

**ISHR submission to OHCHR Questionnaire in relation to General Assembly resolution
68/268**

January 2022

ISHR welcomes the opportunity to provide inputs to the upcoming report of the UN Secretary General on GA resolution 68/268. The present submission echoes and expands on some of the issues touched upon in the joint NGO submission from TBnet, Amnesty International and ISHR, in particular as concerns civil society access to the UNTBs.

The Covid crisis has had an exacerbating impact on deeply entrenched and long-standing limitations in the functioning of UNTBs that directly hamper civil society engagement. Since the beginning of the global pandemic, NGOs have:

1. Publicly called for periodic reviews of states parties to resume or proceed without delay, with full civil society participation, and proposed practical suggestions in that regard
2. Publicly called for more transparency, predictability and timely information and communication ahead of upcoming country reviews
3. Called on the Committees to prioritize reviews of states parties whose human rights records require urgent attention
4. Called on the Committees to avoid seeking approval from states parties in the scheduling of reviews, whether online, hybrid or fully in person, so as to avoid states easily escaping scrutiny

In spite of these repeated calls, in both private and public meetings, encounters and discussions between civil society and UNTBs and their Secretariat, we have seen limited to no improvement so far. This is evidenced by the situation at the time of writing, where yet again several UNTB sessions have been cancelled or differed with little to no communication provided in a timely manner to national NGOs. We are seeing and hearing from NGOs that the inability of the UNTB system to cope in the context of the global pandemic, at a time when other similar institutions have fared better, is contributing to a significant and deeply worrying civil society disengagement with UNTBs.

1. The need for periodic reviews to proceed, with full civil society access

The Covid outbreak has revealed and exacerbated pre-existing fundamental limitations and challenges in the work of UNTBs and opened up avenues for new and sometimes unprecedented restrictions to civil society engagement. The multiplication of incidents which may individually seem anecdotal, constitutes a deeply worrying and problematic pattern of significant degradation when added up and looked at from a global and historical perspective. The pandemic has given rise to a significant and worrying pattern of closing civil society engagement with UNTBs.

At a time when the world had to shift online, the UNTBs proved unable to do so. Sessions were cancelled and reviews of states parties postponed, resulting in a backlog of 443 state reports pending review as at December 2021.¹ NGOs have called both publicly and privately, and in both bilateral and

¹ Figure provided by OHCHR

multilateral encounters with UNTB members and UN staff for practical avenues to be pursued for periodic reviews to proceed. Such calls included for instance:

- October 2020: Joint letter endorsed by over 500 NGOs from all world regions <https://ishr.ch/latest-updates/treaty-bodies-state-scrutiny-un-human-rights-bodies-must-resume/>
- June 2020: Joint letter endorsed by 40 organisations <https://ishr.ch/latest-updates/covid-19-ngos-concerned-suspension-treaty-body-sessions/>

As an illustration of the long lasting consequences of this, at an average rate of six reports reviewed per session, and three sessions per year, it would take over 11 years for the Committee on the Rights of Persons with Disabilities (CRPD) to review all reports currently pending review, excluding new periodic reports submitted in the meantime.

Although States may invoke acceptable and good faith justifications for having to postpone a review at the last moment such as the inability to travel to Geneva, or delegates infected with Covid, it is imperative for UNTBs to have protocols in place to avoid last minute cancellations. Those could include measures such as the use of online tools for remote and hybrid meetings as undertaken by several Committees already.

- *Lack of physical access to UN premises during in person reviews, despite the fact that states and UNTB members have access.*

This was raised notably during a meeting between NGOs and OHCHR officials on 29 November 2021. The fact that in 2021, some states were able to access UN premises such as Palais Wilson or Palais des Nations to participate in UNTB reviews, but NGOs were not, or only some NGOs, constitutes a serious and worrying precedent. It is incompatible with the basic and well-established principle of equality of access to UNTB reviews by both state and non-state actors. Unless clear indications are provided and publicly disseminated by OHCHR and UNTBs providing access to in person sessions of UNTBs to civil society, there is a risk that such limited access could become a practice beyond the pandemic.

2. The need for transparent & timely communication to national level NGOs ahead of reviews

The Covid pandemic exacerbated an already deficient OHCHR outreach strategy towards civil society in relation to engagement with UNTBs. Previous ISHR and joint NGO submissions highlighted the need to improve outreach and visibility to national NGOs in relation to upcoming reviews.² OHCHR should not rely on proxy NGOs to fulfil this task. During Covid, OHCHR and UNTBs communicated bilaterally with States on the scheduling of reviews, with limited or no information provided to NGOs, particularly national NGOs, or often at the last minute.

At the time of writing, uncertainty and last minute changes continued to prevail in relation to ongoing and upcoming UNTB reviews, making it nearly impossible for NGOs to engage meaningfully in reviews, including tragic situations of NGOs having travelled to Geneva to engage in reviews that were cancelled without prior notification.

The major hindrances that NGOs have been facing in accessing the UNTBs since the beginning of the pandemic, include:

² E.g. see para and recommendations on “Strategies for increasing the visibility of the treaty body system” in *Joint NGO submission to the 29th meeting of UNTB chairpersons* (2017). Available at: <https://www.ohchr.org/Documents/HRBodies/TB/AnnualMeeting/29Meeting/JoinNGOStatement.pdf>

- *Unpredictability in upcoming sessions and countries to be reviewed*

This was flagged on a number of occasions including a joint NGO submission to the June 2021 meeting of UNTB chairpersons,³ and a private joint NGO letter to the UNSG and High Commissioner dated 22 February 2021.

- *Dissemination by OHCHR of factually erroneous information in relation to reviews and sessions that are not confirmed or cancelled at the time of disseminating information*

For instance, in late 2021, the CEDAW sessions webpage listed 14 countries to be reviewed at the 81st session scheduled in February 2022, whereas the allocated meeting time allowed for a maximum of 8 reviews during the session. This kind of information may be relied upon by national NGOs to submit information and prepare for travels to Geneva for reviews that are actually not confirmed. This practice of advertising unconfirmed country reviews has no documented precedent prior to Covid. This issue was flagged bilaterally with both Committee members and the Secretariat, as well as during an NGO meeting with Senior OHCHR staff on 29 November 2021. The lack of accuracy in information disseminated through OHCHR civil society newsletters was already flagged on several occasions prior to Covid, e.g. see <https://twitter.com/vploton/status/889815347351760897?s=20>

- *Last minute cancellations of reviews, and unreasonably short deadlines for the submission of information*

In spite of the numerous requests and suggestions from civil society for more transparency and consultation in the process of scheduling reviews during the pandemic, we see no improvement so far, and a long list of reviews cancelled, sometimes at the last minute, and unreasonably short deadlines for inputs. Some of the most recent examples include:

- CEDAW review of Nicaragua cancelled at the last minute during the 80th session (October 2021) upon the State party's request, and despite the fact that CESCR had decided to proceed with a review in the absence of a state delegation only two weeks before: <https://ishr.ch/latest-updates/treaty-bodies-nicaragua-defies-human-rights-bodies-escapes-scrutiny/>
- CERD review of Bahrain cancelled at the last minute during the 105th session (November-December 2021), in spite of the presence of NGOs in Geneva who had submitted information for the review, and travelled from far destinations to participate in the review
- Unreasonably short timelines (less than a month) for NGO contributions ahead of periodic reviews scheduled for the 134th session of the Human Rights Committee (Feb-March 2022)
- Unreasonably short timeline (less than a month) for NGO contributions to the draft general recommendation of CEDAW on the rights of indigenous women and girls (with "deadline strictly applied") <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Draft-GR-rights-indigenous-women-and-girls.aspx>

3. Prioritizing upcoming reviews and the need for criteria

The need for clear and publicly accessible criteria in the scheduling of country reviews during times of Covid induced restrictions, as well as the prioritization of countries that most urgently require reviews has been made repeatedly since the start of the pandemic, including the following.

- The June 2021 joint NGO submission⁴ noted that "a disproportionate amount of States parties reviewed so far have been from the WEOG regional group" and that practices adopted during Covid send "a deeply problematic signal to States parties that they can easily avoid scrutiny by simply refusing the terms proposed for the online reviews".

³ Joint submission coordinated by Race and Equality and ISHR (3 June 2021) available at <https://bit.ly/3L0ZEFh>

⁴ Ibid

- Private joint NGO letter to CAT encouraging prioritisation of the review of the United Arab Emirates, dated 1st April 2020
- Private joint NGO letter to HR Ctte, CERD, CEDAW, CESC and CAT chairpersons encouraging prioritisation of the reviews of Nicaragua, dated 22 July 2020
- Private joint NGO letter to CAT encouraging the prioritisation of the review of Nicaragua, dated 29 March 2021
- Private joint NGO letter to CAT encouraging the prioritisation of the review of Cuba, dated 4 May 2021.

At the time of writing, the scheduling process continues to be chaotic, and no objective criteria are publicly available with regards to the prioritization or scheduling of upcoming reviews by UNTBs.

4. Avoiding seeking permissions from states to conduct periodic reviews

An in-depth legal advice commissioned by the International Service for Human Rights to a leading international law firm⁵ found that:

“The Treaty Bodies are empowered by their governing treaties to undertake periodic reviews online, with or without the presence or consent of the state concerned “

and that

“States are under either express or implied obligations to cooperate fully and in good faith with the Treaty Bodies under the Treaties. However, these obligations to cooperate do not entail an absolute requirement to attend and participate in any scheduled periodic review meetings. Rather, they require states to accord genuine, meaningful consideration to the Treaty Bodies’ procedures and decisions, including any requests or invitations to attend review meetings convened online.”

As alluded to above, the fact that Nicaragua managed to escape the scrutiny of two Committees (CESCR and CEDAW) in late 2021, and the lack of harmonised approach between the two Committees in handling the situation,⁶ provided a vivid and sad illustration of how easy it continues to be for states to avoid reviews. The CESCR approach of proceeding in spite of the refusal of the state party to respond is commendable, as it did provide an opportunity for NGOs to engage, whereas CEDAW’s approach of postponing the review contributes to fostering civil society disengagement. We urge all Committees to adopt a common approach in dealing with last minute requests for cancellations or postponements, and prioritise reviews, including in the absence of a state delegation, when warranted.

⁵ *Virtual periodic reviews by UN human rights treaty bodies*. Legal advice dated July 2021.

⁶ CESCR undertook a review in absence of a state delegation, and CEDAW postponed the review. See <https://ishr.ch/latest-updates/treaty-bodies-nicaragua-defies-human-rights-bodies-escapes-scrutiny/> for more details