THE ONGOING BUSINESS OF STRENGTHENING THE UN HUMAN RIGHTS TREATY BODIES

Joint NGO response to the report of the co-facilitators of the UN General Assembly’s review of the UN human rights treaty body system

INTRODUCTION

We welcome the report containing the findings and recommendations of the consultation process on the UN human rights treaty body system published by the co-facilitators of the process on 14 September 2020 (the Report).1 We would like to extend our appreciation to the co-facilitators, the Permanent Representatives of Morocco and Switzerland to the UN, for their leadership in this process.

We appreciate that the co-facilitators adhered to the instructions of the President of the General Assembly to conduct the consultations in a “transparent and inclusive manner” and sought the views of civil society during the process, despite the many challenges that arose in the context of the COVID-19 pandemic.2

In their report addressed to the President of the 74th session of the UN General Assembly, the co-facilitators address several key issues that all stakeholders discussed during the three-month consultation process and make recommendations on how these should be addressed. In addition, the co-facilitators recommend that a “follow-up process” should be undertaken to allow for further discussions and consensus solutions to be reached that would allow Member States to reaffirm their support for General Assembly Resolution 68/268 on the treaty body system, and complement it where needed.

This joint NGO response highlights some of the key recommendations we consider fundamental for the strengthening of the human rights treaty body system (treaty body system), and includes our recommendations to States, the treaty bodies, the Office of the High Commissioner for Human Rights (OHCHR), and the President of the 75th session of the General Assembly on how to move forward on the implementation of these recommendations.

USE OF INFORMATION AND COMMUNICATION TECHNOLOGIES3

We welcome the Report’s conclusion and recommendations with regard to the need to increase the efficiency, transparency and accessibility of the treaty body system, including through technological developments. The COVID-19 pandemic has exposed the challenges treaty bodies face to function online. We welcome the efforts undertaken by treaty body members and their secretariats to switch to online sessions, but we are seriously concerned about the postponement, cancellation and scaling down of nearly all sessions scheduled for 2020, including, in particular, the postponement of reviews of States parties’ periodic reports since March 2020.

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3 Co-facilitators report, p. 9.
We welcome more online accessibility and participation overall, and consider them positive developments for civil society engagement with the treaty bodies. Good practices regarding online participation by civil society already existed prior to the COVID-19 crisis, and we consider that these may be further built upon by drawing on this experience.

Digital technologies should be used as a tool, selectively and where appropriate, to increase the effectiveness, efficiency and flexibility of the treaty bodies, in their individual committees, across committees and with stakeholders. Predictability, transparency and inclusivity, as well as security, privacy, confidentiality and accessibility, including adequate interpretation, are also essential conditions to enable the full participation of civil society.

Where online engagement is envisioned, adequate conditions to ensure predictability, transparency and inclusivity, as well as security, privacy, confidentiality and accessibility must be provided. Civil society experiences of online engagement to date must be taken into account when assessing current efforts. OHCHR and the United Nations Office at Geneva must ensure that suitable platforms are used, and Member States must ensure that funding is available for digital meeting platforms and for other technological needs of the system (see Individual communications).

**INDIVIDUAL COMMUNICATIONS**

We welcome the Report’s recommendation to invest in and set up a digital case management system for individual communications and urgent actions for parties to submit, access and track relevant information, including on the status of a case. Effective follow up communications with all parties are essential to ensure that accurate information is provided through all stages of consideration of individual communications and implementation of views.

Furthermore, we welcome the Report’s conclusion that the individual communications system would benefit from the allocation of appropriate financial, human and technical resources to the Petitions Unit to enable it to more systematically manage the growing number of communications it receives and, at the same time, reduce the existing backlog. We recommend that Member States provide the necessary funding through the regular budget for such resources without further delay. We regret that the report of the Advisory Committee on Administrative and Budgetary Questions (ACABQ) on the programme budget for 2021 has recommended that the Fifth Committee deny the majority of the resources requested by the Secretary-General for additional staff support for the treaty bodies for 2021.

Given that a modern case management system, which enjoys strong and widespread support, is imperative for the effective and timely work of the treaty bodies, we recommend that it be set up by

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5 Co-facilitators report, p. 10.

OHCHR\textsuperscript{7}, and that Member States provide funding for this purpose, either through the regular budget or through voluntary contributions to OHCHR, without further delay.

Member States should not support the ACABQ’s recommendation to deny needed additional resources for the treaty bodies in 2021, and should advocate in the Fifth Committee for the full allocation of resources requested by the Secretary-General in his proposed budget for 2021. Member States should also urge the Secretary-General to request the full allocation of additional resources that the treaty bodies require in order to function effectively in his proposed budget for 2022, which he will prepare in the first months of 2021.

**NOMINATION AND SELECTION OF TREATY BODY MEMBERS\textsuperscript{8}**

We welcome the support for the ‘Guidelines on the independence and impartiality of members of the human rights treaty bodies’ (”The Addis Ababa Guidelines”) in a number of submissions to the co-facilitators. We welcome the strong opposition expressed by many States to establishing a code of conduct for treaty body members, which would be incompatible with the full independence of the treaty bodies - and potentially open a dangerous avenue for States to attempt to control the actions of treaty body experts.

In this regard, we welcome the co-facilitators’ call that “States and all other stakeholders should recommit to fully respecting the independence of treaty body members and to avoiding any act that would interfere with the exercise of their functions”.

States have been repeatedly reminded, including in resolution 68/268 itself, and in the biennial reports of the Secretary-General and NGO submissions to those reports,\textsuperscript{9} of the importance of national competitive selection processes for the nomination of Committee experts, and/or of other independent vetting processes. Such processes would ensure that nominated candidates fulfil the highest standards of competence, expertise and independence that are necessary for the treaty bodies to best discharge their protection functions. Yet, few States have set up such national processes. Furthermore, States also frequently disregard the criteria set out for a merit based independent membership and engage in vote-trading to secure support for their candidates.

We welcome initiatives to increase openness and transparency around nominations and elections of treaty body experts. Improved nomination procedures will ensure strong pools of quality, independent and diverse candidates nominated by States. 

We recommend that when States formally put forward a nominee, they should also report about their national selection process, including compliance with principles for independent, open, transparent, participatory, competitive and merit-based selections with the aim of ensuring diversity of nominees, including based on gender, sexual orientation, race, ethnicity, disability, age, etc. 

\textsuperscript{7} See joint NGO letter from October 2018 which called on the OHCHR to “Make optimal use of information technology and internal management instruments that can help to standardize, streamline, and facilitate the registration and processing of communications, https://www.ishr.ch/sites/default/files/documents/letter_to_hc_en_indiv_complaints_to_tbs_final.pdf

\textsuperscript{8} Co-facilitators report, p. 11.

We also support the proposal to create a web-based elections platform and call on States parties to review carefully the expertise, independence and impartiality of the nominees, paying due attention to the geographical and gender composition of the respective treaty bodies, and not to vote for unqualified nominees as a consequence of vote-trading.\textsuperscript{10}

A future follow-up process by the General Assembly should avoid any initiatives that would interfere with the independence and impartiality of the treaty bodies, and reject any attempt to introduce a so-called Code of Conduct or any purported Ethics Council for the treaty bodies.

**ACCESSIBILITY AND ALIGNMENT OF WORKING METHODS AND METHODOLOGIES FOR ENGAGEMENT WITH STAKEHOLDERS AND FOLLOW-UP TO RECOMMENDATIONS**\textsuperscript{11}

We welcome the recommendation to the treaty bodies to adopt an aligned methodology for the constructive dialogue. We also welcome efforts to make the concluding observations more focused, concrete, targeted, measurable and implementable, as well as the recommendation that the treaty bodies should align their methodologies with respect to their interaction with stakeholders. However, we emphasize that the General Assembly must respect the independence of the treaty bodies and prerogative of the treaty bodies to establish their own working methods. In this connection, we urge the treaty bodies to take these steps without further delay.

In this regard, we also recommend that the treaty bodies establish -- and OHCHR provide support for -- additional opportunities to coordinate their work and strengthen procedural and jurisprudential coherence and mutual reinforcement, building on interdependence and indivisibility of rights. It is critical that in pursuing such opportunities each treaty’s legal specificity be respected, and that the ultimate objective be to enhance States parties’ compliance with their treaty obligations, as opposed to seeking to eliminate duplication for its own sake. This coordination can take place online and a plan in this regard should be proposed by OHCHR without further delay. States must provide funding for such meetings to be held.

We also welcome the recommendation to States to expand and institutionalize follow-up at national level. States should strengthen their engagement with the treaty bodies on issues of implementation, and also invest in national procedures to monitor implementation, such as the setting up of national mechanisms for reporting and follow-up.

The General Assembly should provide appropriate resources from the regular budget to ensure that the treaty body system is accessible to civil society and other relevant stakeholders, including through webcasting and online meetings, and for the development of necessary information management systems.

Member States should provide funding for an accessibility audit across the treaty bodies, including for their webpages, civil society participation, dialogue with States parties, and physical premises, with a view to proposing arrangements that would make possible and enhance the participation of persons with disabilities, including, for example, through the provision of international sign language interpretation, live captioning, Plain English, Easy-Read format and braille. Such an audit must not be limited to the Committee on the Rights of Persons with Disabilities.

\textsuperscript{10} The proposal for a vetting process was echoed by the High Commissioner in her opening statement to the reviews process, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25917&LangID=E

\textsuperscript{11} Co-facilitators report, p. 12-14 and 16.
FIXED CALENDAR AND PERIODICITY OF THE HUMAN RIGHTS TREATY BODIES SESSIONS

We welcome the broad support for predictable reporting calendars and the benefits they could bring to the system as a whole, improving coordination of State reporting obligations, and also ensuring periodic scrutiny of all States parties. As the co-facilitators point out, fixed calendars would contribute to predictability and stability in reporting for both States parties and treaty bodies, as well as for civil society.

It is key that there is coordination among treaty bodies in the establishment of such calendars and with the UPR reporting obligations. We consider that such calendars will increase transparency, coordination and predictability and will promote regular reviews by all States parties. It is key that regularity of reviews be kept at the heart of the coordination and costing estimates that OHCHR will carry out. States are parties to the treaties and, therefore, must provide resources for effective monitoring of their implementation of their freely undertaken treaty obligations.

We support the position of the Chairs, and the prerogative of all treaty bodies, to establish fixed review schedules for the regular reviews of all States parties. We strongly recommend that the treaty bodies move forward as one system and ensure coordination among the various Committees.

REVIEWS IN THE REGIONS

We welcome the co-facilitators support for reviews in the region “as an important step towards increased domestic stakeholder accessibility, enhanced visibility of the treaty body system and closer interaction with national and regional human rights systems.”

We consider that such reviews could have a positive effect in bringing the treaty bodies closer to the domestic stakeholders, including rights-holders, the ultimate beneficiaries, and increasing awareness and visibility of the work of the treaty bodies, as well as strengthening cooperation with regional human rights mechanisms.

We welcome the Report’s recommendations to encourage the treaty bodies to engage with Member States at the regional level, including through reviews in regions, follow-up webinars on concluding observations and for the sharing of good practices. Member States should consider inviting treaty body members to hold discussions on follow-up issues in-country. OHCHR and host States should make the necessary arrangements to facilitate safe access for civil society representatives without fear of intimidation and reprisals, and should also support meaningful engagement by CSOs that may not be familiar with these processes.

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12 Co-facilitators report, p. 15.
14 Co-facilitators report, p. 17.
CAPACITY BUILDING AND TECHNICAL ASSISTANCE

We welcome the activities that have been carried out as part of the OHCHR capacity building programme established by resolution 68/268, which has enabled dozens of countries around the world to submit their periodic reports to the treaty bodies. Nevertheless, we note that civil society engagement in the capacity building programme has been limited.

We support the call to strengthen the role of OHCHR in supporting the treaty body system and providing technical assistance for capacity building and for OHCHR to conduct a thorough, inclusive, independent and publicly available evaluation of the capacity-building programme. We also call for the integration of a dedicated civil society component into the capacity-building programme.

BUDGETARY ISSUES

We welcome the co-facilitators’ recognition that the treaty bodies face serious resource deficits (as set out above in the section entitled individual communications) and that the failure of Member States to provide the treaty bodies with the resources they require to function has a direct impact on the enjoyment of human rights. We agree with the co-facilitators that States have an obligation to avoid taking actions that lead to this protection gap.

Since 2017, however, Member States have repeatedly denied the treaty bodies the full amount of resources they require to function, including by partially rejecting budget requests from the Secretary-General for additional staff support to allow the treaty bodies to process rising numbers of individual petitions (justified with reference to the resourcing formula in resolution 68/268); by making across-the-board cuts to UN travel funds aimed at reducing the overall UN budget that had an outsized impact on the treaty bodies; and by creating a financial architecture at the UN in which the Secretariat lacks cash reserves to draw upon when Member States fail to pay their assessed contributions to the UN in a timely fashion, leading to repeated cash flow crises that have threatened, in turn, OHCHR’s ability to facilitate the treaty bodies’ meetings and other activities.

We are also concerned that since 2017 the Secretary General has stopped requesting Member States to provide the full allocation of additional resources that the resourcing formula in resolution 68/268 indicates they require, let alone the additional resources that the Secretary-General’s biennial reports to the UN General Assembly on the treaty bodies notes that they require to carry out mandated functions that are not covered by the resolution 68/268 formula. We understand that this is a reflection of political pressure by States that are averse to growth in the regular UN budget in general and to the growth of resources allocated to support the treaty body system in particular.

In their report, the co-facilitators suggest that a follow-up process should revisit the funding formula in resolution 68/268 to allow States to identify and agree on more appropriate ways of calculating the treaty bodies’ true resource needs. NGOs welcomed States’ adoption of resolution 68/268 and its innovative resourcing formula because it reflected an unprecedented expression of consensus that States should objectively calculate and fully meet the treaty bodies’ resource needs. We recognize that the 68/268 formula does not capture all of the relevant treaty bodies’ needs. At the same time, we also recognize that present resource crisis affecting the treaty bodies has not arisen because Member States lack information about their actual resource needs; rather, the resource crisis is a consequence of a

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15 Status of the human rights treaty body system, Report of the Secretary-General, 10 January 2020, A/74/643, Chapter V, https://undocs.org/A/74/643
lack of political will on the part of some Member States to adequately fund these institutions and more broadly to ensure that the UN has the financial means it requires to operate.

Member States should act immediately, including in the context of the ongoing discussions on the regular UN budget for 2021 in the Fifth Committee, to address the serious resource shortfalls affecting the treaty bodies. In their discussions on the 2021 regular budget, Member States should at the very least approve the additional resources requested by the Secretary-General, and should, in fact, consider providing the additional resources that the treaty bodies need but that the Secretary-General has not requested; in the course of efforts to reduce the overall UN budget for 2021, Member States should also avoid imposing across-the-board cuts to travel budgets or cuts to other resources that will negatively affect the ability of the treaty body system to function.

Member States should also urge the Secretary-General to request the full allocation of additional resources that the treaty bodies require in order to function effectively in his proposed budget for 2022, which he will prepare in the first months of 2021.

Any follow-up process - and any future discussions about adjustments to the resourcing formula for the treaty bodies - must be aimed at reaffirming State support and adequate funding of the treaty bodies on the basis of their resource needs. The follow-up process will not benefit the treaty bodies, let alone rights-holders, if its practical result is to force the treaty bodies to adopt changes to their working methods aimed primarily at reducing their operational costs, rather than at making them more effective at monitoring States parties’ compliance with their binding human rights treaty obligations.

CONCLUSIONS AND RECOMMENDATIONS

The co-facilitators’ report clearly reflects widespread support for the treaty bodies, as well as the urgent need for technological upgrades and additional resources to facilitate and strengthen their ability to work effectively. We also welcome the strong conviction expressed by many stakeholders during the consultations that the independence of the treaty bodies must be maintained.

We encourage Member States, treaty bodies, and OHCHR to consider the recommendations set out in this document and to support their immediate implementation. We also recommend that the President of the General Assembly ensure that any follow-up process on the treaty bodies convened during the 75th session is carried out in an open, transparent and inclusive manner, as was the 2020 review, so that the views of civil society can continue to play an integral role in the proceedings.

RECOMMENDATIONS TO UN MEMBER STATES:

- Provide appropriate resources from the regular budget to ensure that the treaty body system is accessible to civil society and other relevant stakeholders, including through webcasting and online meetings, and for the development of necessary information management systems.
- Advocate for the full allocation of resources requested by the Secretary-General in the 2021 budget in the Fifth Committee and not support the ACABQ’s recommendation to deny needed additional resources for the treaty bodies in 2021.
- Fund meetings that will enhance inter-committee coordination.
- Urge the Secretary-General to request the full allocation of additional resources that the treaty bodies require in order to function effectively in his proposed budget for 2022, to be prepared in the first months of 2021.
- Avoid imposing across-the-board cuts to travel budgets or cuts to other resources that will negatively affect the ability of the treaty body system to function.
- Fully respect the independence of treaty body and the prerogative to establish their own working methods.
- Reject any attempt to introduce a so-called Code of Conduct or any purported Ethics Council for the treaty bodies.
- When formally putting forward candidates for treaty body membership, report about the national selection process, including compliance with principles for independent, open, transparent, participatory, competitive and merit-based selections, with the aim of ensuring diversity of nominees, including based on gender, sexual orientation, race, ethnicity, disability, age, etc.
- Carefully review the pool of nominees, vote only for qualified nominees and avoid vote-trading for human rights expert mechanisms.
- States should strengthen their engagement with the treaty bodies on issues of implementation, and also invest in national procedures to monitor implementation, such as the setting up of national mechanisms for reporting and follow-up.
- Invite treaty body members to hold discussions on follow-up issues in-country.
- Provide funding for an accessibility audit across the treaty bodies, including for their webpages, civil society participation, dialogue with States parties, and physical premises, with a view to proposing arrangements that would make possible and enhance the participation of persons with disabilities, including, for example, through the provision of international sign language interpretation, live captioning, Plain English, Easy-Read format and braille. Such an audit must not be limited to the Committee on the Rights of Persons with Disabilities.

**RECOMMENDATIONS TO THE HUMAN RIGHTS TREATY BODIES:**

- Establish additional opportunities to coordinate the work by the treaty bodies in order to strengthen procedural and jurisprudence coherence and mutual reinforcement, building on interdependence and indivisibility of rights.
- Establish fixed review schedules for the regular review of all States parties and ensure due inter-committee coordination when establishing such calendars.

**RECOMMENDATIONS TO THE UNITED NATIONS (OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, UN OFFICE AT GENEVA, UN SECRETARIAT):**

- Take into account civil society experiences of online engagement to date and address shortcomings.
- Ensure suitable platforms for online engagement with the treaty bodies and that online engagement with the treaty bodies meet adequate conditions to ensure predictability, transparency and inclusivity, as well as security, privacy, confidentiality and accessibility.
- Provide support for inter-committee discussions to strengthen and coordinate the work of the treaty bodies and to strengthen procedural and jurisprudential coherence and mutual reinforcement, building on interdependence and indivisibility of rights.
- Prepare without delay, a proposed schedule and estimated costing for predictable review cycles.
- OHCHR in coordination with host States should make the necessary arrangements to facilitate safe access to reviews in regions for civil society representatives without fear of intimidation and reprisals, and should also support meaningful engagement by CSOs that may not be familiar with these processes.
- Conduct a thorough, inclusive, independent and publicly available evaluation of the capacity-building programme and integrate a dedicated civil society component into the capacity-building programme.
RECOMMENDATION TO THE PRESIDENT OF THE GENERAL ASSEMBLY:

- Ensure that any follow-up process on the treaty bodies convened during the 75th session is carried out in an open, transparent and inclusive manner, as was the 2020 review, so that the views of civil society can continue to play an integral role in the proceedings.

SIGNATORIES:

ACAT España Catalunya (Acción de los Cristianos para la Abolición de la Tortura)
Action Canada for Sexual Health and Rights
Aditus foundation
Advocates for Human Rights
Al-Dameer Association for Human Rights
Alianza por los Derechos de Niñas, Niños y Adolescentes en Mexico
All human rights for all in Iran
ALTSEAN-Burma
American Civil Liberties Union (ACLU)
Americans for Democracy & Human Rights in Bahrain (ADHRB)
Amnesty International
Antenna fondation
Anti-Slavery International
Article 12 in Scotland
Asistencia Legal por los Derechos Humanos A.C. (ASILEGAL)
Asociación Pro Derechos Humanos de España (APDHE)
Association pour la Protection des droits des Enfants au Tchad-défense des Enfants International (APDET-DEI TCHAD)
Associação de Reintegração dos Jovens/ Cháncias na Vida Social (SCARJoV)
Association ARC-EN-CIEL
Association Des Jeunes Futurs Cadres Du Pays
Association ESE
Association for the Prevention of Torture
Association Mauritanienne Pour la Promotion des Droits de l’homme AMPDH
Association of the Survivors of Makobola Massacres (ARMMK)
Association pour la paix et le développement
AUDF Alliance pour l’universalité des Droits
Fondamentaux ONG
AWID
Aye Right
Bir Duino Kyrgyzstan
Canadian Centre on Statelessness
Care Micronesia Foundation
CASACIDN
CEDAL - Centro de Derechos y Desarrollo
Center for Civil Liberties
Center for Reproductive Rights
Center for the Human Rights of Users and Survivors of Psychiatry
Central Union for Child Welfare
Centre for Independent Journalism (Malaysia)
Centre International de Conseil, de Recherche et d’Expertise en Droits de l’Homme (CICREDHO)
Centro de Políticas Públicas y Derechos Humanos-Peru EQUIDAD
Child Protection Alliance- The Gambia
Child Rights Governance Nepal
Child Rights Information Centre (CRIC) Moldova
Children’s Rights Alliance for England
Chinese & Southeast Asian Legal Clinic
Citizens Commission on Human Rights New Zealand
Collective de Abogados “José Alvear Restrepo” - CAJAR
Collectif Défenseurs Plus
Collectif des familles de disparus en Algérie
Collectif pour la promotion des droits des personnes en situation de handicap
Comisión Mexicana de Defensa y Promoción de los Derechos Humanos
Comisión Nacional de los Derechos Humanos
Confederacon Sordos de Venezuela
Coordinated Organizations and Communities for Roma Human Rights in Greece (SOKADRE)
Corporacion OPCION
Cyprus Confederation of Organizations of the Disabled
DEFENCE FOR CHILDREN INTERNATIONAL
Disability Rights International
ECPAT Sri Lanka
EKAMA Development Foundation
FIDH - International Federation for Human Rights
FIDH (International Federation for Human Rights)
Finnish Refugee Advice Centre
Fondazione Pangea
Forum Tunisien pour les Droits Économiques et Sociaux
FUNDACION PANIAMOR
Fundación Regional de Asesoría en Derechos Humanos, INREDH
Geneva for Human Rights
Global Campaign for Equal Nationality Rights
Global Detention Project
GRADEL-Guinee
Greek Helsinki Monitor
Plan International
Promo-LEX Association
PROMSEX, Centro de Promocion y Defensa de Los Derechos Sexuales y Reproductivos
Purple Admiral Foundation for Community Development
Red Latinoamericana de Organizaciones no Gubernamentales de Personas con Discapacidad y sus Familias - RIADIS
REDIM
Refugee Rights Europe (RRE)
Réseau National de Défense des Droits Humains (RNDDH)
Réseau Unité pour le Développement de Mauritanie
Save the Children Finland
Save the Children International
Sisters’ Arab Forum for Human Rights (SAF)
SOHRAM-CASRA Centre Action Sociale
RÉHABILITATION ET RÉADAPTATION POUR LES VICTIMES DE LA TORTURE, DE LA GUERRE ET DE LA VIOLENCE
SOS INFORMATION JURIDIQUE
MULTISECTORIELLE, SOS IJM
Synergy - Initiatives for Human Rights
Syracuse University Disability Law and Policy Program
TB-Net comprising:
Centre for Civil and Political Rights;
Child Rights Connect;
Global Initiative for Economic, Social and Cultural Rights (GI-ESCR);
International Disability Alliance;
International Movement Against All Forms of Discrimination and Racism (IMADR);
International Women’s Rights Action Watch Asia Pacific (IWRAW Asia Pacific); and World Organisation Against Torture (OMCT).
The Canada OPCAT Project
The Finnish League for Human Rights
The Independent Commission for Human rights CIDH
The Independent Medico-Legal Unit
The Leprosy Mission England and Wales
The Mannerheim League for Child Welfare, Finland Together (Scottish Alliance for Children’s Rights)
Trans ry
Trasek
Väestöliitto ry / the Family Federation of Finland
Validity Foundation - Mental Disability Advocacy Centre
Women’s Link Worldwide