty Bodies, International Commission of Jurists' Statement on the Independence of the UN Human Rights Treaty Bodies, August 2012, para. 8.

**84** Statement to the informal hearing for civil society – Intergovernmental process on the strengthening of the Human Rights Treaty Bodies, 4 September 2012, International Commission of Jurists.

**85** Guidelines on the independence and impartiality of members of the human rights treaty bodies (Addis Ababa guidelines), UN doc. HRI/MC/2012, 25–29 June 2012.

The Guidelines underline the general principles stemming from the notion of independence and clarify their application to the different activities included in the mandates of the treaty bodies. Mirroring the approach of the rules of procedure of the treaty bodies, the Guidelines define conflict of interest to include *suspicion* of lack of independence by a reasonable observer.<sup>86</sup> Article 3 of the Guidelines identifies a series of factors that may raise a real or perceived conflict of interest. These include: a member's nationality; place of residence; current or past employment; membership of or affiliation with an organization; family and social relations; or the interest of a state of which a member is a national or resident.<sup>87</sup> On the other hand, race, ethnicity, religion, gender, disability, colour, descent, or any other ground for discrimination shall not be considered a basis for a real or perceived conflict of interest.

With respect to procedural guarantees of the independence of members of the treaty bodies, the Guidelines cite the irremovability of members during the terms of their mandate, except in situations where each Committee determines that early termination is appropriate.<sup>88</sup> The independence of treaty body members also protects them against any direction or influence of any kind, or from pressure from the state of which they are nationals or from other states. As a consequence, treaty body members should neither seek nor accept instruction in the performance of their duties.

As mentioned in several rules of procedure, treaty body members are responsible to their respective Committees. With regard to the election of members, the fact that treaty body members need to be independent should enable them to reject any state party's demand for favourable treatment in future Committee procedures.<sup>89</sup> Additionally, members must refrain from any activity that might lead to, or be perceived by a reasonable observer to lead to, bias against any state party. On both grounds, treaty body members must uphold their independence and impartiality. They are accountable to themselves and to the Committees on which they sit, and only the respective Committee is authorised to determine the existence of a potential conflict of interest.<sup>90</sup>

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<sup>86</sup> *Ibid.*, Art. 2.

<sup>87</sup> The Guidelines for the first time include, among factors that may raise suspicion regarding the independence of treaty body members, past employment positions held by elected members, affiliation with or membership of an organization, and family and social relations.

<sup>88</sup> Addis Ababa Guidelines, Art. 5

<sup>89</sup> *Id.*

<sup>90</sup> *Ibid.*, Art. 16.

The application of these general principles to the mandate of the treaty bodies depends on the type of activity. Upon a finding that a member of a treaty body is not independent or is perceived not to be independent, the Committee in question can decide to exclude that member from activities that would generate a conflict of interest. With respect to periodic reports, where conflict of interest is found to exist, the Guidelines impose on treaty body members the obligation not to participate in or influence the preparation or outcome of dialogues, and the obligation not to be present during any non-public consultations, briefings, meetings, discussions, or deliberations, including the preparation of concluding observations.<sup>91</sup>

With respect to communications, a member is considered to lack independence if any of the following four criteria is fulfilled: (a) he or she is a national of the state whose acts are impugned by the communication; (b) he or she has any personal or professional conflict of interest in the case; (c) any other real or perceived conflict of interest exists; or (d) he or she has participated in any capacity, other than as a member of his or her treaty body, in the making of any decision on the case covered by the communication.<sup>92</sup> The obligation of non-participation also covers country visits or inquiries.<sup>93</sup>

The Guidelines attest that the independence of treaty body members is also preserved by careful analysis of the professional backgrounds of the experts. Thus, Article 12 mentions that 'the independence and impartiality of treaty body members is compromised by the political nature of their affiliation with the executive branch of the State'.<sup>94</sup> Functions or activities that raise a suspicion of lack of independence or impartiality should be avoided, be they in the executive branch, in private corporations or entities, civil society organizations, academic institutions, or state-related organizations.<sup>95</sup> When participating in the human rights activities of intergovernmental organizations, such as panels, trainings, seminars, etc., treaty body members are obliged to make all necessary arrangements to safeguard their independence and impartiality.<sup>96</sup>

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<sup>91</sup> *Ibid.*, Art. 9.

<sup>92</sup> *Ibid.*, Art. 10.

<sup>93</sup> *Ibid.*, Art. 11.

<sup>94</sup> *Ibid.*, Art. 12.

<sup>95</sup> *Ibid.*, Art. 14.

<sup>96</sup> *Ibid.*, Art. 15.

In conclusion, the Addis Ababa Guidelines are grounded on the provisions of the human rights treaties and the rules of procedures established by the treaty bodies. They reiterate a number of obligations of treaty body members, make explicit procedural safeguards to ensure they remain independent and impartial, and stipulate what must happen when circumstances emerge that may undermine the independence of treaty body members. The Guidelines have been welcomed for bringing greater clarity to the notion of conflict of interest based on lack of independence or perceptions of lack of independence. The Guidelines also usefully indicate the factors that may generate such conflicts of interests and give guidance on the preferred professional background of experts. The Guidelines take into consideration the specificity of the mandate of the treaty bodies and of their membership.

Unlike the separate sets of rules of procedure adopted by the Committees, the Addis Ababa Guidelines were elaborated cooperatively by representatives of all the treaty bodies. The Guidelines nevertheless probably need to be discussed and eventually adopted by each treaty body.

# Findings and recommendations

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The meetings convened by the UN High Commissioner for Human Rights, the UN General Assembly, and the Chairpersons of the treaty bodies brought together the relevant stakeholders and provided different fora for exploring a significant number of solutions that may strengthen and enhance the effectiveness of the treaty body system. The discussions indicate a general concern about, and interest in ensuring the independence of treaty body members. After the release of her report on *Strengthening the United Nations human rights treaty body system* in June 2012,<sup>97</sup> the High Commissioner has not convened further meetings or follow-up, although the report was discussed by the treaty bodies during their meetings, invoked in the Preamble of the Addis Ababa Guidelines, and constituted the basis of negotiation during the intergovernmental process. The initiatives adopted by the Chairpersons of the treaty bodies and the General Assembly remain open. Final decisions have not been reached either by the treaty bodies in respect of the Addis Ababa Guidelines, or by states in the context of the intergovernmental process.

The Addis Ababa Guidelines need to be discussed by each of the treaty bodies during their sessions. The Committee on the Rights of Persons with Disabilities

adopted the Guidelines at its Eighth Session in September 2012. First steps were also taken by the Committee on the Rights of the Child, which discussed the Guidelines at its 61<sup>st</sup> Session in September–October 2012. More treaty bodies should be encouraged to discuss the Guidelines in their next sessions.

With respect to the intergovernmental process, no final decision has yet been reached on any of the issues debated. The extension of this process to the 67<sup>th</sup> session of the UN General Assembly would provide the space necessary to continue deliberations and ‘build upon the discussions held thus far with a view to identifying [...] concrete and sustainable measures needed’.<sup>98</sup> It is not yet clear when further meetings will be scheduled.

Regarding the proposals put forward, some are worth considering in future consultations. To ensure open and transparent nomination of candidates, the proposals concerning national policies and processes and the development of an

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<sup>97</sup> HCHR Report 2012.

<sup>98</sup> UN General Assembly, Extension of the intergovernmental process of the General Assembly on strengthening and enhancing the effective functioning of the human rights treaty body system, UN doc. A/RES/66/295, 17 September 2012.

open public space in which states parties could present their candidates could lead to positive outcomes. These solutions do not deprive states of their exclusive competence to nominate candidates, but would enhance the visibility of the whole process. From a procedural point of view, it would be welcome if states were able to propose more than one candidate to the meetings of the states parties for possible election. This possibility is already envisaged by the ICCPR and OP-CAT.<sup>99</sup> Further guidance on suitable ways to improve the process of nomination of treaty body members might also be found in the practice of regional human rights mechanisms.

The criteria that the candidates need to meet should stress the overriding requirement that experts should serve in their personal capacity, possess expertise that is relevant to the mandate of the treaty body for which they are nominated, and act with total independence and impartiality. The definition of independence should be broad and should cover issues that arise because of the candidate's or member's nationality, place of residence, current or past employment, membership or affiliation with an organization, or family or social relations. The threshold for determining interference should be low enough to include the perception that an expert is not independent. Additionally, a handbook that sets out what is expected from a treaty body member, and a compilation of good practices with regard to nomination of candidates, might be useful tools.

The analysis of membership undertaken in the course of this study identified several problematic aspects, including the incidence of affiliation to the executive branch, gender imbalance, and uneven geographic representation. Membership of the treaty bodies should be revised progressively in accordance with the terms of the current mandates. Upon the nomination or re-election of members, consideration should be given to the Addis Ababa Guidelines as well as the rules of procedure of each treaty body.

Lastly, the independence of treaty body members must be preserved during their term of office. The provisions of the human rights treaties and their rules of procedure provide meaningful procedural and functional guarantees for upholding the independence of members. Nothing should be adopted in the future that could undermine this set of guarantees.

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<sup>99</sup> ICCPR, Art. 29(2); OP-CAT, Art. 6(1).

# Annex. Addis Ababa Guidelines on the independence and impartiality of members of the treaty bodies

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## I. Preamble

*Recognizing* the importance of the human rights treaties in ensuring the independence and impartiality of the treaty body members, and stressing the common will of the Chairs at their twenty-fourth meeting, convened in Addis Ababa in June 2012, to clarify and reinforce the treaty body provisions in this regard,

*Recalling* that the Secretary-General has affirmed that the United Nations human rights treaty body system is one of the greatest achievements in the history of the global struggle for human rights and that these bodies stand at the heart of the international human rights protection system,

*Noting* that the report of the United Nations High Commissioner for Human Rights on the strengthening of the United Nations human rights treaty body system (A/66/860), which is the outcome of extensive consultations with all stakeholders, underlined the powers of the treaty bodies to decide on their own working methods and rules of procedure and to guarantee their independence as defined in the respective treaties,

*Noting with appreciation* that the General Assembly has also recognized the important, valuable and unique role and contribution of each of the human rights treaty bodies to the promotion and protection of human rights and fundamental freedoms,

*Recalling* the right and statutory competence of each treaty body to adopt its own rules of procedure,

1. The Chairs of the United Nations treaty bodies, at their twenty-fourth meeting, following their decision at the twenty-third meeting in 2011 and after consulting their respective Committees, discussed and endorsed guidelines on the independence and impartiality of treaty body members (“the Addis Ababa guidelines”), which they strongly recommend for prompt adoption by the respective treaty bodies, inter alia through inclusion, in an appropriate manner, in their rules of procedure.

## II. General principles

2. The independence and impartiality of members of the human rights treaty bodies is essential for the performance of their duties and responsibilities and requires that they serve in their personal capacity. Treaty body members shall not only be independent and impartial, but shall also be seen by a reasonable observer to be so.

3. Real or perceived conflicts of interest and 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. Consequently, a treaty body member shall not be considered to have a real or perceived conflict of interest as a consequence of his or her race, ethnicity, religion, gender, disability, colour, descent or any other basis for discrimination as defined in the core international human rights treaties.

4. Treaty body members commit themselves to abide by the principles of independence and impartiality when making their solemn declaration under the relevant treaty.

5. The principle of independence requires that members not be removable during their term of office, except to the extent that the treaty in question so provides. They may not be subject to direction or influence of any kind, or to pressure from the State of their nationality or any other State or its agencies, and they shall neither seek nor accept instructions from anyone concerning the performance of their duties. Consequently, members are accountable only to their own conscience and the relevant treaty body and not to their State or any other State.

6. Considering that within each treaty body, members are nationals of only a limited number of States parties, it is important that the election of one of its nationals to a given treaty body shall not result in, or be thought to result in, more favourable treatment for the State or States, as the case may be, of which

the member is a national. In this regard, members holding multiple nationalities shall inform, on their own initiative, the chairperson of the relevant treaty body and its secretariat accordingly. Members holding multiple nationalities shall not participate in the consideration of reports, individual complaints, or take part in visits or inquiries relating to any of the States of which she or he is a national.

7. All members shall avoid any action in relation to the work of their treaty body which might lead to or might be seen by a reasonable observer to lead to bias against States. In particular, members shall avoid any action which might give the impression that their own or any given State was receiving treatment which was more favourable or less favourable than that accorded to other States.

### III. Application of the general principles

#### A. Participation in consideration of State party reports and other report-related procedures

8. A member shall not participate or influence in any way the consideration of a State party report by the treaty body, or by any of its subsidiary bodies, if he or she may be seen by a reasonable observer to have a conflict of interest with respect to that State party. The same principle shall apply to any other treaty body procedure, such as follow-up, early warning or urgent action, which is not specifically mentioned in these guidelines.

9. In case of a real or perceived conflict of interest with respect to a State party, a member:

(a) Shall not participate or influence in any way the preparation, course or outcome of dialogues, discussions or any other public meetings of the treaty body, but may be present as an observer;

(b) Shall not be present during any non-public consultations, briefings or meetings with a single country focus of his or her treaty body with other entities or partners, such as United Nations entities, national human rights institutions and civil society organizations. However, the member may receive the relevant documentation;

(c) Shall not be present during discussions, deliberations or any other non-public meetings of his or her treaty body, such as for the preparation, drafting, discussion and adoption of concluding observations or any other related treaty body documents.

## B. Participation in the consideration of communications

10. A member shall not participate in, be present during, or influence in any way the examination of a communication, either at the admissibility or the merits stage, if:

(a) The member is a national of the State whose acts are impugned by the communication or has any personal or professional conflict of interest in the case, or if any other real or perceived conflict of interest is present;

(b) The member has participated in any capacity, other than as a member of his or her treaty body, in the making of any decision on the case covered by the communication.

## C. Participation in country visits and inquiries

11. A member shall not participate in the preparation or conduct of or follow-up to a country visit or inquiry or in the consideration of ensuing reports if any real or perceived conflict of interest is present.

## D. Relationship with States

12. The independence and impartiality of treaty body members is compromised by the political nature of their affiliation with the executive branch of the State. Members of treaty bodies shall consequently avoid functions or activities which are, or are seen by a reasonable observer to be, incompatible with the obligations and responsibilities of independent experts under the relevant treaties.

13. When acting as a consultant or as counsel for any State in connection with the process of reporting to the treaty body on which they serve or in any other matter that might come up for consideration before his or her treaty body, treaty body members shall take all necessary measures to ensure that they do not have, and are not seen by a reasonable observer as having, a conflict of interest.

## E. Other situations which might entail a situation of a possible conflict of interest

14. Individuals holding or assuming decision-making positions in any organization or entity which may give rise to a real or perceived conflict of interest with the responsibilities inherent in the mandate as a member of a treaty body shall, whenever so required, not undertake any functions or activities that may appear not to be readily reconcilable with the perception of independence and impartiality. Such organizations or entities may include private corporations or entities, civil society organizations, academic institutions or State-related organizations.

## F. Participation in other human rights activities

15. When treaty body members participate in other human rights activities of intergovernmental organizations, such as panels, training courses and seminars, they shall make it clear that the views they are expressing are their own and not those of the treaty body in question unless the members have been expressly mandated by the latter. The same applies to meetings organized by States, civil society organizations and national human rights institutions.

## G. Accountability

16. Observance of the above guidelines falls first and foremost within the individual responsibility of each treaty body member and his or her own conscience. If for any reason a member considers that he or she is facing a potential conflict of interest, he or she shall promptly inform the chairperson of the treaty body concerned. Furthermore, if and when necessary, it is the duty of the chairperson of the relevant treaty body to remind individual members of the content of these guidelines if the situation so requires. Ultimately, the relevant Committee as a whole shall take any measures deemed necessary to safeguard the requirements of independence and impartiality of its members.

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