



# Strengthening of the United Nations Treaty Bodies

## Questions and Answers

September 2012

This Q&A document provides current and background information about the ongoing process to strengthen the United Nations (UN) treaty bodies. This document also explains how non-governmental organizations (NGOs) and other stakeholders may be affected by and contribute to the treaty body strengthening process.

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## GENERAL

### Q1: What are the UN treaty bodies?

A: The treaty bodies are committees of independent experts established under the “core” international human rights treaties to monitor states parties’ implementation of their obligations under those treaties. These committees are as follows:

- The Committee on the Elimination of Racial Discrimination
- The Human Rights Committee
- The Committee on Economic, Social and Cultural Rights
- The Committee on the Elimination of Discrimination against Women
- The Committee against Torture
- The Committee on the Rights of the Child
- The Committee on Migrant Workers
- The Committee on the Rights of Persons with Disabilities
- The Committee on Enforced Disappearances
- The Subcommittee on Prevention of Torture (established under the Optional Protocol of the Convention against Torture)

Refer to the Office of the High Commissioner for Human Rights (OHCHR) website at <http://www2.ohchr.org/english/bodies/treaty/index.htm> for more information about the core international human rights treaties.

### Q2. What do the treaty bodies do?

A: Depending on the terms of each treaty and its optional protocol(s), the treaty bodies perform some or all of the following functions:

- Monitor implementation of the treaty and issue concluding observations through a public review of periodic reports submitted by the states parties;
- Consider communications from individuals concerning alleged violations of their rights under the treaty;
- Undertake confidential investigations into widespread or systematic violations of the treaty, including through country missions;
- Provide an authoritative interpretation of the treaty through the development of general comments or general recommendations.

A state must ratify a treaty and/or its optional protocol(s) in order to be legally bound by the human rights obligations therein.

Refer to the OHCHR website at <http://www2.ohchr.org/english/bodies/treaty/index.htm> for more information about treaty ratifications, treaty body mechanisms, and state reports.

### Q3. Why do the treaty bodies need to be strengthened?

A: The significant growth of the treaty body system over the decades has led to an increasing number of challenges<sup>1</sup>, including:

- **Poor reporting compliance rates**—States parties to the core international human rights treaties have obligations to report to the treaty bodies at regular intervals on the implementation of those treaties. Currently, only 16% of states parties report on time. As of May 2011, 621 reports were overdue.<sup>2</sup>
- **Backlog of reports awaiting consideration**—As of May 2011, 263 reports were pending consideration by the treaty bodies.<sup>3</sup>

- **Backlog of individual communications awaiting consideration**—As of May 2011, 459 individual communications were pending consideration by the treaty bodies.<sup>4</sup>
- **Lack of resources**—Permanent and adequate resources to support the work and functioning of the treaty bodies are lacking.
- **Poor quality of some treaty body experts**—Some members elected to serve on the treaty bodies do not meet the standards of being either “expert” in the mandate of the committee or “independent.”

Some observers believe that the core international human rights treaties themselves limit the effectiveness of the treaty bodies in protecting human rights—for example, by failing to ensure that there are penalties for states parties that do not comply with the recommendations and views of the committees. Whatever the merits of these arguments, the current strengthening debate is *not* seeking to re-open any of the treaties.

#### **Q4: Are the challenges to the treaty bodies new?**

A: No. Reform of the treaty bodies has been discussed for more than 20 years. In fact, as far as back as 1989, the UN Secretary-General appointed an independent expert to look at the challenges facing the treaty body system. Many of the challenges identified then have not changed but have been further compounded by increasing numbers of ratifications (and therefore committee workload) as well as the elaboration of more treaties and optional protocols.

## **PREVIOUS TREATY BODY STRENGTHENING INITIATIVES**

#### **Q5: What previous initiatives have been taken to strengthen the UN treaty bodies?**

A: Various solutions for strengthening the UN treaty bodies have been put forward over the years. One suggestion was for states parties to produce a single report on implementation of their treaty obligations for consideration by the different treaty bodies rather than submitting separate reports to each treaty body. Another proposal called for a unified treaty body to monitor the rights currently dispersed under the different core human rights treaties. 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 committees have also adapted their working methods to make the reporting process more effective—for example, by developing “lists of issues” to identify priority areas for state reports and dialogue with the committees. The committees also identify priorities for implementation and follow-up.

Most recently, treaty body strengthening has been addressed through the multi-stakeholder Dublin Process, described below.

*Refer to the OHCHR website at <http://www2.ohchr.org/english/bodies/treaty/reform.htm> for more information about previous treaty body strengthening initiatives.*

#### **Q6: What is the Dublin Process?**

A: The Dublin Process was the most recent effort to strengthen the treaty bodies. It was initiated by the High Commissioner for Human Rights (High Commissioner) in

September 2009. The aim of the process was to encourage a broad range of stakeholders—including states, treaty body experts, NGOs and national human rights institutions (NHRIs)—to develop proposals to strengthen the treaty body system. Shortly after the process began, a group of current and former treaty body experts convened in Ireland and issued the “Dublin Statement” to establish principles to underpin the discourse on treaty body strengthening. Subsequently, some 20 consultations were organized by and for different stakeholders, who contributed many proposals to the process.

Refer to the OHCHR website at <http://www2.ohchr.org/english/bodies/HRTD/index.htm> for information about stakeholder contributions to the Dublin Process.

#### **Q7: How did NGOs contribute to the Dublin Process?**

A: International, regional and national NGOs developed written contributions proposing solutions to address the challenges of the reporting process and the individual communications procedure. In April and June 2011, respectively, NGOs participated in and contributed to the outcome documents for civil society consultations in Seoul and Pretoria. NGOs also participated in a meeting in Bristol in September 2011 on the theme of implementation of treaty body concluding observations, as well as in a November 2011 meeting in Dublin reflecting on the overall progress of the Dublin Process.

As with the “Dublin Statement,” NGOs have been keen to stress that the strengthening process must be driven first and foremost by the goal of enhancing the capacity of rights holders to enjoy their rights, rather than by concerns about efficiencies or savings. NGOs also have highlighted proposals to make the treaty body system more accessible to a broad range of stakeholders.

Refer to the OHCHR website at <http://www2.ohchr.org/english/bodies/HRTD/index.htm> for information about NGO contributions to the Dublin Process.

#### **Q8: What was the outcome of the Dublin Process?**

A: 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. 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 has 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.

Some proposals made in the course of the Dublin Process, such as the idea to hold some treaty body meetings outside of Geneva and New York, are not reflected in the High Commissioner’s report. The High Commissioner’s report includes a proposal that

NGO briefings with treaty bodies be held in public. Currently, many treaty bodies hold these in private session, thus enabling NGOs to provide information without state or media presence. Consequently the High Commissioner's suggestion has raised concern.

The High Commissioner's report is being used to inform the inter-governmental process, described below, which has been convened under the auspices of the UN General Assembly.

Refer to the OHCHR website at <http://www2.ohchr.org/english/bodies/HRTD/index.htm> to access a copy of the High Commissioner's report.

Refer to the following documents for NGO responses to the High Commissioner's report:

- *Strengthening the UN treaty bodies, a preliminary response from non-governmental organizations, 13 July 2012, AI Index: IOR 40/015/2012, available at <http://www.amnesty.org/en/library/info/IOR40/015/2012/en>*
- *Strengthening the UN treaty bodies: remarks by NGOs at side-event with the High Commissioner for Human Rights, 16 July 2012, AI Index: IOR 40/016/2012, available at <http://www.amnesty.org/en/library/info/IOR40/016/2012/en>*

## CURRENT TREATY BODY STRENGTHENING INITIATIVE

### **Q9: What is the inter-governmental process?**

A: The inter-governmental process was established in February 2012 by Resolution 66/254 of the UN General Assembly. 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.

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. The President of the General Assembly recently reported to the General Assembly on the progress of the process.

Refer to the United Nations website at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/474/06/PDF/N1147406.pdf?OpenElement> for the full text of General Assembly resolution 66/254.

### **Q10: How does the inter-governmental process relate to the Dublin Process?**

A: The multi-stakeholder approach used in the Dublin Process gave rise to concerns by states that their concerns and proposals were being given insufficient attention. In response to these concerns, in December 2011 the Russian Federation proposed the creation of an open-ended working group of the General Assembly.

Difficult negotiations followed, as it seemed that an inter-governmental process would establish a parallel track to the Dublin Process. It was agreed finally that reference would be made in the text of the negotiated resolution to the High Commissioner's report on treaty body strengthening. NGOs and some states advocated for effective participation of NGOs in the inter-governmental process. Under the compromise reached, NGO participation has been organized through informal arrangements separate from inter-governmental negotiations.

**Q11: How has the inter-governmental process progressed so far?**

A: Informal consultations of states took place in New York on 2 July and preceded three days of "thematic discussions," from 16 to 18 July. Issues were grouped under five headings: comprehensive calendar, methods of work, reporting process, capacity to implement, and the way forward.

**Q12: What proposals have emerged so far from the inter-governmental process?**

A: The inter-governmental process has taken into consideration the proposals from the High Commissioner's report on treaty body strengthening. For example, there is support for the idea of a comprehensive reporting calendar in principle, although doubts have been raised as to whether the proposed reporting cycle is sustainable. The comprehensive calendar also is dependent on a significant injection of new funds. Many states also support the idea of an increased use of technology.

A small group of states, comprising the Russian Federation, China, Syria, Iran and a few others, have countered many of the proposals put forward by the High Commissioner. For example, these states have suggested that many of the High Commissioner's recommendations cannot be implemented without amendment of the core treaties. These states also argue that webcasting of public sessions should take place only if the state under review agrees in advance. They also argue that the treaty bodies should have a code of conduct, a proposal that could be abused to limit the scope of the treaty bodies' work.

**Q13: Are there emerging issues that could affect NGOs' work with the treaty bodies?**

A: Over the years, NGO engagement with the treaty bodies has developed significantly. All treaty bodies now provide for time during their formal meeting time (and therefore with the benefit of translation and the presence of all members) to hear NGOs' concerns. This dedicated time is in addition to informal time, for example lunch briefings, given to NGOs. National NGOs have increasingly become engaged with the treaty body system and made very significant contributions. Often these NGOs do not have consultative status with ECOSOC but can nevertheless contribute and participate in the same way as NGOs with consultative status.

As indicated above, the High Commissioner's report proposes that NGO meetings with the committees be held in public. This proposal would allow anyone, including government representatives, to sit in on the meetings. Public meetings also would be reported through the UN media service. Some states suggest that all meetings between treaty bodies and NGOs, including by implication those currently held in private, should be webcast. These proposals have given rise to concern on the part of

NGOs who fear reprisals from their governments for their interaction with the treaty bodies.

The High Commissioner's report highlights the issue of reprisals and intimidation against individuals, their families or organizations who cooperate or attempt to cooperate with the treaty bodies. The High Commissioner suggests the establishment of a treaty body focal point on reprisals, which would be a welcome first step to addressing this concern.

**Q14: How can NGOs contribute to the inter-governmental process?**

A: The informal consultations in July 2012 included an NGO panel during the state consultations, as well as side events for NGOs, organized over the lunch period, in the same room as the consultations. NGOs therefore could participate as members of panels, be in the meeting room to monitor state positions, distribute written materials in the meeting room, and take the floor during the side events.

A civil society forum took place on 4 September 2012 in New York, with a video link-up to Geneva. NGOs prepared written statements in advance and distributed them to the co-facilitators, as well as to permanent missions in New York and/or Geneva. Some NGOs outside of New York and Geneva arranged for other NGO representatives who were present at the meeting to read their statements.

It is likely that the arrangements for NGO participation in these initial consultations will be replicated throughout the inter-governmental process. Outside of these formal meetings, there is always the possibility of advocacy with states on specific themes. The non-exhaustive list of issues identified by the co-facilitators is contained in the report of the President to the GA.

**Q15: What challenges have NGOs faced in participating in the inter-governmental process?**

A: The modalities for NGO participation generally are far from ideal. Because of the stipulation that separate informal arrangements are to be made after consultation with member states, NGOs have sometimes had very little notice of whether and how they will be able to participate. Increased outreach to a broader base of national, regional and international NGOs and better use of technology to enable participation by those who cannot be physically present in New York are necessary. NGOs are also looking at how their contributions to the inter-governmental process and the civil society forum can be made accessible in one place over the internet.

While NGOs with ECOSOC consultative status were able to participate in the civil society forum, those without consultative status were allowed to participate only on a "no objection" basis. Under this practice, any state can object to the participation of an NGO. No reason has to be given for the objection and there is no recourse for the NGO concerned. At least one NGO was unable to participate in the civil society forum due to the objection of a state. Several NGOs and states raised concerns about this negative development, both at the civil society forum and subsequently.

**Q16: What are the next steps in the inter-governmental process?**

A: Just prior to the end of the 66<sup>th</sup> session of the General Assembly, on 17 September 2012, a resolution was adopted extending the inter-governmental process to the 67<sup>th</sup> session. This means the process will continue through to September 2013. The process is to "build upon the discussions held thus far with a view to

identifying ...concrete and sustainable measures needed” to strengthen the system. Given that delegations will be busy with the regular session of the General Assembly, it is not expected that the inter-governmental process will continue before 2013.

**Q17: How can NGOs be kept informed of the inter-governmental process?**

A: The OHCHR has notified NGOs of developments and distributed invitations from the co-facilitators to NGOs for participation in the civil society forum. NGOs should contact the Civil Society Section at [civilsociety@ohchr.org](mailto:civilsociety@ohchr.org) to receive notifications and summary information.

Additional information about negotiations also is available from the International Service for Human Rights at [www.ishr.ch/treaty-body-reform](http://www.ishr.ch/treaty-body-reform). Amnesty International maintains an informal email distribution list to update partners on developments. Contact Tania Baldwin-Pask at [tbaldwin@amnesty.org](mailto:tbaldwin@amnesty.org) if you wish to be added to this distribution list.

## AMNESTY INTERNATIONAL RESOURCES

Amnesty International has an ongoing programme of work across the UN treaty bodies and maintains a keen interest in strengthening the system. Amnesty International has issued and/or contributed to the following documents related to the treaty body strengthening process:

- Dublin Statement on the Process of Strengthening the UN Human Rights Treaty Body System: Response by non-governmental organizations, November 2010 (available in English, French and Spanish), AI Index: IOR 40/023/2010, available at <http://www.amnesty.org/en/library/info/IOR40/023/2010/en>
- Dublin 2 Outcome document in 15 points, 31 January 2012 (available in English, French and Spanish), AI Index: IOR 40/004/2012, available at <http://www.amnesty.org/en/library/info/IOR40/004/2012/en>
- Human rights NGOs call for an inclusive consultation process on treaty body strengthening, 22 February 2012 (available in English and French), AI Index: IOR 40/002/2012, available at <http://www.amnesty.org/en/library/info/IOR40/002/2012/en>
- Strengthening the UN Treaty Bodies: four recommendations to ensure the effective participation of non-governmental organizations, 9 March 2012 (available in English, French and Spanish), AI Index: IOR 40/003/2012, available at <http://www.amnesty.org/en/library/info/IOR40/003/2012/en>
- Issues for the inter-governmental process on strengthening the effective functioning of the human rights treaty body system, a joint NGO contribution, 12 April 2012, AI Index: IOR 40/005/2012, available at <http://www.amnesty.org/en/library/info/IOR40/005/2012/en>
- Strengthening the UN treaty bodies, a preliminary response from non-governmental organizations, 13 July 2012, AI Index: IOR 40/015/2012, available at <http://www.amnesty.org/en/library/info/IOR40/015/2012/en>
- Strengthening the UN treaty bodies: remarks by NGOs at side-event with the High Commissioner for Human Rights, 16 July 2012, AI Index: IOR 40/016/2012, available at <http://www.amnesty.org/en/library/info/IOR40/016/2012/en>
- Amnesty International statement at the civil society forum, 4 September 2012, AI Index: IOR 40/017/2012, available at <http://www.amnesty.org/en/library/info/IOR40/017/2012/en>



## ENDNOTES

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1 These challenges have been articulated in reports by the UN Secretary General and the High Commissioner. See Measures to improve further the effectiveness, harmonization and reform of the treaty body system, UN doc A/66/344, 7 September 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, 14 December 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 online at <http://www2.ohchr.org/english/bodies/HRTD/docs/HCreportonTBstrengthening210612.doc>.

2 Measures to improve further the effectiveness, harmonization and reform of the treaty body system, UN doc A/66/344, 7 September 2011, para. 8

3 *Idem*, para. 11

4 *Idem*, para. 9