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SUBMISSION TO CALL FOR WRITTEN CONTRIBUTIONS/QUESTIONNAIRE ON THE UN HUMAN RIGHTS TREATY BODY SYSTEM

The Danish Institute for Human Rights (the Institute) welcomes the call for written contributions to National Human Rights Institutions (NHRIs) as communicated by e-mail on 27 May 2020 by the Office of the United Nations High Commissioner for Human Rights (OHCHR) transmitting the letter dated 17 June from the co-facilitators for the review of the UN human rights treaty body system calling for written contributions to the questionnaire on the UN Human Rights Treaty Body system.

THE DANISH INSTITUTE FOR HUMAN RIGHTS

The Institute is regulated by Act no. 553 of 18 June 2012 on the Institute for Human Rights – Denmark’s National Human Rights Institution and is an independent, self-governing institution within the public administration and is established in accordance with the Paris Principles. The Institute is accredited as an A-status NHRI.

In addition, the Institute is designated as the independent mechanism to promote, protect and monitor the implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) in Denmark and Greenland. The Institute participates in OPCAT inspections led by the Danish parliamentary ombudsman in Denmark.

1. THE FUNCTIONING OF THE TREATY BODY SYSTEM: ITS EFFICIENCY, EFFECTIVENESS, STRENGTHS AND WEAKNESSES; SUGGESTIONS FOR FURTHER IMPROVEMENT

While the report of the Secretary-General on the status of the human rights treaty body system notes a 2.7 per cent increase in the total number of ratifications of human rights treaties and protocols,¹ the

¹ Status of the human rights treaty body system, Report of the Secretary-General, para. 10, available at: <https://undocs.org/A/74/643>.

report also indicates a lack of reporting compliance by some States.²

The report documents a significant backlog in relation to communications awaiting review (62.4 per cent).³

In addition, the report notes the inability of some Committees to effectively and fully carry out their mandates, the Subcommittee on Prevention of Torture and the Committee on Enforced Disappearances, respectively.⁴

This suggests that the treaty bodies have been unable to effectively monitor the compliance of some States' parties with their human rights obligations in line with their respective mandates, as those States have failed to comply with their reporting obligations and for some due to budgetary reductions.

The Institute recommends that the General Assembly:

- encourages all Member States to comply fully with their reporting and substantive obligations set out in the human rights treaties to which they are parties; and
- provides the full allocation of resources that the treaty bodies require to effectively carry out their mandates and functions, as per Resolution 68/268, including by securing the necessary supporting staff with OHCHR.

2. IMPLEMENTATION OF UNGA RESOLUTION 68/268 AND VIEWS ON THE BIENNIAL REPORT OF THE UN SECRETARY-GENERAL ON THE STATUS OF THE TREATY BODY SYSTEM

The Institute notes that the adoption of Resolution 68/268⁵ indeed marks an important landmark as it represented the first time that the General Assembly had addressed the treaty bodies as a collective system, rather than as individual committees.⁶

² Status of the human rights treaty body system, Report of the Secretary-General, para. 12, available at: <https://undocs.org/A/74/643>.

³ Status of the human rights treaty body system, Report of the Secretary-General, para. 15 and 17, available at: <https://undocs.org/A/74/643>.

⁴ Status of the human rights treaty body system, Report of the Secretary-General, para. 19-20 and 22-23, available at: <https://undocs.org/A/74/643>.

⁵ General Assembly Resolution no. 68/268, Strengthening and enhancing the effective functioning of the human rights treaty body system, available at: <https://undocs.org/en/A/RES/68/268>.

⁶ Status of the human rights treaty body system, Report of the Secretary-General, para. 9, available at: <https://undocs.org/A/74/643>.

The Institute recommends that:

- the General Assembly reaffirms its support for the framework for strengthening the treaty body system in Resolution 68/268; and
- Member States reaffirm the implementation of their obligations as set out therein.

3. GOOD PRACTICES AND METHODOLOGIES IN RELATION TO WORKING METHODS AND PROCEDURAL MATTERS, INCLUDING HARMONIZATION AND ALIGNMENT OF WORKING METHODS

The Institute wishes to underline that it is the right and statutory competence of each treaty body to adopt its own rules of procedure.⁷

Whilst the Institute as an NHRI in general enjoys opportunities to participate with each of the treaty bodies, the Institute notes the current variety and diversity in the extent to which treaty bodies have recognised NHRIs in their rules of procedures, working methods and practices.

At present, information about the diverse modalities for NHRI participation in the work of treaty bodies is spread across treaty bodies respectively in their General Comments/General Recommendations, rules of procedures, working methods, practical information notes for NHRIs, and statements or policy papers. These documents vary in terms of their nature, status and scope. Mindful that many of them have been developed at different stages of the evolving relationship between NHRIs and treaty bodies, they are published at different locations on each of the treaty body webpages.

The Institute recommends that the General Assembly:

- supports the ongoing efforts of the treaty bodies to further align working methods and an aligned approach and common guidelines for NHRIs.

⁷ See the preamble of Guidelines on the independence and impartiality of members of the human rights treaty bodies (“the Addis Ababa guidelines”), A/67/222, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=A%2f67%2f222_&Lang=en.

4. COORDINATION AND PREDICTABILITY IN REVIEW CYCLES AND REPORTING

The Institute welcomes efforts of the treaty bodies to move towards a predictable review cycle.⁸ As long as predictability is not at the expense of inattention to States' implementation of their human rights obligations, the Institute supports the agreed proposal by the chairpersons to increase predictability and coordination in the reporting process by shifting to an 8-year cycle for the Covenant Committees while the Convention Committees will review countries on a 4-year cycle, unless the provisions of a particular convention provide otherwise.⁹

The Institute recommends that the General Assembly:

- expresses its support for the June 2019 'Treaty Body Chairpersons Position Paper on the Treaty Body Strengthening Process' which sets out their proposal for a predictable reporting cycle and calendar; and
- considers including in-country visits by the treaty bodies as a component of the review process.

5. CURRENT REPORTING SYSTEM, INCLUDING COMMON CORE DOCUMENT, AND WAYS TO FURTHER IMPROVE AND SIMPLIFY REPORTING FOR STATES' PARTIES WHILST ENSURING THE SUBSTANTIVE QUALITY OF THE NATIONAL REPORTS

5.1 Current Reporting System

In line with the recommendation set out in Resolution 68/268 by the General Assembly to Member States to 'consider submitting a common core document and updating it as appropriate, as a comprehensive document or in the form of an addendum to the original document, bearing in mind the most recent developments in the particular State party, and in this regard encourages the human rights treaty bodies to further elaborate their existing guidelines on the common core

⁸ See i.e. The Human Rights Committee, available at: <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/PredictableReviewCycle.aspx>.

⁹ Position paper of the Chairs of the human rights treaty bodies on the future of the treaty body system, Annex III, A/74/256, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CHAIRPERSONS/MCO/31/31309&Lang=en.

document in a clear and consistent manner'.¹⁰ The Institute notes that Denmark updated its common core document in 2018.¹¹

5.2 Simplified Reporting Procedures

The Institute welcomes the commitment by the Chairpersons that all treaty bodies will offer simplified reporting procedures to all States' parties for periodic reports.¹² However, the Institute notes that a systematic use of the simplified reporting procedure would have resource implications as it requires additional staff support to undertake the preparatory drafting of the list of issues prior to reporting.¹³

The Institute recommends that the General Assembly:

- recommends to all States parties to use the simplified reporting procedure; and
- ensures additional supporting staff within the secretariat to undertake the preparatory drafting of the list of issues prior to reporting.

6. DIALOGUE BETWEEN STATES AND TREATY BODIES IN PREPARATION FOR AND DURING STATES' REVIEWS, AS WELL AS IN FOLLOWING UP ON THE REVIEWS

The treaty bodies have aligned their methodology for the constructive dialogue between States' parties and treaty bodies, as well for interaction between treaty bodies, NHRIs and civil society organizations, by i.e. clustering questions during the interactive dialogue. The Institute welcomes the proposal by the Chairs that all treaty bodies will coordinate their list of issues prior to reporting to ensure that dialogues with State parties are comprehensive and do not

¹⁰ General Assembly Resolution 68/268, Strengthening and enhancing the effective functioning of the human rights treaty body system, 9 April 2014, para. 3, available in English at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=HRI%2fCORE%2fDNK%2f2018&Lang=en.

¹¹ Denmark, Common core document forming part of the reports of States parties, HRI/CORE/DNK/2018, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=HRI%2fCORE%2fDNK%2f2018&Lang=en.

¹² Position paper of the Chairs of the human rights treaty bodies on the future of the treaty body system, Annex III, A/74/256, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CHAIRPERSONS/MCO/31/31309&Lang=en.

¹³ Status of the human rights treaty body system, Report of the Secretary-General, para. 36, available at: <https://undocs.org/A/74/643>.

raise substantively similar questions in the same time period limited to 25 to 30 questions.¹⁴

7. ASSESSMENT OF THE CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

7.1 Concluding Observations

In Resolution 68/268, the General Assembly encouraged the treaty bodies to ensure that concluding observations are short, focused and concrete.¹⁵ The Institute welcomes the efforts and follow-up by the treaty bodies to Resolution 68/268 to align their methodology for concluding observations.¹⁶ Concluding observations are important for State parties to use in complying with their treaty obligations.

The Institute notes that even though concluding observations are not legally binding, they play an important role for national stakeholders when formulating policies and initiating concrete initiatives to improve the protection of rights holders in Denmark. In this regard, the accuracy and quality of the recommendations of treaty bodies are paramount in their usefulness to States and stakeholders for promoting improvements and implementation at national level.

The Institute recommends that the General Assembly:

- encourages the treaty bodies to continue their efforts to improve their concluding observations by making them more focused, targeted and implementable.

¹⁴ Position paper of the Chairs of the human rights treaty bodies on the future of the treaty body system, Annex III, A/74/256, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CHAIRPERSONS/MCO/31/31309&Lang=en.

¹⁵ General Assembly Resolution 68/268, Strengthening and enhancing the effective functioning of the human rights treaty body system, 9 April 2014, para. 6, available in English at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=HRI%2FCORE%2FDNK%2F2018&Lang=en

¹⁶ Follow-up to General Assembly Resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system and to the decisions of the twenty-fifth meeting of chairpersons of the human rights treaty bodies pertaining to the harmonization of working methods, HRI/MC/2014/, available at: <https://undocs.org/en/HRI/MC/2014/2>.

7.2 General Recommendations

While it is the prerogative of the treaty bodies to adopt authoritative guidance on the provisions of the treaty they monitor in the form of general comments or general recommendations, the Institute would welcome further alignment of treaty bodies in the consultation processes.

As most treaty bodies post calls for submissions on draft general comments on their websites, along with deadlines for input, indications for stakeholders who wish to participate, and the texts of the submissions, which remain available after a general comment, have been adopted. The Institute notes that the calls for submission are not always shared for comments and input among national stakeholders.

8. STRENGTHENING THE ENGAGEMENT WITH CIVIL SOCIETY AND OTHER RELEVANT STAKEHOLDERS

The Chairpersons discussed ways and means to ensure the implementation of the common treaty body approach to engagement with NHRIs,¹⁷ as endorsed at their twenty-ninth meeting.¹⁸

As the NHRI in Denmark, the Institute engages in the work of the UN treaty bodies – and thereby in the implementation of international human rights treaties at national level – in several ways, including:

The Institute advises the State on the implementation of international human rights norms and standards and the recommendations resulting from treaty bodies. This includes advice on ratification of international human rights treaties and their optional protocols and domestication into national laws and policies.

The Institute systematically participates in the process of reporting to the treaty body system, including by submitting parallel reports and participating to the maximum extent possible in the examinations.

The Institute monitors Denmark's implementation and follow-up on concluding observations of Denmark received by treaty bodies.

¹⁷ Identifying progress achieved in aligning the working methods and practices of the treaty bodies, HRI/MC/2018/3, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=HRI%2fMC%2f2018%2f3&Lang=en.

¹⁸ Report of the Chairs of the human rights treaty bodies on their 29th meeting A/72/177, paras. 46–50, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=A/72/177&Lang=en.

Concluding observations are included in the monitoring of human rights in Denmark and Greenland. The Institute translates concluding observations of Denmark into Danish and publishes the observations in Danish on our website to disseminate knowledge of the recommendations. The Institute has also taken initiatives to facilitate meetings with Danish civil society organizations to coordinate how to jointly monitor and follow up on the implementation of the concluding observations.

The Institute also works to increase awareness of and involvement by national-level institutions and actors of the work of the treaty bodies, thereby helping to give further relevance to the processes at national and grassroots level, including for the rights-holders themselves.

Thus, the Institute welcomes the proposal of the Chairs to further align their interaction with stakeholders, including NHRIs, within the context of reporting procedures, including the suggested formats of alternative reports, their submission deadlines and the scheduling of private meetings.

The Institute recommends that the General Assembly:

- supports the ongoing efforts of the treaty bodies to further align working methods, takes an aligned approach and adopts common guidelines for NHRIs' involvement;

9. THE CAPACITY-BUILDING PROGRAMME, EXPERIENCES AND IMPACT, IN TERMS OF REPORTING AND IN TERMS OF NATIONAL IMPLEMENTATION OF RECOMMENDATIONS;

National Mechanisms for Reporting and Follow-up (NMRF) have proved to have a positive impact on reporting and the coordination of follow-up on recommendations of different human rights mechanisms at national level. Likewise, have the practical guides to effective state engagement and for national actors with international human rights mechanisms developed by the Capacity-Building Programme been helpful.¹⁹

¹⁹ See: The Training Guide is part of a comprehensive training package on human rights treaty reporting with an emphasis on procedural aspects of reporting, which is developed by the Treaty Body Capacity Building Programme pursuant to General Assembly resolution 68/268, available at: <https://www.ohchr.org/EN/PublicationsResources/Pages/TrainingPackage.aspx>.

10. USE OF NEW INFORMATION AND COMMUNICATIONS TECHNOLOGIES AND ITS POTENTIAL TO FURTHER INCREASE EFFICIENCY AND ACCESSIBILITY

The Institute notes that enhanced use of new information and communication technologies provides an opportunity for enhanced participation of States' parties and other stakeholders in meetings of the different Committees²⁰ as well as the possibility of further involvement by national actors and rights holders in the work of the treaty bodies. The virtual opening of the eighteenth session of the Committee on Enforced Disappearances marks an important first step.²¹

At the same time, the technologies should also be used on safe technology platforms, including to guarantee the confidential nature of private meetings, etc. Moreover, this is because persons could be at risk without equally sufficient safeguards to protect against misuse. All online meetings should guarantee equal access and provide interpretation in the working languages of the respective treaty bodies.

The Institute welcomes the decision by the General Assembly as of 2020 to fully cover live webcasts and video archives of relevant meetings of the treaty bodies under the regular budget of the United Nations,²² as it enhances the accessibility and visibility of the human rights treaty bodies by enabling national stakeholders' to participate remotely in reviews.

While the possibility of stakeholders' remote direct involvement in reviews can be arranged on an ad hoc basis by the treaty bodies with assistance from the Secretariat, there is no formalised procedure for doing this.

The Institute recommends that the General Assembly:

- suggests treaty bodies to consider expanding their use of new technologies with a view to ensuring the remote participation of national stakeholders.

²⁰ Status of the human rights treaty body system, Report of the Secretary-General, para. 33, available at: <https://undocs.org/A/74/643>.

²¹ Opening of Session – 314th Meeting, 18th Session, Committee on Enforced Disappearances, 4 May 2020, available at: <http://webtv.un.org/meetings-events/watch/opening-of-session-314th-meeting-18th-session-committee-on-enforced-disappearances/6154057846001>.

²² General Assembly Resolution no. A/RES/73/162, para. 6, available at: <https://undocs.org/en/A/RES/73/162>.

11. OPPORTUNITY OF REVIEWS IN COUNTRIES OR REGIONS

The Institute notes that some treaty bodies have already conducted reviews outside of Geneva. For instance, in 2020 the eighty-fourth Extraordinary Session of the Committee on the Rights of the Child took place in Samoa.²³

The Institute recommends that the General Assembly:

- welcomes the exploration of conducting reviews at regional level.

12. PRESERVE AND STRENGTHEN THE INDEPENDENCE AND IMPARTIALITY OF TREATY BODY MEMBERS AND ENSURE DIVERSITY IN TERMS OF GENDER, GEOGRAPHY, BACKGROUND, EXPERTISE, REPRESENTATION OF DIFFERENT FORMS OF CIVILIZATION AND PRINCIPAL LEGAL SYSTEMS, AS WELL AS THE PARTICIPATION OF PERSONS WITH DISABILITIES; ALL PERMANENT REPRESENTATIVES AND PERMANENT OBSERVERS AT THE UNITED NATIONS, NEW YORK

Since the adoption of the Addis Ababa guidelines,²⁴ each Committee has considered the guidelines and either endorsed them or included express reference to them in their rules of procedure or working methods. The Institute notes the importance of enhancing the integrity of the treaty body system by ensuring greater transparency in the processes for nominating and electing treaty body members.

The Institute recommends that the General Assembly:

- encourages States to ensure the nomination of candidates who hold the highest standards of integrity, independence, impartiality and high moral standards. The candidates should be competent and hold extensive expertise in the field of human rights, keeping in mind the mandate of each treaty body and its gender balance;
- encourages States' parties that are planning to nominate a candidate for a treaty body to issue an open call for applications and ensure wide dissemination of the call;

²³ Eighty-fourth Extraordinary Session of the Committee on the Rights of the Child, available at:
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=2410&Lang=en.

²⁴ Guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines), A/67/222, annex I, available at:
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=A%2f67%2f222_&Lang=en.

- encourages State parties to fully respect the independence of the treaty body members and avoid any actions that would interfere with the exercise of their role.

13. ENHANCEMENT OF THE COORDINATING ROLE OF TREATY BODIES' CHAIRPERSONS

The Institute notes the growing importance of the coordinating role of the treaty bodies' chairpersons, particularly their annual meeting as a forum to further align working methods and to be able to share good practices as well as to discuss the Committees' common challenges.

The Institute recommends that the General Assembly:

- encourages treaty bodies to enhance the role of their Chairpersons; and
- supports the annual meeting of the Chairpersons with a view to enhancing their joint decision making on procedural matters, harmonizing of working methods and sharing and enhanced use of best practices across the treaty bodies as appropriate and relevant.

14. FUNDING OF THE TREATY BODY SYSTEM AND ENSURING THE ADEQUATE ALLOCATION OF FINANCIAL AND HUMAN RESOURCES TO TREATY BODIES FOR ALL THEIR MANDATED ACTIVITIES

Resolution 68/268 recognizes that the allocation of resources did not allow the human rights treaty body system to work sustainably and effectively, and in this regard, it also recognizes the importance of providing, under the existing procedures of the General Assembly, adequate funding to the human rights treaty body system from the regular budget of the United Nations.

By reference to, inter alia, a recent statement by the Chairperson of the Subcommittee of Prevention of Torture and other cruel, inhuman or degrading treatment to the General Assembly in 2019,²⁵ and as noted in the report of the Secretary-General,²⁶ the Institute notes with concern

²⁵ Statement, the Chairperson of the Subcommittee of Prevention of Torture and other cruel, inhuman or degrading treatment in a statement to the General Assembly, 74th session of the General Assembly, Third Committee, Item # 69 (a), 14 October 2019, New York, available at:

<https://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIndex.aspx>.

²⁶ Status of the human rights treaty body system, Report of the Secretary-General, para. 19, available at: <https://undocs.org/A/74/643>.

the current funding crisis hampering the work of treaty bodies and thus the protection of human rights on the ground.

Moreover, the Institute would like to note that this also affects the work of national stakeholders and that preparatory work and resources at the national level are wasted as a result when sessions, reviews or visits are postponed because adequate resources and funding are not secured for the treaty bodies.

The Institute recommends that the General Assembly:

- provides the full allocation of resources required by the treaty bodies to effectively carry out their functions and mandates, as indicated by Resolution 68/268, including the need to secure the necessary supporting staff within the secretariat.

15. CURRENT SYSTEM OF PROCESSING INDIVIDUAL COMMUNICATIONS, INTER-STATE COMMUNICATIONS AND URGENT ACTIONS: ITS EFFICIENCY, EFFECTIVENESS, STRENGTHS AND WEAKNESSES; SUGGESTIONS FOR ITS FURTHER IMPROVEMENT;

The Institute notes with concern that the Secretariat has not been able to process individual communications received given the current limited level of staff resources and the increase in the number of individual communications received.²⁷

The Institute recommends that the General Assembly:

- urges Member States to ensure that the treaty bodies receive adequate staff resources to address their existing communications workload and support OHCHR's request to introduce a case management system for the Petitions Unit in order to increase the treaty bodies' efficiency.

16. ACCESSIBILITY FOR PERSONS WITH DISABILITIES AND WIDER ACCESSIBILITY AND VISIBILITY OF THE WORK OF THE TREATY BODIES

As noted in the report of the Secretary-General,²⁸ provisions for accessibility for persons with disabilities are extended only to the Committee on the Rights of Persons with Disabilities (CRPD).

²⁷ Status of the human rights treaty body system, Report of the Secretary-General, para. 45, available at: <https://undocs.org/A/74/643>.

²⁸ Status of the human rights treaty body system, Report of the Secretary-General, para. 31, available at: <https://undocs.org/A/74/643>.

As acknowledged by the Chairperson of the Committee,²⁹ steps have been taken by the United Nations in relation to sign-language interpretation and captioning. More is needed to ensure that meetings and documents are accessible to persons with disabilities in both the physical and digital worlds for them to work effectively on an equal footing with others. Accessibility for persons with disabilities and the provision of reasonable accommodation to persons with disabilities as set out in the CRPD so that they can perform their work and participate in the work of treaty bodies on an equal footing with others are necessary.

The Institute recommends that the General Assembly:

- encourages Member states to provide funding across treaty bodies to ensure the accessibility for persons with disabilities in the work of treaty bodies on an equal footing with others.

Yours sincerely,

Christoffer Badse

DEPARTMENT DIRECTOR

²⁹ Opening remarks 22nd session of the Committee on the Rights of Persons with Disabilities, 26 August 2019, available at: <http://www.internationaldisabilityalliance.org/crpd-22nd-session>.