



INTERNATIONAL  
COMMISSION  
OF JURISTS

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**Civil Society Forum on the Intergovernmental Process on the Strengthening of the  
Human Rights Treaty Bodies**

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**INTERNATIONAL COMMISSION OF JURISTS (ICJ) STATEMENT ON THE  
INDEPENDENCE OF THE UN HUMAN RIGHTS TREATY BODIES**

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*Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.*

## **ICJ Statement on the Independence of the UN Human Rights Treaty Bodies**

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the informal hearing for civil society on the intergovernmental process on the strengthening of the UN human rights treaty bodies, and thanks the co-facilitators and the Office of the High Commissioner for Human Rights for convening a forum to that end.
2. Although the informal hearing aims to discuss a number of issues relevant to the strengthening of the treaty bodies, this statement restricts itself to the issue of the independence of the treaty bodies, as a matter relevant to the methods of work for the human rights treaty bodies. The ICJ is prepared and willing to discuss other issues during the civil society forum, but considers it particularly compelling to make a written statement in advance concerning this important aspect of the functioning of the treaty bodies.
3. The non-exhaustive list of issues prepared by the co-facilitators identifies several issues relating to treaty body methods of work. This list does not refer, however, to a troubling proposal for the establishment of a code of conduct for treaty body members made during the informal consultations in New York in July 2012 by the Russian Federation, Cuba and a small group of other States.

### **NO COMPETENCE TO ESTABLISH OR IMPOSE A CODE OF CONDUCT**

4. The methods of work of the UN treaty bodies are not established under the human rights treaties in respect of which each treaty body operates. The UN human rights treaties instead authorise each treaty monitoring body to establish its own rules of procedure, except in the case of the Committee on Economic, Social and Cultural Rights (CESCR), which is governed in its work and functioning by resolution 1985/17 of the Economic and Social Council (ECOSOC). For example, in the case of the Human Rights Committee – the treaty monitoring body under the International Covenant on Civil and Political Rights (ICCPR) – article 39(2) of the ICCPR establishes the competence and authority of that Committee to establish rules of procedure for its work and functioning. This is similarly the case for other human rights treaty monitoring bodies.<sup>1</sup> This approach was reflected in the negotiations for the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR), in respect of which China had proposed that States should establish the rules of procedure under the ICESCR Optional Protocol – a proposal that was rejected by other negotiating States and found no public support from others.<sup>2</sup>
5. The UN human rights treaties do not confer authority on States parties to establish, review or amend rules of procedure governing the work or functioning of the treaty bodies. Nor do the human rights treaties make the treaty monitoring bodies subject to governance by any other body or organ of the United Nations. This consistent approach across the human rights treaties reflects and reinforces the independent character of the treaty bodies.
6. There is consequently no authority on the part of the States parties to the UN human rights treaties to establish or impose a code of conduct for treaty body members. To change this position would require amendment of each of the ‘parent’ treaties under which the monitoring bodies are established, except in the case of the CESCR where the ECOSOC has the capacity to negotiate and adopt a resolution amending its earlier resolution 1985/17 on the work and functioning of the CESCR. For most of the remaining human rights treaties, amendment requires two-thirds of the States parties to the parent treaties to accept such

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<sup>1</sup> See: article 10(1) of the International Convention on the Elimination of All Forms of Discrimination (CERD); article 19(1) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); article 10(2) of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT); article 43(8) of the Convention on the Rights of the Child (CRC); article 75(1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW); article 34(10) of the Convention on the Rights of Persons with Disabilities (CRPD); and article 26(6) of the Convention for the Protection of All Persons from Enforced Disappearance (CED).

<sup>2</sup> *Revised Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, UN DOC A/HRC/8/WG.4/2 (2007), Annex II Explanatory Memorandum, para 53.

amendment.<sup>3</sup> In the case of the International Convention on the Elimination of All Forms of Discrimination (CERD) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), any revision of the CERD and CEDAW must take the form of an amending agreement, which will only become binding upon States that become party to the amending agreement.<sup>4</sup>

7. The intergovernmental process of the General Assembly on the strengthening of the treaty bodies has the mandate, pursuant to General Assembly resolution 66/254 (2012) and the corresponding action of the Secretary General, to conduct “negotiations on how to strengthen and enhance the effective functioning of the human rights treaty body system” (OP 1). This mandate does not operate as a conference of the States parties to the human rights treaties. Consequently, the intergovernmental process has no authority to amend the UN human rights treaties. As a process of the General Assembly, rather than of the ECOSOC, the intergovernmental process likewise lacks competence to revise or impose rules affecting the work and functioning of the CESC.

8. Since the intergovernmental process has no authority to establish rules pertaining to the work and functioning of the treaty monitoring bodies, and given that it is not operating as a conference of States parties under any of the human rights treaties, or as a process of the ECOSOC, there is no lawful authority on the part of the intergovernmental process to establish or impose a code of conduct for treaty body members.

#### INDEPENDENCE OF THE TREATY MONITORING BODIES

9. Short of amendment of each of the UN human rights treaties to give States parties the authority to establish, review or amend treaty body rules of procedure – and thereby permit States to establish a code of conduct for treaty body members – the only option open to the intergovernmental process of the General Assembly is to request the treaty bodies to themselves incorporate codes of conduct within their rules of procedure. The ICJ takes the view that this option is neither necessary, nor appropriate.

10. Key to the integrity of the monitoring functions of the human rights treaty bodies is their independence. The same can be said of the role of the treaty bodies concerning inquiries and the consideration of individual communications. The need to safeguard the independence of treaty body members has been recognised and reiterated in several meetings of the chairpersons of the treaty bodies, including in 1997, 2008, 2009 and 2012.<sup>5</sup>

11. Various provisions of the UN human rights treaties reflect the independent character of treaty body members, including the following common features:

- a) Although the treaty bodies are composed of nationals of the States parties, members serve in their personal capacity.<sup>6</sup>
- b) Non-performance of functions by a member of the Human Rights Committee may only be declared to amount to a vacancy of seat if “in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary nature” (article 33(1) of the ICCPR). The ICCPR confers on the Human Rights Committee the sole competence to arrive at such a conclusion.
- c) In the event of the death or resignation of a member of the Human Rights Committee, the Secretary General may not declare the seat to be vacant before the

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<sup>3</sup> See: article 51(2) of the ICCPR; article 29(2) of the CAT; article 34(2) of the OPCAT; article 50(2) of the CRC; article 90(2) of the CMW; article 47(1) and (2) of the CRPD; and article 44(2) and (3) of the CED.

<sup>4</sup> See article 23 of the CERD and article 26 of the CEDAW and the provisions of article 40 of the Vienna Convention on the Law of Treaties.

<sup>5</sup> See: Report of the Eight Meeting of Persons Chairing the Human Rights Treaty Bodies, UN Doc A/52/507 (1997), para 67-68; and Report of the Chairpersons of the Human Rights Treaty Bodies on their Twenty-Third Meeting, UN Doc A/67/150 (2012), para 35.

<sup>6</sup> See: article 28(3) of the ICCPR; paragraph (b) of ECOSOC resolution 1985/17; article 8(1) of the CERD; article 17(1) of the CEDAW; article 17(1) of the CAT; article 5(6) of the OPCAT; article 43(2) of the CRC; article 72(2)(b) of the CMW; article 34(3) of the CRPD; and article 26(1) of the CED.

Chair of the Committee notifies the Secretary General of the death or resignation (article 33(2) of the ICCPR).<sup>7</sup> This further emphasises the fact that the treaty monitoring bodies are not subject to governance by any organ of the United Nations.

12. As well as the latter institutional provisions reflecting and supporting the independent character of treaty body members, comparisons may be made with best practices concerning the independence of national judicial bodies. While acknowledging that the UN treaty bodies are not judicial bodies, most act in a quasi-judicial capacity, particularly as it concerns the consideration of individual communications. It notable that it is considered to be best practice, although not universal, that judicial bodies are themselves responsible for the establishment of codes of conduct and the administration of disciplinary procedures, thus preserving their independence and the separation of powers between executive, legislative and judicial branches.<sup>8</sup> Therefore, even if it were not the case that the UN human rights treaties give their monitoring bodies the sole competence to establish rules of procedure for their work and functioning – it is the treaty bodies that *should* be entrusted with such functions.

13. It should furthermore be noted that, as well as being inappropriate and inconsistent with the independence of the treaty bodies, it is unnecessary for the intergovernmental process to request the treaty bodies to incorporate codes of conduct within their rules of procedure. During the 24<sup>th</sup> meeting of the chairpersons of the treaty bodies, held in Addis Ababa in June 2012, the chairpersons endorsed guidelines on the independence and impartiality of treaty body members (the Addis Ababa Guidelines).<sup>9</sup> The Addis Ababa Guidelines address various issues concerning the conduct of treaty body members, including: participation in State party reports and other report-related procedures; participation in the consideration of communications, country visits and inquiries; relationships with States; other situations which might entail a possible conflict of interest; participation in other human rights activities; and accountability. Having been endorsed by the chairpersons of the treaty bodies in June 2012, each of the treaty bodies will be closely considering the Guidelines, thus demonstrating that self-regulation and accountability are issues that the treaty bodies are conscious of and take seriously. The Human Rights Committee, for example, is scheduled to undertake this exercise beginning with its 106<sup>th</sup> session in October 2012 in order to consider which of the guidelines need to be incorporated within the Committee's rules of procedure. It should also be noted that, even before the endorsement of the Addis Ababa Guidelines, the Human Rights Committee had adopted, in 1998, procedures pertaining to the impartial and independent exercise of their functions.<sup>10</sup>

## CONCLUSIONS

14. Based on the foregoing discussion and analysis, the ICJ concludes that:
- a) The human rights treaty bodies have sole competence to establish rules of procedure for their work and functioning. The work and functioning of the treaty bodies is not subject to governance by any other organ of the United Nations. Changing this position would require amendment of each human rights treaty, in most cases by a two-thirds majority, a function that is beyond the mandate or authority of the intergovernmental process of the General Assembly on treaty body strengthening. In the case of the CESC, it is only the ECOSOC that may

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<sup>7</sup> For other treaty provisions concerning the substitution of casual members, or the death or resignation of members, see: article 8(5)(b) of the CERD; article 17(7) of the CEDAW; article 17(6) of the CAT; article 8 of the OPCAT; article 43(7) of the CRC; article 72(6) of the CMW; article 34(9) of the CRPD; and article 26(5) of the CED.

<sup>8</sup> See, for example: *The Bangalore Principles of Judicial Conduct*, UN Doc E/CN.4/2003/65 (2003), "Implementation" at p. 25; *Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region*, 1995, Principles 22-30; and Council of Europe Committee of Ministers, *Recommendation R(94)12 on the independence, efficiency and role of judges*, Principle VI.

<sup>9</sup> Report of the Chairpersons of the Human Rights Treaty Bodies on their Twenty-Third Meeting, UN Doc A/67/150 (2012), Annex I.

<sup>10</sup> Human Rights Committee, *Guidelines for the exercise of their functions by members of the Human Rights Committee*, UN Doc A/53/40 (1998), Vol I, Annex 3.

consider such steps. The intergovernmental process therefore has no competence to establish or impose a code of conduct for treaty body members.

- b) Although the intergovernmental process has the competence to request the treaty bodies to incorporate codes of conduct within their rules of procedure, such a request would not be appropriate or consistent with the framework of the human rights treaty bodies. It could place undue pressure on individual treaty members and would undermine the independent character of the treaty body members, which is integral to their monitoring, inquiry and individual communications functions. Their independent character is reflected in and supported by various provisions in the UN human rights treaties. Considering comparable best practices, it is the treaty body members who should themselves determine what codes of conduct may be necessary, and how these are to be administered.
  - c) Any such request is also unnecessary, given that the 24<sup>th</sup> meeting of the chairpersons of the treaty bodies in June 2012 saw the endorsement of the Addis Ababa Guidelines on the independence and impartiality of treaty body members. The Addis Ababa Guidelines address various issues concerning the conduct of treaty body members and will be considered by each of the treaty bodies with a view to determining which of the guidelines need to be incorporated within corresponding rules of procedure.
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