

**INTERNATIONAL COMMISSION OF JURISTS
BACKGROUND NOTE**

**CORE FUNCTIONS AND ACTIVITIES OF THE UN HUMAN RIGHTS
TREATY BODIES**

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.

CORE FUNCTIONS AND ACTIVITIES OF THE UN HUMAN RIGHTS TREATY BODIES

There are ten human rights treaty bodies, comprised of independent experts serving in their personal capacity. Each treaty body is established by one of the corresponding universal human rights treaties, except in the case of the Committee on Economic, Social and Cultural Rights, which was established by the Economic and Social Council (ECOSOC) under its resolution 1985/17. Each treaty body, also referred to as a 'Committee', is responsible for monitoring the implementation of the core universal human rights treaties.¹

This document will provide an overview of five of these treaty bodies; the Human Rights Committee (CCPR), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee against Torture (CAT); the Committee on the Elimination of Discrimination Against Women (CEDAW) and the Committee on the Rights of the Child (CRC). This overview will provide information on the core functions of the treaty bodies, with a particular focus on: individual communications and general comments. Reference will also be made to the treaty body strengthening process commenced by the High Commissioner for Human Rights and taken up in 2012 by the General Assembly intergovernmental process on the strengthening of the UN human rights treaty bodies.

CORE FUNCTIONS AND ACTIVITIES

Consideration of State parties' reports

Each of the five treaties in question contain provisions that create an obligation on States parties to submit periodic reports to the relevant monitoring treaty body.² One of the main functions of the five treaty bodies is to review these reports and issue 'Concluding Observations' on each party's compliance with and implementation of the treaty.

Full details on this function are explained in the ICJ background document on the *Overview of the Periodic Reporting Process of the UN Human Rights Treaty Bodies*.

Annual Reports

Each of the five treaty bodies is obliged to provide reports to the General Assembly on its activities. For CCPR, CESCR, CAT and CEDAW, this report must be provided annually. For CRC, this report is submitted at two-year intervals.³ The reports of the Committees can be found online.⁴

Consideration of individual complaints

Currently, CCPR, CAT and CEDAW can receive 'individual communications' (the technical term used to refer to complaints from individuals) from persons who claim that her or his rights

¹ The core universal human rights treaties are the: International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); Convention on the Elimination of All Forms of Racial Discrimination (CERD); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Optional Protocol to the CAT (OPCAT); Convention on the Rights of the Child (CRC), Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW); Convention for the Protection of All Persons from Enforced Disappearance (CPED); and Convention for the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (CRPD). Full texts can be found at URL: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>.

² ICCPR, article 40; ICESCR, articles 16 and 17; CAT, article 19; CEDAW, article 18; and CRC, article 44.

³ The obligation is found within the Rules of Procedure for each Committee. See: CCPR, Rule 68; CESCR, Rule 57; CAT, Rule 64; CEDAW, Rule 42; and CRC, Rule 68. Rules of Procedure can be found on the treaty body web pages at URL: <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>.

⁴ Ibid.

under the treaty have been violated by a State party. This function is explained in further detail below.

Country Inquiries

Currently, CAT and CEDAW may, under certain conditions, initiate country inquiries if they receive reliable information that there have been serious, grave or systematic violations of the treaty in a State party.

The committees can conduct country inquiries on their own initiative. They are mandated to do so under their respective treaties,⁵ which provide that the following procedure is to be followed:⁶

1. The procedure may be initiated if the Committee receives reliable information indicating that the rights contained in the relevant Convention are being systematically violated by the State party. In the case of CAT, the information should contain well-founded indications that torture is being systematically practiced in the territory of the State party; in the case of CEDAW, the information should indicate grave or systematic violations of the rights set forth in the Convention by a State party.
2. The Committee will invite the State party to co-operate in the examination of the information by submitting observations.
3. The Committee may, on the basis of the State party's observations and other relevant information available to it, decide to designate one or more of its members to make a confidential inquiry and report to the Committee urgently. The CEDAW procedure specifically authorises a visit to the territory of the State concerned, where warranted and with the State's consent.
4. The findings of the member(s) are then examined by the Committee and transmitted to the State party together with any appropriate comments or suggestions and/or recommendations.
5. The CEDAW procedure sets a six-month deadline for the State party to respond with its own observations on the Committee's findings, comments and recommendations and, where invited by the Committee, to inform it of the measures taken in response to the inquiry. The CAT procedure calls for the State to inform the Committee of its position within a reasonable time.
6. The Committee may decide, in consultation with the State party, to include a summary account of the results of the proceedings in its annual report.

In both cases, the procedure is confidential and the cooperation of the State party must be sought throughout.

This procedure can only be followed if the concerned State party has recognised the competence of the relevant Committee to act in this regard. At the time of ratification or accession, States may make a declaration to opt out or exclude the Committee's competence to conduct country inquiries.⁷

CESCR and CRC also have a similar mandate, although this cannot be exercised until the relevant Optional Protocol has come into force.⁸

⁵ Convention Against Torture, article 20; and OP-CEDAW, articles 8-10.

⁶ The full details on the procedure for each Committee can be found in their respective Rules of Procedure. For CAT, see part XIX; for CEDAW, see part XVII.

⁷ For CAT, a declaration is made under article 28 of the Convention; for CEDAW, a declaration is made under article 10 of the Optional Protocol.

⁸ The Optional Protocol to CESCR was adopted on 10 December 2008 under GA Res 63/117, UN Doc A/RES/63/117, but will not come into force until ten instruments of ratification have been deposited (there are currently eight). The Optional Protocol to CRC on the communications procedure was adopted

Inter-State complaints

Currently, CCPR, CAT and CEDAW have the authority to consider complaints about alleged violations of the respective treaty by another State party.⁹ However, this does not presently form part of the Committees' core functions as the procedure has never been used.

Activities to enhance the implementation of the treaties

Several further activities of the treaty bodies act to enhance the implementation of the treaties.

General comments

The preparation of General Comments is an important way in which the Committees can provide greater clarification on the interpretation and application of the different provisions of the treaties, which also assist States in their periodic reporting obligations. This function is explained in further detail below.

Days of general discussion

Currently, CESCR and CRC hold days of general discussion in order to foster a deeper understanding of the content and interpretation of the respective treaties.¹⁰ There is no set time period placed on when a discussion day is held, but once the Committee has decided to convene such a meeting, the details are published online.¹¹ They are open for States, UN mechanisms and bodies, specialized agencies, National Human Rights Institutions (NHRIs), NGOs, individuals (and children in the case of CRC) to attend and take part in the discussion.

Meeting of chairpersons

In 1983, the General Assembly called for chairpersons to meet in order to discuss how to enhance the work of the treaty bodies.¹² The Meeting of Chairpersons provides a forum for members of all the treaty bodies to discuss their work, share best practices, and consider ways to enhance the effectiveness of the treaty body system as a whole. The meeting has been taking place annually since 1995. In recent years, the chairpersons have met with Special Procedures mandate holders and held informal consultations with States, UN partners and civil society as part of their meetings.

Since 2002, Inter-Committee Meetings have been held, which are attended by chairpersons plus two additional members from each committee. These meetings focus particularly on the coordination of working methods between the Committees and have, in recent years, taken place twice per year.¹³

Statements

CESCR, CAT and CEDAW issue statements to clarify their position with respect to major international developments and issues, particularly when such issues bear upon the implementation of their respective treaties.¹⁴ This option is open to all of the treaty bodies.

on 19 December 2011 under GA Res 66/138, UN Doc A/RES/63/117 and will also come into force once there are ten parties (there are currently two).

⁹ ICCPR, articles 41-43; CAT, article 21; and CEDAW, article 29.

¹⁰ Reference to days of general discussion can be found in CESCR Working Methods, UN Doc E/2011/22-E/C.12/2010/3, para 49; and CRC Rules of Procedure, Rule 79.

¹¹ For CRC see URL: <http://www2.ohchr.org/english/bodies/crc/discussion2012.htm>; for CESCR see URL: <http://www2.ohchr.org/english/bodies/cescr/discussion.htm>.

¹² GA Resolution 38/117, UN Doc A/RES/38/117 (1983).

¹³ See URL: <http://www2.ohchr.org/english/bodies/icm-mc/index.htm>.

¹⁴ Reference to the issuing of statements is found in CESCR Working Methods, para 59; CAT Working Methods, Part X and para 36; and CEDAW Working Methods, para 36.

INDIVIDUAL COMMUNICATIONS

Currently, CCPR, CAT and CEDAW can receive individual communications from individuals who claim that her or his rights under the corresponding treaty have been violated by a State party. The individual communications procedure of the CCPR and CEDAW are established pursuant to the Optional Protocols to the ICCPR and CEDAW and apply to States parties to those Optional Protocols. The individual communications procedure under the Convention against Torture is established under article 22 of the Convention. The CESCR and CRC will be able to consider individual communications once the respective Optional Protocols come into force.¹⁵

The individual communications process is undertaken in writing, through the submission of documentation to the relevant Committee, and without any oral hearing of witnesses or representatives on behalf of the alleged victim or the respondent State.

Members of the three treaty bodies will not participate in the consideration of individual communications where the member is a national of the respondent State; if the member has any personal interest in the case; or if the member has participated in any capacity in the making of any decision on the case prior to it being brought to the Committee.¹⁶

Competence of the treaty bodies to receive individual communications

For an individual to be able to raise a complaint with the treaty bodies, two requirements must first be satisfied:

1. The concerned State must have ratified the principal treaty in question.¹⁷
2. The concerned State has recognised the competence of the Committee to consider individual complaints by having ratified the applicable Optional Protocol or, in the case of CAT, having issued a declaration recognising the competence of the Committee under article 22 of the Convention.

Where a treaty body has competence to receive individual communications (i.e. where the above two conditions are satisfied), any individual can submit a complaint to that Committee. Where there is the need, a person can make a claim on behalf of the alleged victim, provided she or he receives written consent. CEDAW, unlike the other two Committees, will consider complaints on behalf of or from individuals as well as *groups* of individuals.¹⁸

Meetings in which the Committees consider the individual complaints are held closed, private, sessions.¹⁹

There are two main elements to the procedure: the "admissibility" and the "merits" phases of a case.

Admissibility

To determine whether an individual communication is admissible, the Committee will consider the following:²⁰

- If claiming on behalf of another person, the author of the communication must have the relevant authority/permission;²¹

¹⁵ Above n 8.

¹⁶ CCPR Rules of Procedure, Rule 84; CAT Rules of Procedure, Rule 109; and CEDAW Rules of Procedure, Rule 60.

¹⁷ First Optional Protocol to ICCPR, article 1; CAT, article 22(1); and CEDAW, articles 1 and 3.

¹⁸ See CEDAW Rules of Procedure, Rule 68.

¹⁹ CCPR Rules of Procedure, Rule 88; CAT Rules of Procedure, Rule 107; and CEDAW Rules of Procedure, Rule 74(1).

²⁰ For the admissibility considerations and procedures for each committee see: OP1-ICCPR, articles 1,2,3 and 5(2) and CCPR Rules of Procedure, Rule 96; CAT, article 22 and CAT Rules of Procedure, Rule 113; and OP-CEDAW, articles 2,3 and 4 and CEDAW Rules of Procedure, Rule 69-74.

- The alleged violation must have occurred as a direct effect of the laws, policies, practices, acts or omissions of the State (challenges in the abstract cannot be made);
- The alleged violation must relate to a right protected under the relevant treaty;²²
- The claim must be sufficiently substantiated for the purposes of admissibility (not “manifestly ill-founded”), and must not constitute an abuse of the right of submission;²³
- The alleged violation must have occurred prior to the entry into force of the relevant treaty (unless the violation continued after its entry into force);
- The exhaustion of all domestic remedies have been exhausted;²⁴
- The complaint must not be vexatious, frivolous or otherwise an inappropriate use of the communications procedure; and
- The complaint cannot be under consideration, or already considered, by another mechanism of international settlement (e.g. a regional court).²⁵

Merits

In considering the merits of the case, the Committees will generally take into account all the facts and evidence submitted by the individual. The individual does not have to prove facts beyond any standard of proof, although evidence such as arrest warrants, court judgments and medical records will assist the Committee in making a decision. Where there is insufficient information, the Committees will request further information from the individual and the State.²⁶ In situations where all the information needed is in the hands of the State and the State does not cooperate with the Committee, the burden of proof is reversed.²⁷

Time considerations

In general, there is no formal time limit within which communications should be made, although the alleged violation must have taken place after the entry into force of the relevant Optional Protocol or Declaration, unless the violation continued over this period.²⁸ However, the period of time between the violation and the complaint may have an impact on the individual’s ability to substantiate the claim.

Given the large number of cases brought before CCPR, the procedure from registration of a communication to the decision of the Committee can take several years. CAT has fewer cases so that disposal of communications takes approximately one to two years from the time of registration. The time will be shorter in the case of a decision on admissibility alone. Similarly to CAT, CEDAW has fewer cases and cases are therefore usually resolved within one year.

Urgent Cases

Where the Committees consider a situation to be urgent, they will send a request to the concerned State to implement interim measures in order to avoid further harm to the individual whilst the complaint is being considered.²⁹ For example, such requests often arise with CAT in the context of pending deportations, or with the CCPR in the case of pending imposition of the death penalty.

²¹ CCPR Rules of Procedure, Rule 96(b); and CAT Rules of Procedure, Rule 113(a). CEDAW allows for some situations where consent is not required: see CEDAW Rules of Procedure, Rule 68.

²² CCPR Rules of Procedure, Rule 98(d); CAT Rules of Procedure, Rule 113(c); and OP-CEDAW, article 2.

²³ CCPR Rules of Procedure, Rule 96; CAT Rules of Procedure, Rule 113(b); and CEDAW Rules of Procedure, Rule 82.

²⁴ OP-ICCPR, article 2; CAT, article 22(4); and OP-CEDAW, article 4.

²⁵ CCPR Rules of Procedure, Rule 74(c); CAT Rules of Procedure, Rule 113(d); and CEDAW Rules of Procedure, Rule 58(f).

²⁶ CCPR Rules of Procedure, Rule 86; CAT Rules of Procedure, Rule 105; and CEDAW Rules of Procedure, rule 58.

²⁷ See URL: http://www.bayefsky.com/complain/9_procedures.php.

²⁸ For example, see CEDAW-OP, article 4(2)(e).

²⁹ For CCPR, this is communicated by the Special Rapporteur on New Communications under Rule 86 of the CCPR Rules of Procedure. The authority for interim measures by CAT and CEDAW are found in Rule 108(1) of the CAT Rules of Procedure and Rule 91(3) of the CEDAW Rules of Procedure.

CCPR

The procedure for submitting an individual communication to the Committee is as follows:³⁰

- The complaint is submitted and referred to the Committee's Special Rapporteur on New Communications.
- The Special Rapporteur decides if the case should be considered under the Optional Protocol and issues any pertinent instructions to the Secretariat (the Office of the High Commissioner on Human Rights (OHCHR) Petitions Unit).
- The admissibility and merits of the case are considered simultaneously:
 - The State party is given six months to make submissions on the admissibility and merits of the case;
 - Once the State party has made its submissions, the individual is given two months in which to comment on those submissions;
 - Once all relevant information is received, the Committee considers the information and makes a decision (called 'Views').
- If a violation is found, the State has three months to provide the Committee with information on the steps taken to implement the Views of the Committee and to provide an effective remedy.³¹
- If no effective remedy is provided, the case is referred to the Special Rapporteur on Follow-Up of Views for further action (such as meeting with country representatives).
- Information on follow-up actions is published in an annual report on follow-up (with some exceptions).³²

If the State party fails to respond to the initial request for information within six months, it will be sent two reminders. In the absence of submissions, the Committee will proceed with determining the case on the information provided by the author of the communication. If submissions are sent after a reminder, the individual will still be given a chance to comment on them before a decision is made.

In some situations the Committee will consider admissibility and merits separately. This is usually when the State only replies to the admissibility aspects of the case in their submission. In this situation, provided the submission on admissibility was received within two months, the individual can comment on this submission and the State is given a further six months in which to submit information on the merits, with further time given for the individual to comment.

CAT

The procedure for submitting an individual communication to CAT is as follows:³³

- The complaint is submitted and registered by the OHCHR Petitions Unit.
- The State party has six months in which to submit information on the admissibility and merits of the communication, and any applicable remedy. In this regard:³⁴
 - If the submission is received within two months and only refers to admissibility then the individual has four weeks to comment;
 - If the Committee decides the communication is admissible, the State has four months to provide information on the merits; and
 - If the submission contains information on both admissibility and merits, the individual has six weeks to comment.
- The Committee then makes a decision on substance and transmits this to the State and individual as a View of the Committee.
- Where a violation has been found, the State has 90 days in which to report to the Committee on what action it has taken in response to the Views of the Committee.

³⁰ CCPR Rules of Procedure, Parts C and D.

³¹ The obligation to provide an effective remedy is found in article 2(3) ICCPR.

³² CCPR Rules of Procedure, Rule 101(4).

³³ CAT Rules of Procedure, Parts B and C.

³⁴ Convention Against Torture, article 2(3).

- Where necessary, the Rapporteur for Follow-Up will take further action, details of which will be included in the annual report.³⁵

CEDAW

The procedure for submitting an individual communication to CEDAW is as follows:³⁶

- The complaint is submitted and registered by the OHCHR Petitions Unit.
- State party has three months to make submissions on admissibility and merits:
 - If submissions are made on admissibility, the individual has six weeks to provide comments;
 - If the communication is determined to be admissible, the State has a further three months to provide submissions on the merits;
 - The individual then has six weeks to provide comments on the submission on merits; and
 - If submissions are solely made on the merits (and admissibility is accepted), the individual has six weeks to comment before the Committee makes a decision on the merits.
- The Committee adopts Views on the communication and transmits it to the State and the individual.
- CEDAW also has follow-up measures in place to monitor the implementation of the Committee's views, which are undertaken by a Rapporteur whose activities are included in the annual report.³⁷

GENERAL COMMENTS

General Comments developed by the treaty bodies act as interpretations of the content and application of human rights treaty provisions in order to clarify the human rights and related procedural obligations of States Parties. The first such comment was adopted in 1972 by the Committee on the Elimination of Racial Discrimination. At present seven of the ten treaty bodies have adopted a total of 134 General Comments. While the first General Comments dealt with reporting guidelines and State Party obligations, the later ones, adopted after 1990, focus on more substantive issues.

The legal basis of General Comments

The legal basis for the adoption of General Comments by treaty bodies is to be found in the treaties themselves which envision a role for the Committees to react to State reports by making observations, recommendations and comments.³⁸ With the Committee on Economic, Social and Cultural Rights the legal basis is set out in ECOSOC Resolution 1985/17.³⁹ Under these provisions, the treaty bodies are mandated to provide States parties with observations, recommendations and comments as the treaty bodies may from time to time consider appropriate.

The legal status of General Comments

General Comments constitute the opinion of the expert members of the treaty bodies, mainly on the interpretation of the substantive provisions of the treaties. The recognition of the role of General Comments in determining the meaning of a relevant rights and freedoms has been confirmed by their increasing use as an interpretive source in the judicial decisions of national

³⁵ CAT Rules of Procedure, Rule 121(3).

³⁶ CEDAW Rules of Procedure, Rules 69-74.

³⁷ CEDAW Rules of Procedure, Rule 73.

³⁸ ICCPR article 40(4); CEDAW article 21; CAT article 19(3); and CRC article 45(d).

³⁹ ECOSOC Res 1985/17, paragraph F. See also ICESCR article 21.

courts.⁴⁰ However, while they are authoritative and persuasive, General Comments are not legally binding.

The benefits of General Comments

Numerous substantive and procedural provisions of the universal human rights treaties involve complex and important issues concerning their meaning and implementation. The treaty bodies have the benefit of examining and ruling upon such implications through the consideration of periodic reports and individual communications. The clear enunciation of the meaning and implementation of treaty provisions, through the adoption of General Comments, has the benefit of bringing together and explaining Concluding Observations and Views into a single document representing the authoritative and consensus opinion of the expert members of the treaty bodies. This can assist all stakeholders to more thoroughly understand the meaning of treaty provisions. It can assist States in their implementation of treaty obligations and the preparation of periodic reports. It can also be invaluable for rights-holders to understand the scope of application of rights and freedoms.

The formulation of General Comments

Between the five Committees, the methods for selecting themes, the process of drafting, and the number and periodicity of General Comments that are adopted vary. For example, the Human Rights Committee is the first and only treaty body to date to hold a half-day general discussion on the development of a general comment, with the view of obtaining State and NGO participation from the outset, although general discussions by other treaty bodies have in a number of cases led to the identification of issues to become the subject of a General Comment.⁴¹

The other Committees use a variety of means to engage NGOs and States in the selection of themes and drafting stages. For example, the CRC is willing to consider external proposals on themes for days of general discussion, which in turn sometimes lead to the drafting of a General Comment as part of the outcome of the discussion day.⁴² Some Committees also post draft versions of General Comments under development online, making it possible for comments and proposals to be made throughout the drafting process.⁴³

TREATY BODY STRENGTHENING PROCESS

Due to some of the challenges faced by the treaty bodies,⁴⁴ measures seeking to address those challenges began in 1989.⁴⁵ Some of these challenges include:

- Poor reporting compliance rates by States parties;
- Backlog of reports awaiting consideration;
- Backlog of individual communications awaiting consideration;

⁴⁰ For cases in which national courts have relied upon the interpretation provided by the treaty bodies, see International Law Association, Committee on International Human Rights Law and Practise, *Final Report on the Impact of Findings of the United Nations Human Rights Treaty Bodies*, (2004), p.43.

⁴¹ See URL: <http://www2.ohchr.org/english/bodies/hrc/discussion2012.htm>.

⁴² NGO Group for the CRC, *Fact Sheet 3 for NGOs on General Comments*, p.2.

⁴³ As an example, see the CRC draft comment on child rights and the business sector, available at URL: http://www2.ohchr.org/english/bodies/crc/callsubmissionsCRC_BusinessSector.htm.

⁴⁴ These challenges have been articulated in reports by the UN Secretary General and the High Commissioner. See, for example: Measures to improve further the effectiveness, harmonization and reform of the treaty body system, UN Doc A/66/344 (2011); Report of the Secretary-General on measures taken to implement resolution 9/8 and obstacles to its implementation, including recommendations for further improving the effectiveness of, harmonizing and reforming the treaty body system, UN Doc A/HRC/19/28 (2011); OHCHR, *Strengthening the United Nations human rights treaty body system: A report by the United Nations High Commissioner for Human Rights*, June 2012, available at URL: <http://www2.ohchr.org/english/bodies/HRTD/docs/HCreportonTBstrengthening210612.doc>.

⁴⁵ In 1989, the UN Secretary General appointed an independent expert to look at the challenges faced by the treaty body system. This was in response to the request of the General Assembly and the Commission on Human Rights in GA Res 44/115 – see: UN Doc E/CN.4/1989/43.

- Lack of resources; and
- Poor quality of some treaty body experts.⁴⁶

It has been noted that these challenges will continue with the increasing number of ratifications accessions to the universal human rights treaties and with the elaboration of more treaties and optional protocols.⁴⁷

Previous treaty body strengthening activities

Various proposals have been made over the years on how to strengthen the treaty body system. One suggestion was to unify the reporting obligations of States so that one report is submitted to all Committees on State compliance with all treaties.⁴⁸ Another suggestion was to create a unified treaty body to monitor the rights under all the treaties.⁴⁹

In response to these suggestions it has been noted that:⁵⁰

“While these ambitious suggestions have not been successful, the treaty bodies have taken steps to respond to some of the problems identified. For example, the treaty bodies have aligned their working methods to make it easier for states parties and other stakeholders to navigate the system.”

The following steps were taken in the lead up to what is known as the ‘Dublin process’, which is one of the most recent developments in the area of treaty body strengthening:

- 1989: appointment of an independent expert to look at the challenges faced by the treaty body system.⁵¹
- September 2002: report by the UN Secretary General on “Strengthening the United Nations: an Agenda for Further Change”. The main essence of this report was a suggestion that State reporting should be unified into a single report submitted to all treaties.⁵²
- October 2002: report by the Management Review of the OHCHR making broadly similar recommendations to that of the Secretary General.⁵³
- February 2003: resolution of the General Assembly based on the similar recommendations made by the Secretary General.⁵⁴
- May 2003: informal consultations held in Malbun to exchange views on the Secretary General’s ideas. This was attended by members of treaty bodies, States parties, UN entities, NGOs and other members of civil society.⁵⁵
- March 2005: report by the UN Secretary General entitled “In Larger freedom: towards development, security and human rights for all”. This report called for harmonised guidelines on the reporting procedure.⁵⁶ These were later adopted in 2006.⁵⁷

⁴⁶ See Amnesty International, *Strengthening the United Nations Treaty Bodies*, AI Index IOR 40/018/2012, available at URL: <http://www.amnesty.org/en/library/info/IOR40/018/2012/en>, pp.2-3.

⁴⁷ Ibid, p.3

⁴⁸ See Report of the UN Secretary General “Strengthening the United Nations: an Agenda for Further Change”, UN Doc A/57/387 (2002).

⁴⁹ This was suggested by the UN High Commissioner for Human Rights in her concept paper from March 2006, see UN Doc HRI/MC/2006/2.

⁵⁰ Above n 50, p.3. See also the harmonized reporting guidelines on the core document that were adopted to ease this stage of the reporting process: UN Doc HRI/GEN/2/Rev.6.

⁵¹ Above n 49.

⁵² UN Doc A/57/387 (2002), above n 54.

⁵³ UN Doc A/57/488 (2002).

⁵⁴ General Assembly Resolution 57/300 (2002).

⁵⁵ For the report from the Malbun meeting see UN Doc A/58/23 (2003). This report was considered by the second Inter-Committee Meeting and the fifteenth meeting of chairpersons in June 2003 and submitted to the General Assembly (UN Doc A/58/123).

⁵⁶ UN Doc A/59/2005 at 147.

⁵⁷ UN Doc HRI/GEN/Rev.6

The Dublin Process

The Dublin process is the most recent effort to strengthen the work of the treaty bodies, other than the General Assembly's intergovernmental process on treaty body strengthening initiated in 2012. The Dublin process was initiated by the UN High Commissioner on Human Rights in 2009 following a statement made to the Human Rights Council.⁵⁸ The aim of the process was to encourage a broad range of stakeholders - including States, treaty body experts, NGOs and NHRIs - to develop proposals to strengthen the treaty body system. Since 2009, 20 such consultations have taken place, where the various stakeholders have contributed proposals.

Following the call by the High Commissioner, a group of current and former members of the treaty bodies issued the *Dublin Statement on the Strengthening of the United Nations Human Rights Treaty Body System* following a meeting that took place in Dublin in November 2009.⁵⁹ One of the key observations made in the statement is that:⁶⁰

"The purpose of all forms of reform of the treaty body system must be the enhanced protection of human rights at the domestic level. Subsidiary goals, such as enhanced efficiency, must always be in service of this purpose. Reform should strengthen the capacity of rights-holders to enjoy their human rights and support States to carry out their obligations to implement fully these rights."

This principle also constituted one of the primary focuses of the contributions made by NGOs, in their response to the Dublin statement and throughout the process to date.⁶¹

The consultation process consisted of the following:

- Formal meetings, including the annual Inter-Committee Meetings of human rights treaty bodies and meetings of chairpersons;
- Consultations within treaty bodies and an Expert Meeting on Petitions for treaty body members;
- Informal meetings and consultations;
- Stakeholders' written submissions to the High Commissioner's call; and
- Stakeholders' individual written submissions in the context of the treaty body strengthening process.⁶²

The Dublin process culminated in the 'Dublin II' wrap-up meeting in November 2011. In June 2012, the High Commissioner produced a report, entitled *Strengthening the United Nations human rights treaty body system*, setting out key recommendations arising from the multi-stakeholder Dublin Process.⁶³ These recommendations included:

- *Developing a Comprehensive Reporting Calendar*: A Comprehensive Reporting Calendar would regularize States parties' reporting and establish in advance deadlines for reports and their review by treaty bodies.
- *Treaty body election improvements*: The High Commissioner proposed an "open public space" for states parties to present their treaty body candidates. This public space would improve the candidate selection process by ensuring candidates' expertise, independence, and impartiality.
- *Increased use of technology*: The increased use of technology, including webcasting of treaty body sessions, would enhance the visibility of treaty body meetings and enable some state delegates to follow proceedings without travelling to Geneva or New York.

The report by the High Commissioner has been used to inform the intergovernmental process of the General Assembly.

⁵⁸ See URL: <http://www2.ohchr.org/english/bodies/HRTD/>.

⁵⁹ Available at URL: http://www2.ohchr.org/english/bodies/HRTD/hrt_d_process.htm#dublin.

⁶⁰ Ibid, p.7.

⁶¹ NGO submissions are available at URL: <http://www2.ohchr.org/english/bodies/HRTD/>.

⁶² All documents relating to these consultations can be found on the OHCHR website, above n 65.

⁶³ Available on the OHCHR website, above n 65.

The inter-governmental process

The General Assembly's inter-governmental process on the strengthening of the UN human rights treaty bodies was established in February 2012 under Resolution 66/254. Under this resolution, the inter-governmental process involves open, transparent and inclusive negotiations within the General Assembly framework to strengthen and enhance the functioning of the treaty body system. It takes into consideration relevant proposals on treaty body strengthening, including those developed by the High Commissioner as part of the Dublin Process.

As an initiative of the General Assembly, the inter-governmental process convenes in New York and is open to all member States of the UN, regardless of whether they have ratified some or all of the core international human rights treaties. Separate informal arrangements have been developed to integrate the inputs and expertise of treaty body experts, NHRIs and relevant NGOs in the inter-governmental process.⁶⁴

The President of the General Assembly appointed two co-facilitators (the ambassadors of Iceland and of Indonesia) to work with him to lead the inter-governmental process.

Issues arising from the inter-governmental process

Although the inter-governmental process has largely progressed on the basis of the report of the High Commissioner, some issues have arisen since its inception such as:

- A small group of States have countered many of the High Commissioner's proposals, claiming that they would require amendment of the treaties themselves;⁶⁵
- The same group of States also argue that webcasting of the public sessions should only take place with the consent of the State;
- The comprehensive calendar is dependent on additional funding;
- The High Commissioner recommended that NGO briefings take place in public (which would undermine the current advantage of sharing information in the absence of the State);
- Logistical difficulties have been faced by NGOs in participating in the informal consultations;⁶⁶ and
- The proposal made, primarily by the Russian Federation, to establish a code of conduct for treaty body members which, if adopted, would undermine the independence of the treaty bodies.⁶⁷

The current stage of the inter-governmental process

General Assembly Resolution 66/295 (2012) extends the inter-governmental process into 2013. The purpose of the extended time is to "build upon the discussions held thus far with a view to identifying... concrete and sustainable measures needed".⁶⁸

⁶⁴ These informal arrangements were a result of a compromise agreement following negotiations on GA resolution 66/254, where NGOs advocated for involvement in the inter-governmental process.

⁶⁵ Mainly Russia, China, Syria, and Iran.

⁶⁶ See above n 50, p.7

⁶⁷ For further details on this, see the ICJ statement on the independence of treaty bodies, available at URL: <http://www.icj.org/icj-statement-on-the-independence-of-the-un-treaty-bodies/>.

⁶⁸ GA Res 66/295, [1].