



# General Assembly

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## Human Rights Council

Twenty-second session

Agenda item 2

**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General**

### **Written statement\* submitted by the International Commission of Jurists, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[7 February 2013]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## Independence of the human rights treaty bodies

The first preambular paragraph of Human Rights Council resolution 9/8 reaffirms that the effective functioning of the United Nations human rights treaty bodies is indispensable for the full and effective implementation of the UN human rights instruments. The resolution thereafter stresses “the importance of preserving the independence of the human rights treaty bodies”. It is against that background that the ICJ notes the report of the Secretary General on measures taken to implement resolution 9/8 and on obstacles to its implementation (A/HRC/22/21).

Pursuant to General Assembly resolution 66/254 (2012), an intergovernmental process was commenced to consider the strengthening of the treaty bodies. A very troubling proposal made during that process comes from the Russian Federation, Cuba and a small group of other states for the establishment of a code of conduct for treaty body members.

The International Commission of Jurists (ICJ) takes the view that:<sup>1</sup>

- The intergovernmental process has no legal competence to establish or impose a code of conduct for treaty body members;
- A *request* by the intergovernmental process to establish a code of conduct would be inappropriate and inconsistent with the framework of the human rights treaty bodies; and
- Such a request is also unnecessary, as it is redundant to an initiative underway by the treaty bodies themselves.

### No competence to establish or impose a code of conduct

It should be recognized at the outset that the intergovernmental process is one created by the UN General Assembly. It does not operate as a conference of the states parties to any one or more of the universal human rights treaties, nor as a process mandated by the Economic and Social Council (ECOSOC).

Questions concerning the conduct of treaty body members relate to the working methods of the treaty bodies. In this regard, it should be noted that the methods of work of the UN treaty bodies are not established under the human rights treaties in respect of which each treaty body operates. Each treaty instead authorises its respective treaty monitoring body to establish its own rules of procedure. This is the case for all treaty bodies except the Committee on Economic, Social and Cultural Rights (CESCR), which is governed in its work and functioning by ECOSOC resolution 1985/17.

The empowerment of the treaty bodies with the sole authority to establish rules of procedure has been reaffirmed repeatedly, including by States. Thus, the approach is reflected in the negotiations for the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR), in respect of which China had proposed that states should establish the rules of procedure under the ICESCR Optional Protocol. That proposal that was rejected by other negotiating states and found no public support from others.<sup>2</sup>

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<sup>1</sup> See ICJ Statement on the Independence of the UN Human Rights Treaty Bodies, August 2012, available at URL; <http://www.icj.org/icj-statement-on-the-independence-of-the-un-treaty-bodies/>.

<sup>2</sup> UN DOC A/HRC/8/WG.4/2 (2007), Annex II Explanatory Memorandum, para 53.

The universal human rights treaties do not confer authority on States parties to establish, review or amend rules of procedure governing the work and functioning of the treaty bodies. Nor do the human rights treaties make the treaty monitoring bodies subject to governance by any other body or organ of the United Nations. This consistent approach across the human rights treaties reflects and reinforces the independent character of the treaty bodies.

The implication of this framework is that there is no authority on the part of the States parties to the universal treaties to establish or impose a code of conduct for treaty body members. To change this position would require amendment of each of the ‘parent’ treaties under which the monitoring bodies are established, except in the case of the CESCR where the ECOSOC has the capacity to negotiate and adopt a resolution amending its earlier resolution 1985/17. For most of the remaining human rights treaties, amendment requires two-thirds of the States parties to the parent treaties to accept such amendment.

Recalling that the intergovernmental process on the strengthening of the UN human rights treaty bodies is a process of the UN General Assembly, this leads to the following inevitable conclusions:

- The intergovernmental process has no authority to amend the UN human rights treaties ;
- As a process of the General Assembly, rather than of the ECOSOC, the intergovernmental process likewise lacks competence to revise or impose rules affecting the work and functioning of the CESCR ;
- There is necessarily no lawful authority on the part of the intergovernmental process to establish or impose a code of conduct for treaty body members.

#### **A request to establish a code of conduct would be inappropriate**

Short of amendment of each of the universal treaties to give States parties the authority to establish, review or amend treaty body rules of procedure, the only option open to the intergovernmental process would be to request the treaty bodies to themselves incorporate codes of conduct within their rules of procedure. The ICJ takes the view that this option is neither necessary, nor appropriate.

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

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

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

(article 33(2) of the ICCPR). This further emphasises the fact that the treaty monitoring bodies are not subject to governance by any organ of the United Nations.

As well as these institutional provisions reflecting and supporting the independent character of treaty body members, comparisons may be made with best practices concerning the independence of national judicial authorities. While acknowledging that the UN treaty bodies are not judicial bodies, most act in a quasi-judicial capacity, particularly as it concerns the consideration of individual communications. It is notable in this regard that it is considered to be best practice, although not universal, that judicial bodies are themselves responsible for the establishment of codes of conduct and the administration of disciplinary procedures, thus preserving their independence and the separation of powers between executive, legislative and judicial branches.<sup>3</sup> The same principle might be said to apply by analogy as between a treaty body (comparable to the judicial branch), the conference of States parties pertaining to the treaty body's parent treaty (comparable to the legislative branch), and the organs of the United Nations, including subsidiary bodies and processes established by them (comparable to the executive branch).

#### **A request to establish a code of conduct is unnecessary**

It should furthermore be noted that, as well as being inappropriate and inconsistent with the independence of the treaty bodies, it is unnecessary for the intergovernmental process to request the treaty bodies to incorporate codes of conduct within their rules of procedure.

As noted in the Secretary-General's report, during their 24<sup>th</sup> annual meeting held in Addis Ababa in June 2012, the chairpersons of the treaty bodies endorsed guidelines on the independence and impartiality of treaty body members.<sup>4</sup> Each of the treaty bodies will now be closely considering the Guidelines, thus demonstrating that self-regulation and accountability are issues that the treaty bodies are conscious of and take seriously.<sup>5</sup> The Human Rights Committee began consideration of the Guidelines during its 106<sup>th</sup> session in October 2012 in order to consider which of the guidelines need to be incorporated within the Committee's rules of procedure.

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<sup>3</sup> See, for example: UN Doc E/CN.4/2003/65 (2003), "Implementation" at p. 25; Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region, 1995, Principles 22-30; and Council of Europe Committee of Ministers, Recommendation R(94)12 on the independence, efficiency and role of judges, Principle VI.

<sup>4</sup> UN Doc A/HRC/22/21, para 2. See UN Doc A/67/150 (2012), Annex I.

<sup>5</sup> Regarding steps already taken by the Committee on the rights of the Child and the Committee on the Rights of Persons with Disabilities, see UN Doc A/HRC/22/21, paras 7 and 8.