



## **CURRENT LEVELS OF REPRESENTATION OF WOMEN IN HUMAN RIGHTS ORGANS AND MECHANISMS**

### ***Response of the GQUAL Campaign to the Questionnaire issued by the Human Rights Council Advisory Committee***

#### **A. Introduction**

The GQUAL Campaign commends the work of the Human Rights Council Advisory Committee in preparing a report on current levels of representation of women in human rights organs, as requested by the Human Rights Council through its resolution 41/6 of 11 July 2019, entitled “Elimination of all forms of discrimination against women and girls”. The GQUAL Campaign considers the report presents a unique opportunity for the Human Rights Council (HRC), and its different organs and mechanisms, to consider the structural gender inequality that exists in most human rights special procedures, treaty bodies and other UN international mechanisms and organs. Further, we expect that putting this matter before the HRC will engage States, UN bodies, civil society, academics and other relevant stakeholders in a productive dialogue that may lead to concrete actions resulting in an increased presence of women in key international institutions.

[GQUAL is a global campaign](#) launched in 2015 and aimed at achieving gender parity in the composition of international tribunals and monitoring bodies. The Campaign’s focus is to ensure the consideration of gender parity in national and international selection procedures, and to disseminate timely information on vacancies, as well as new research on the impact and role of women in international justice. The Campaign is founded on the shared understanding that for reasons of equality, for the impact of women’s participation in expanding the talent pool, for the legitimacy of international bodies, for its potential impact on sustainable development and peace, it is critical to have women engaged in international justice.

The available research and extensive data collected by the GQUAL Campaign to date shows that the underrepresentation of women continues to exist across almost all international bodies in charge of imparting or affecting international justice and human rights. The research that launched the campaign, also showed that there is not a guaranteed positive trajectory followed by justice and monitoring bodies at the international level. An overview of current gender representation in these bodies can be found [here](#).

The GQUAL Campaign has identified priority strategies to improve gender representation in the international arena. These priorities are established in the [GQUAL Declaration](#) and the [GQUAL Action Plan](#), and include the following: 1) improving national and international nomination and selection processes that States carry out to fill positions at the international levels; 2) working with international organizations to improve transparency and trigger the adoption of rules that results in gender parity representation; and 3) raising awareness about the underrepresentation of women, fostering academic research on the topic, disseminating information on its causes, impact and possible solutions, and creating a platform to coordinate advocacy. A [background paper](#) for the campaign includes further analysis of the issues and the strategies.

Considering the questionnaire issued by the Advisory Committee, in this document we have combined answers addressing the following relevant areas: 1) national nomination and selection procedures for treaty body, the Advisory Committee and other organs (questions 1, 2, 3, 7 of the questionnaire); 2) election of special procedures (question 6 of the questionnaire); 3) levels of underrepresentation of women in Special Procedure Mandates

and treaty bodies (question 5 of the questionnaire); 4) international obligations to ensure gender equality (question 4 of the questionnaire); 5) good practices (question 8 of the questionnaire); 6) recommendations (question 9).

## **B. Answers to the questionnaire**

### **1. National practices to nominate, elect and appoint experts for human rights organs, such as the Advisory Committee, special procedures, and the treaty bodies.**

According to data gathered by the GQUAL Campaign, for the most part, the nomination of candidates to human rights organs and treaty bodies shares similar features with that of other international institutions, such as regional human rights courts, the International Criminal Court or the International Court of Justice. Nomination is the responsibility of a limited number of State actors, and usually based on decisions adopted within the Executive branch, specially by the Ministry of Foreign Affairs. In most cases, there are no specific processes in place for the nomination of candidates. In this sense, nomination decisions lack publicity, transparency and the participation of civil society organizations or other actors. Particularly, these processes generally don't include considerations based on gender balance, and as a result States tend to nominate more men than women to international positions.

Voting is generally done by State representatives expressing their Government's position in the international organization that hosts the relevant body (United Nations, Organization of American States, African Union). It is generally a diplomatic process that often involves only a cursory review of the qualifications, and where votes are frequently exchanged between countries<sup>1</sup>. These exchanges usually involve agreements to support preferred candidates in the same election, but might also involve future elections in the same body or concurrent elections in other bodies. Most of these agreements take place in secret, and the candidate most likely will not be involved in the decisions of trading votes. Gender balance is not a necessary consideration in this process.

The above deficiencies in the nomination and voting processes have been documented in a number of studies, including:

- [A compilation of studies conducted by CEJIL on the nomination and election procedures for the Inter-American Commission and Court of Human Rights](#),
- [A study by the Open Society Justice Initiative](#) ("Raising the Bar" and "[Strengthening from Within](#)"),
- A set of studies conducted by the Center for Human Rights of the Law School at the *Universidad de Buenos Aires* regarding nomination and election in specific countries in Latin America, available [here](#) and [here](#).
- A [research paper with recommendations](#) prepared by Skadden and Women at the Table regarding nomination and selection procedures.
- A [working paper](#) and [set of recommendations](#) on the election of members of treaty bodies, resulting from a global conference organized by GQUAL in 2017.
- A [working paper](#) and [set of recommendations](#) on the election of members to the Inter-American Commission and Court of Human Rights, resulting from a global conference organized by GQUAL in 2017.
- A [working paper](#) with analysis of national nomination procedures and how to improve them, prepared for the global conference organized by GQUAL in 2017
- A [working paper](#) and [set of recommendations](#) on the election of members to the International Court of Justice, resulting from a global conference organized by GQUAL in 2017.

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<sup>1</sup> J Linehan, "Women and Public International Litigation: a background prepared for the Project on International Courts and Tribunals", 2002. Project on International Courts and Tribunals, p. 6.

- A [working paper](#) and [set of recommendations](#) on the election of members to the International Court of Justice, resulting from a global conference organized by GQUAL in 2017.

These studies prove that transparent, public, participatory and merit-based processes are, unfortunately, the exception and not the rule. It is even more exceptional for these processes to consider gender balance as part of the decision-making process or goal.

Given the deficient processes for nominating and voting, individual attributes such as proficiency and expertise in the specific field, independence, and integrity are likely to be overlooked. Similarly, collective outcomes that reflect balanced representation in terms of geography, gender, race, skills, experience, and background cannot be ensured.

As such, even when treaty bodies, special procedures and other UN human rights bodies and mechanisms were created based on the principle of non-discrimination, women are frequently underrepresented. According to our data, out of the 10 UN human rights treaty bodies, only the Committee on the Rights of the Child (CRC) and the Committee on the Elimination of Discrimination against Women (CEDAW) have 50% or more women. Out of the 172 existing treaty body positions, 78 are held by women (45.35%). However, excluding the CEDAW (where there is a majority of women), the number of women members would scarcely reach 1/3.

In the context of the review process of the treaty bodies system currently underway, the GQUAL Campaign submitted [a number of recommendations](#) to improve the gender representation of women in the treaty bodies, with a view to achieve parity. These recommendations include the following, which the Campaign believes are relevant and pertinent regarding other selection procedures for international positions:

- UN bodies shall include **gender parity as an explicit goal** and shall highlight the importance and value of gender balance in the composition of such bodies.
- The UN should deepen its commitment to work closely with States to ensure that more women are nominated. This could be done by:
  - Actively encouraging **States to develop open and transparent national nomination procedures**, that include gender parity as a specific criteria and goal.
  - Providing **technical assistance** to States (for instance through the OHCHR) for the development of guidelines or mechanisms for the selection of candidates to UN human rights bodies.
  - Encourage States to **keep track of data** in relation to the gender balance in the nomination process and to make this information public.
  - **Communicating to Member States ahead of nominations**. The OHCHR -in its capacity to support the treaty bodies, the special procedures and the HRC could continue to generate communications to States ahead of nominations. Such communications could emphasize information on the current composition of any specific body in relation to gender balance, the amount of available positions, the number of female nominees required to achieve gender equality and remind States of their commitments to achieve gender balance.
  - **Establishing a baseline and a path to move forward**. The OHCHR could keep track of existing nomination policies, practices and mechanisms, highlighting best practices, including progress indicators, and well as an evaluation system.
- **States shall improve their nomination processes** to ensure gender equality is an explicit goal.
- **States shall improve voting practices** by incorporating gender parity as an explicit objective.

- **States should develop guidelines to address parity**, which could include the following:
  - A zipper system similar to that of some national legislatures, to include women and men for nomination.
  - Implementing targets and measures (i.e., 50% of the candidates elected have to be women), which could vary depending on the current composition of the treaty body.
  - Postpone the election process if no women are nominated for a specific body lacking gender parity.
  - Member States could commit to electing candidates of a given gender to increase equality if any specific body is grossly unequal (i.e., 15 males and 1 woman in the current composition).
- **States and UN bodies must ensure that new human rights treaties include selection processes that ensure gender parity.**

## 2. Nomination and voting to fill Special Procedure Mandates

The Special Rapporteurs, Independent Experts and members of the Working Groups are appointed by the United Nations Human Rights Council to serve pro-bono in their personal capacities. This arrangement aims at ensuring that they can retain their independent status and perform their duties impartially.

The OHCHR issues public calls for qualified persons to be nominated. The application is usually open for six weeks, but this timeframe may vary. Governments, NGOs, international organizations, other human rights bodies, and individuals can nominate candidates for the position. The self-nomination and submission of candidacies is allowed. There is no established gender quota during the process.

The HRC appoints a Consultative Group to conduct interviews and provide recommendations to the President of the HRC. The Consultative Group consists of five members, one from each of the regional groups, appointed by their regional groups to serve for one cycle/year. The Consultative Group itself is often not gender balanced and no guidelines exist to overcome this.

There is no official gender quota that the Consultative Group must take into account when selecting candidates for interview or for the final shortlist to be sent to the President of the HRC. Yet, the Consultative Group often refers to gender as a selection criterion in its final reports, which include a list of candidates recommended to the President of the HRC. This report is made public on the website of the HRC.

Past memberships of the Consultative Group have acknowledged the need to incorporate gender parity guidelines to mainstream gender balance into the selection procedure. Ambassador Mauras from Chile explored [these obstacles here](#) and led the Consultative Group to [adopt a set of gender parity guidelines for the first time in 2015](#). Unfortunately, these important guidelines have yet to be adopted as a permanent set of rules guiding the work of all Consultative Group's memberships. The adoption of guidelines of this sort has been a permanent call from the GQUAL Campaign, as expressed [here](#), [here](#), and [here](#).

As of this date, out of the 80 available positions, only 36 are occupied by women. In fact, 15 out of 56 UN Special Mandates have never been held by a woman, including key Rapporteurships such as the mandates on the right to health, the SR on torture, and freedom of expression.

To overcome this imbalance, the GQUAL Campaign [conducted a specific study that analyses the election procedure of special mandates](#) and developed a set of specific recommendations, including the following:

- The HRC **Consultative Group should adopt “Guidelines on Gender Parity”**, recommending the establishment of gender targets that the CG would take into

account for the approval of the short list of candidates to be interviewed and presented to the President of the HRC for appointment.

- These guidelines should envisage that if there is an insufficient number of women candidates, the Consultative Group shall request the **OHCHR to extend the deadline to receive applications**.
- The Consultative Group should commit to **reverse the situation of mandates that have never been held by women**, by including a special provision in the guidelines that give priority to the selection of a woman when similar qualified candidates are competing for the appointment.
- The **OHCHR should continue to keep track of gender balance data** on international representation on the special procedures. The office should keep a baseline report and monitor progress yearly.
- The OHCHR could **promote broader dissemination of the announcements**, including targeting interested women's networks.
- The **OHCHR shall engage with governments to ensure the commitments are matched**. The office could prepare gender parity guidelines for the appointment of special procedure mandate holders.

### **3. Levels of underrepresentation of women in Special Procedure Mandates and treaty bodies**

The [data gathered by GQUAL shows that the underrepresentation of women](#) is widespread across international institutions, including treaty bodies and Special Mandates.

GQUAL has publicly monitored and reported on the composition of 93 international bodies, including international courts, regional human rights tribunals and commissions, and United Nations Treaty Bodies and Special Procedures. This covers a total of 592 positions, of which women occupy only 36%. This number drops substantially if we exclude bodies like the CEDAW Committee, the WG on Discrimination against Women, and the Committee on the Rights of the Child, which are usually tied to representation or to so-called "women's issues".

The underrepresentation is particularly dire in prominent judicial bodies. In over 70 years of existence, the ICJ has had 106 judges - only 4 of them women. The International Tribunal on the Law of the Sea improved its composition in 2017, going from one to three women out of 21 members. Overall, the representation of women in main international and regional courts is 26% -only 18 women out of 80 positions.

As mentioned earlier, to date, out of 10 Treaty Bodies, only the CEDAW Committee and the Committee on the Rights of the Child have 50% or more women. The Committee on the Rights of Persons with Disabilities had only one woman out of 18 members until June 2018, despite the fact that the treaty calls for gender balance in the composition of the Committee. Following a strong public campaign, today the Committee has 6 women out of 18 members, far from parity.

As stated above, the underrepresentation of women is significantly present among UN Special Procedures as well.

This overall data shows that while several treaties and guidelines call for geographic and gender representation, States forget about gender when nominating and appointing members.

Further, the GQUAL Campaign has collated data showing how specific States nominate for international positions. This information confirms States nominate an overwhelming majority of male candidates, including countries which have publicly pledged for equality. Based on this analysis the campaign has prepared a ranking specifying the gender balance among nationals of each State serving in positions in international bodies. The Ranking is available [here](#), and a breakout of how different world regions rank is [available here](#).

The existing underrepresentation of women in these international institutions runs contrary to provisions of non-discrimination and equality contained in various international treaties and upheld by the United Nations.

#### **4. International obligations ensuring gender equality**

The studies commissioned by the GQUAL Campaign flesh out the obligations contained in several human rights treaties and soft law instruments that require States to ensure the equal participation of women in the work of human rights organs.

A [study conducted by Prof. Claudia Martin](#) for the GQUAL Campaign focuses on the specific obligations derived of Article 8 of the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW Convention). Article 8 requires States Parties to the treaty to “take all appropriate measures to ensure to women, on equal terms with men and without discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations”. As of today, 189 States have ratified the Convention, thereby making the obligations arising out of Article 8 an almost universal requirement.

The obligation to ensure equal opportunity “to participate in the work of international organizations” under Article 8 is two-fold. At the international level, States must exert influence when the rules regulating processes of appointment to international positions are adopted to guarantee that they conform to the gender equality requirements of that provision. At the domestic levels, States must establish transparent selection processes to ensure that women benefit on an equal basis from the opportunity to work at the international level, particularly when such opportunity requires States to nominate candidates to be appointed to those positions. Even though the obligation to ensure gender equality at the international level is of a positive nature, at the domestic level States have an immediate duty to set up the necessary conditions to guarantee *de facto* that women access those positions in equal terms. On the other hand, the duty to achieve gender equality in practice is considered to be of gradual implementation.

In addition to the obligations derived from Article 8 of the CEDAW Convention, other international treaties and soft law documents contain provisions on the principle of non-discrimination, the rights of equal access to decision-making, equal opportunity in employment, and access to justice, which translate in States’ duties to ensure gender equality in international institutions. A [study commissioned by GQUAL to the Human Rights Clinic of the University of Berkeley](#) offers a detailed analysis of the legal basis in this regard.

First of all, the prohibition of discrimination appears throughout various international human rights instruments, including the UN Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), among other widely ratified treaties. The principle of non-discrimination requires States to eliminate obstacles that result in discriminatory outcomes, such as gender disparity. As selection procedures are within the exclusive control of States, they fall within the non-discrimination obligations States have assumed under international law.

Further, Article 25 of the ICCPR, the UN General Assembly Resolution 66/120, the Beijing Platform, the Millennium Development Goals, and the Sustainable Development Goals, as well as UN Security Council resolutions on women, peace and security, all reflect the commitment of States to promote women’s equal access to decision-making across public entities.

The right of access to equal opportunity in employment, envisaged in the ICESCR, and protected by the non-discrimination provisions of that treaty extends to positions on international judicial and monitoring bodies.

The Convention on the Rights of Persons with Disabilities identifies a structural right of access to justice such that denial of qualified individuals with disabilities the opportunity to serve as judges is violation of their rights to access justice. The Beijing Platform also calls on States to ensure women have equal access to serve in judicial capacities.

The obligations referred to above clearly evidence States' duties to act affirmatively to ensure gender parity, which has reflected in formal commitments by many States to achieve this goal. Considering the underrepresentation of women in international institutions that still prevails, States should take strong action to translate those commitments in measurable progress.

## **5. Good practices by States and other stakeholders to ensure gender parity**

Unfortunately, it is not easy to identify good State practices in the selection, nomination and voting processes to international courts and human rights bodies. As stated above, most decisions are not necessarily a result of a transparent, existing, and participatory process.

Despite this challenge, some [studies](#) have been able to highlight some specific examples in nomination procedures in specific States that can help shed light into accessible measures States could adopt. At the same time, we believe that some selection procedures established in specific treaties, such as the one established [for the ICC](#) or for the European Court of Human Rights, have started to pave the way for the incorporation of specific targets regarding gender balance in the composition of the body. In this sense, the Advisory Committee should consider and look further into those experiences for guidance and good practices.

In addition, the GQUAL Campaign has found that comparative experiences arising from other areas can help identify good practices and recommendations. In particular, we highlight the discussions and [measures adopted within the arbitration](#) community to improve the level of women that serve in arbitration panels and the measures adopted to achieve better [gender representation in corporate boards](#).

## **6. Recommendations directed to States, international bodies and others to achieve gender representation**

In this document we have referred to several recommendations and measures that could help improve the levels of representation in international bodies. We hereby summarize most of them according to the key responsible party that could implement them. Most of these actions have also been highlighted in GQUAL's proposed Action Plan, available [here](#).

- a) Recommendations for States
  - a. Develop and implement transparent and participatory mechanisms and practices for the nomination and selection of candidates to international bodies that ensure gender equality.
  - b. Take decisive actions to nominate in parity.
  - c. Vote in parity
  - d. Keep track of their nomination and voting record and consider making these statistics public.
- b) Recommendations for UN bodies, including the HRC, the OHCHR and human rights bodies whenever appropriate
  - a. Foster transparency.
  - b. Promote the adoption of rules to ensure gender parity in the composition of international treaty bodies, Special Mandates and other international positions.
  - c. Collect relevant data on gender composition, monitor progress, and publish the results periodically.
  - d. Publicize available positions and incentivize female candidates.
  - e. Call on States to nominate and vote taking gender parity into account.

- f. Develop human rights legal standards and recommendations based on the rights of women to equality and non-discrimination.
- g. Ensure that new treaties and other guiding instruments for the selection of members, include language and processes that ensure gender balance.
- h. Invalidate election procedures whenever the pool of candidates lacks appropriate female representation.
- i. Engage with civil society through the nomination and selection process of candidates. Including, by interacting with independent panels of experts engaged in evaluating candidates and processes.

In conclusion, our research and advocacy has shown that, while the underrepresentation of women in international bodies shares roots with the structural discrimination women face in accessing positions of representation and decision making in other spheres of public life, the present one is a specific problem with available solutions. We strongly believe that improved selection mechanisms at the national and international level could make significant change in achieving gender balance.

We hope the information provided in this document will be useful to inform the work of the Advisory Committee and the development of recommendations for improving gender balance in international bodies.

The GQUAL Campaign reiterates its gratitude for the efforts of the Committee in developing the report, and remains available to provide additional information and references, as those may be needed.

Your sincerely,

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