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**Replies of the Holy See to the**

**Questionnaire in relation to the process of review of the state of the UN human rights treaty body system**

1. The Holy See welcomes this opportunity to comment on the state of the human rights treaty body system as provided by General Assembly resolution 68/268 entitled “Strengthening and enhancing the effective functioning of the human rights treaty body system”.

2. Respecting the fundamental human rights of every person is of the utmost importance. In fact, since the foundation of the United Nations, it has been considered an indispensable pillar for building peace in the world and among peoples. Hence, the Holy See welcomes these efforts to ensure that the treaty bodies may effectively assist State Parties in implementing their human rights obligations.

3. The Holy See, mindful of its obligations as a State Party to five international human rights treaties, has participated actively in the State reporting process. Furthermore, the Holy See acknowledges the valuable contribution of each of the human rights treaty bodies in assisting State Parties to fulfill their relevant obligations.

**Observations in the functioning of the treaty body system: its efficiency, effectiveness, strengths and weaknesses and implementation of UNGA resolution 68/268; (1-2)**

4. Scrupulous respect for the treaties’ provisions, as negotiated and agreed for by State Parties, is an essential prerequisite for the strengthening and proper functioning of the treaty body system. As UNGA resolution 68/268 carefully points out, efforts to improve further the treaty bodies’ work must be in line with the provisions of the treaties and should not impose new obligations on State Parties.

5. It should be borne in mind that the General Assembly, in operative paragraph 41 of resolution 68/268 decided “to review the measures taken in order to ensure their sustainability, and, if appropriate, to decide on further action to strengthen and enhance the effective functioning of the human rights treaty body system”, not to review the role and the functioning of the human rights treaty bodies themselves.

6. The Holy See believes that, in order to enhance the effective functioning of the human rights treaty body system, it should be ensured that:

* treaty bodies align their working methodologies with State Parties, bearing in mind the views of the State Parties and respecting scrupulously their specific mandates (OP5, A/RES/68/268);
* the Concluding Observations reflect accurately the inter-active dialogue with the State Parties (OP6, A/RES/68/268);
* the interaction between State Parties and the chairs of the treaty bodies during their annual meetings be enhanced (OP39, A/RES/68/268);
* all strengthening efforts fall under the framework of the legal provisions of the respective treaties without creating new obligations for State Parties (OP9, A/RES/68/268).

**Coordination and predictability in review cycles and reporting; (4-5-9)**

7. The Simplified Reporting Procedure (OP1-2, A/RES/68/268) is a welcome measure to reduce the workload of State Parties and the treaty bodies. It is indispensable, however, to ensure that the list of issues does not contain questions that fall outside the scope of the treaty or beyond the mandate of the treaty body concerned. Questions already answered by the State Party in writing should not be repeated orally during the inter-active dialogue.

8. The possibility of submitting a Common Core document (OP3, A/RES/68/268) and to use combined reports to satisfy all the outstanding reporting obligations (OP32, A/RES/68/268) is a positive development. When a State Party submits a combined report, such a report should never be rejected by the treaty body.

9. The agenda for the examination of periodic reports must contribute to implementation by the State Parties. It must, therefore, take into consideration the challenges facing State Parties, especially by LDCs, LLDS, SIDS and small States.

10. The proposal to carry out the review in the absence of a report by the State has no legal basis and would be detrimental to future engagement between the State and the treaty body. Rather, treaty bodies should engage State Parties in a constructive and result-oriented dialogue.

11. In all matters regarding the reporting process, the specific provisions of the relevant treaty must be observed. The Holy See suggests caution regarding the “strengthening of synergies” between the various human rights bodies as their nature and legal basis differ greatly. The legal obligation of States differ greatly since each State has ratified a different set of human rights treaties. Therefore, the desire to promote synergy should not lose sight of the uniqueness of each legal regime nor lead to the analogous interpretation the provision of the treaties.

**Dialogue between States and treaty bodies and efficient and effective use of the meetings of States parties. (6-18)**

 12. State Parties are the owners of the treaties. The meetings of the State Parties, as well as matters related to the implementation of each treaty, are the exclusive purview of State Parties. Meetings between each treaty body and the State Parties to the respective treaty should be encouraged.

13. Dialogue between a human rights treaty body and a State Party should be strictly based on the specific mandate of each treaty body. It would therefore be inappropriate to adopt a uniform methodology for those dialogues. Meeting times for dialogue with a State Party has to be allocated in such a manner as to ensure a more interactive and more productive dialogue.

**Assessment of the concluding observations and recommendations; (7)**

14. The Holy See believes that the Concluding Observations of each human rights treaty body should reflect accurately the inter-active dialogue with the State Parties “bearing in mind the specificity of the respective committees and of their mandates, as well as the views of State parties” in accordance with operative paragraph 6 of A/RES/68/268.

15. In drafting their Concluding Observations, the human rights treaty bodies should also fully respect the rules of interpretation of human rights treaties codified in the 1969 Vienna Convention on the Law of Treaties, in particular arts. 31 and 32. Any attempt at changing the extent or content of a State Party’s obligations without its consent would deny the value of its ratification.

16. Treaty bodies are not judicial organs, their members are not judges and their procedures differ greatly from judicial proceedings. Moreover, in the past, some of the treaty bodies’ recommendations seem to have departed from basic principles of public international law. It is indispensable to ensure the consistency of treaty bodies’ outcomes with general international law and, in particular, with treaty law.

17. The Holy See is concerned by what appears to be the increasing role of OHCHR staff in legal analysis and in the preparation of the committees’ recommendations (A/73/309, paragraphs 61-69). Those functions are the purview of the treaty bodies’ experts.

**General Comments**

17. An area of particular concern is the fact that General Comments are often described, if not also considered and even invoked, as having an authoritative interpretation of the relevant treaties. It should be borne in mind, however, that human rights treaties set forth, in carefully negotiated language, the obligations that State Parties have voluntarily undertaken. It is thus not within the treaty bodies’ mandate to provide an authoritative or dynamic interpretation of their constitutive instruments nor to introduce concepts not found in those treaties. Human rights treaties must be interpreted strictly, pursuant to the rules of interpretation codified in the 1969 Vienna Convention on the Law of Treaties. Any interpretation that goes beyond the text of treaty is null and void and would be counter-productive to the application of the treaty itself.

18. The recent practice whereby General Comments are co-authored by two or more treaty bodies is also a matter of concern, particularly for those States that have not ratified all the pertinent treaties. It is similarly a matter of concern when one treaty body relies upon a General Comment of another treaty body, which not all State Parties have ratified.

**Opportunity of reviews in countries or in regions; Overall coherence of the treaty body system and the collaboration among treaty bodies as well as within the UN system and with regional monitoring bodies; (11-14)**

19. The Holy See suggests caution regarding the “strengthening of synergies” between the treaty bodies and other human rights mechanisms. The nature and legal basis of treaty bodies differ greatly from those of the UN Charter bodies as well as from those of regional and local human rights bodies. It appears difficult to envision how treaty bodies might engage with such mechanisms without compromising the specificity of their legal mandates.

20. The same concern could be raised over the possibility to conduct dialogues with State Parties concerning their reports at a regional level.

**Good practices and methodologies in relation to working methods and procedural matters, including harmonization and alignment of working methods; Enhancement of the coordinating role of treaty bodies Chairpersons; (3-13)**

21. The Holy See suggests caution in the efforts to enhance the role of chairpersons (OP 37-39) since there is no legal basis for such an augmented role, particularly when it goes beyond purely procedural matters as set out in operative paragraph 38 of A/RES/68/268.

22. The Holy See also suggests that the human rights treaty bodies continue to enhance their efforts towards achieving greater efficiency, transparency, effectiveness and harmonization through their working methods, within their respective mandates and bearing in mind that these activities should fall under the provisions of the respective treaties, thus avoiding the creation of new obligations for State Parties as set out in operative paragraph 9 of A/RES/68/268.

**Strengthening the engagement with civil society and other relevant stakeholders; (8)**

23. It is indispensable to ensure the independence of treaty bodies from interest and pressure groups. The task of the committees is to help states to comply with the provisions of the treaties, not to promote the positions of particular groups. Furthermore, interaction with advocacy groups and the examination of the so-called "Shadow reports" should not consume the already limited resources of the Committees.

**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; (12)**

 24. It is of the utmost importance to nominate experts of high moral standing, and of recognized competence and experience in human rights, particularly, in areas that fall under the mandate of each treaty body as set out in operative paragraph 10 of A/RES/68/268.

 25. The nomination and election of members of human rights treaty bodies’ is a prerogative of State Parties. In this regard, the neutrality of the secretariat in preparing information concerning the election of the human rights treaty bodies should be preserved and encouraged.

**Funding of the treaty body system and ensuring that treaty bodies have an adequate allocation of financial and human resources for all their mandated activities; (15)**

26. The GA resolution 68/268 recognizes that “the current allocation of resources has not allowed the human rights treaty body system to work in a sustainable and effective manner” and in this regard 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”. This is the task of the Fifth Committee.

27. The provisions of financial resources to the Members of the treaty bodies with the approval of the General Assembly of the United Nations is prescribed by relevant provisions of human rights treaties. For this reason, any solution or new initiative regarding the budget the human rights treaty bodies should remain consistent with relevant provisions of the human rights treaties.