



BEST PRACTICES FOR ELECTION OF MEMBERS TO INTERNATIONAL & REGIONAL TREATY BODIES

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SECTION I. EXECUTIVE SUMMARY

This Report sets out a number of recommendations for UN treaty bodies to incorporate into their nomination and election procedures in order to improve diversity and in particular achieve gender balance among treaty body members.

Improving gender balance within UN treaty bodies is a common goal, promoted by UN regulations and guidelines, which has only been achieved by a few treaty bodies. Members of treaty bodies are still predominantly male and the mechanics for achieving gender balance through the treaty body nomination and election systems are not always clear. This Report draws from gender diversity policies and practices within the private sector where it is widely recognised that not only is it fair and right to reflect society's composition but also that companies with diverse boards that include a closer to equal or equal representation of women, perform better than companies with other less diverse boards.

In the private sector, notably in Europe, the UK and the US, companies have adopted and implemented policies and procedures which are designed to promote female leadership in particular and guarantee a diverse pool of candidates to be considered by shareholders when electing directors to company boards. Companies in some European countries have had to comply with diversity laws which impose a specified quota of women on boards. Many countries also have policies that include encouraging transparency in the election process, making managers responsible for diversity policies and enforcing shorter election terms and staggered boards.

The treaty body system can benefit from the steps taken towards achieving gender balance at the company board level in the private sector. The private sector model can be adapted to the treaty body context during both (i) the State parties' nomination processes and (ii) the treaty body's election process.

Recommendations

At the nomination stage, treaty bodies have the opportunity to propose guidelines for State parties to adopt when selecting candidates for nomination. State parties should select candidates with the relevant experience and expertise, but should also take gender diversity into consideration when selecting candidates for nomination. It is essential that, at the outset of the selection process, State parties are choosing from a diverse pool of candidates. In line

with the ‘comply or explain’ procedure applied in the private sector, State parties who do not provide a diverse and gender-balanced candidate list and do not take into consideration guidelines and recommendations given by the treaty bodies in relation to gender diversity should be prepared to publicly state the basis for their decision, and how and why that decision led to a non-diverse outcome.

At the election stage, when reviewing the merits of each candidate, voting members of the treaty body should also bear in mind the desired objective, which is to reach a diverse and gender-balanced treaty body composition. As such, diversity and gender balance should be set as targets for treaty bodies to achieve by the next election cycle, and each treaty body without a written diversity mandate in its treaty should have a diversity policy in place by that time, which can be shared and implemented by member States.

Treaty bodies should also consider limiting the terms of service of elected members in order to ensure a regular renewal of members. The selection, nomination and election process should be formal, transparent and reported in order to ensure fairness and hold the State parties and electing treaty body members accountable for the reasons behind their candidate selection.

This Report provides a set of realistic and pragmatic recommendations for treaty bodies to consider when developing and improving their diversity policies. The recommendations aim to strengthen the treaty body system by ensuring the election of a diverse and gender-balanced group of experts.

SECTION II. OVERVIEW

1. INTRODUCTION AND SCOPE

This Report has been prepared for the purpose of examining best practices for nominating and selecting individuals across the world to international treaty bodies and private sector governing bodies, with a view to making recommendations which can usefully add to the discussion of strengthening the international treaty body system.

When selecting individuals to governing bodies and leadership positions, both in the private sector and in the international treaty body system, the objective is to select experienced candidates who will contribute to improving the decision-making capacity of the governing body. In her pivotal report on strengthening the international treaty body system, the UN High Commissioner for Human Rights, Navri Pillay, identified “[t]he nomination and election process” for treaty body experts as “a determining factor of paramount importance to the expertise and efficiency of each treaty body”;² ‘expertise’ being a fundamental criterion.

Numerous reports, focusing in particular on the private sector, have established that selecting diverse candidates is a key criterion for governing bodies to ensure that they have the appropriate expertise; companies are more successful and efficient when the members of their boards are more diverse.³ A report developed by McKinsey & Company lists several reasons why more diverse governing bodies perform better, including improved customer orientation, employee satisfaction, better decision-making and innovation and better talent recruitment.⁴

The case for diversity, and particularly gender balance, is echoed within the treaty body system. Pillay’s successor, Zeid Ra’ad Al Hussein said that experts are “prerequisites” for the effectiveness of the treaty body system.⁵ Good quality experts are needed to fulfil treaty

² Report by U.N. High Comm’r on Human Rights, *United Nations Reform: Measures and Proposals*, UN Doc. A/66/860, at 74 (June 26, 2012), https://digitallibrary.un.org/record/730152/files/A_66_860-EN.pdf.

³ GQUAL, *Achieving Gender Parity on International Judicial and Monitoring Bodies: Analysis of International Human Rights Laws and Standards Relevant to the GQUAL Campaign* (IHLRC Working Paper Series No. 4, Oct. 2017); McKinsey & Co., *Diversity Matters* (2015), <https://assets.mckinsey.com/~media/857F440109AA4D13A54D9C496D86ED58.ashx>, (the “**McKinsey report**”).

⁴ McKinsey report, *supra* note 3, at 9-14.

⁵ Office of U.N. High Comm’r for Human Rights, *Handbook for Human Rights Treaty Body Members* iii (2015), https://www.ohchr.org/Documents/Publications/HR_PUB_15_2_TB%20Handbook_EN.pdf.

mandates in an evidence-based, efficient, effective, apolitical, and accountable way. This is why State parties must do their utmost to ensure that treaty body nomination processes are “fair, transparent, gender-balanced and competitive”, and only elect “the most qualified and best suited candidates” to serve.⁶ The GQUAL campaign has even argued that State parties have a duty to act affirmatively to ensure gender parity.⁷

2. OBJECTIVE

Drawing from best practices across the private sector as well as adding to and developing policies and rules already in place among the treaty bodies, the recommendations developed in this Report provide a basis from which treaty bodies can implement better diversity policies and frameworks and improve their nomination processes in order to strengthen the treaty body system by ensuring the election of a diverse group of experts. This Report recognises that not all practices in the private sector apply in the treaty body context. Therefore, to the extent the ‘best practice’ would not be applicable, we have excluded it from our recommendations.

When considering diversity, this Report adopts a point of view similar to that in the McKinsey report where diversity includes, among other criteria, inherent forms of diversity (gender, sexual orientation, ethnicity) and acquired forms of diversity (international work experience, education and training, socioeconomic background), as well as further forms of diversity such as age, religious beliefs, geography and skills.⁸ While this Report is based primarily on analyses which focus on gender balance, the recommendations proposed are intended to apply to a wider, more inclusive scope where diverse committees and diverse groups of elected experts include women and men with different experiences and from different backgrounds.

⁶ *Id.*

⁷ GQUAL, *supra* note 3; GQUAL, Article 8 of the Convention to Eliminate All Forms of Discrimination Against Women: A Stepping Stone in Ensuring Gender Parity in International Organisations and Tribunals (2015), <http://www.gqualcampaign.org/wp-content/uploads/2015/09/Advocacy-Piece-1.pdf>.

⁸ McKinsey report, *supra* note 3.

3. STRUCTURE

This Report is structured to best service the thesis that efforts to improve how individuals are nominated and elected to international treaty bodies on a diversity basis may draw useful lessons – where relevant – from best practices in the international public and private sectors for appointing individuals to governing bodies. SECTION III of this Report provides an overview of the current procedures for nominating and electing individuals to key international and regional treaty bodies and reviews the commentary on best practices in this area. SECTION IV then considers policies and regulations within the private sector in the United States of America, Europe and the Rest of the World, providing a list of recommendations and best practices encountered in each area. SECTION V provides a list of recommendations and explains the basis for arriving at each. SECTION VI is a tabular checklist of certain governance provisions as set out in the treaty texts of each of the treaty bodies examined.

4. TREATY BODIES

In preparing this Report, the practices of the following treaty bodies were examined:

- the Human Rights Committee, which monitors the International Covenant on Civil and Political Rights (“**ICCPR**”);
- the Committee which monitors the Convention on the Elimination of Discrimination against Women (“**CEDAW**”);
- the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, which monitors the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (“**CMW**”);
- the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (“**SPT**”), which monitors the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“**OPCAT**”);
- the International Criminal Court (“**ICC**”) constituted under the Rome Statute of the International Criminal Court; the International Criminal Court Assembly (“**ICC Assembly**”) constituted under the Rome Statute of the International Criminal Court;
- the Committee against Torture (“**CAT**”), which monitors the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

- the Committee on the Rights of Persons with Disabilities, which monitors the Convention on the Rights of Persons with Disabilities (“**CRPD**”);
- the Committee on Economic, Social and Cultural Rights, which monitors the International Covenant on Economic, Social and Cultural Rights (“**ICESCR**”);
- Committee on the Election of Judges to the European Court of Human Rights (“**ECtHR**”), which recommends candidates to the European Assembly for election;
- the European Committee for the Prevention of Torture, which monitors the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“**ECPT**”);
- the African Commission on Human and Peoples’ Rights, and African Court on Human and Peoples’ Rights (“**ACtHPR**”), which together monitor the African Charter on Human and Peoples’ Rights (“**ACHPR**”);
- the Committee on the Elimination of Racial Discrimination (“**CERD**”), which monitors the International Convention on the Elimination of Racial Discrimination (“**ICERD**”);
- the Committee on the Rights of the Child, which monitors the Convention on the Rights of the Child (“**CRC**”);
- the Committee on Enforced Disappearances, which monitors the International Convention for the Protection of all Persons from Enforced Disappearance (“**CED**”);
and
- the Inter-American Commission on Human Rights (“**IACHR**”) and the Inter-American Court of Human Rights (“**IACtHR**”), which together monitor the inter-American system for the protection of human rights.

* * *

SECTION III. CURRENT & BEST PRACTICES IN INTERNATIONAL & REGIONAL TREATY BODIES

1. INTRODUCTION

This section of the Report first provides an overview of the current procedures for nominating and electing individuals⁹ to key¹⁰ international and regional treaty bodies, focusing in particular on the provisions and procedures as set out in the treaty texts. The overview is intended to complement the data appearing in the three tables contained in SECTION VI of the Report. This section then goes on to discuss the best practice commentary for nominating and electing individuals to these treaty bodies.

2. OVERVIEW OF CURRENT PRACTICES FOR NOMINATIONS & ELECTIONS

2.1 Number of Nominees per State

- Each of the treaties examined allows State parties to nominate at least one individual for election to their respective treaty body.
- Some of the treaties examined stipulate a maximum number of nominees per State party (*e.g.* three).
- Among the treaties examined, no State party may nominate more than three nominees.
- Some of the treaties examined – for example, the American Convention on Human Rights and the OPCAT – allow State parties to nominate individuals who are not nationals of the nominating State party to the respective treaty body.¹¹

⁹ Referred to sometimes as ‘experts’ or ‘members’.

¹⁰ We have intentionally canvassed a range of international and regional rights treaties, given their significance in the treaty body space and relevance to the diversity and gender balance discussions.

¹¹ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment art. 6(2)(b), Dec. 18, 2002, 2375 U.N.T.S. 237; American Convention on Human Rights art. 36(2), Nov. 22, 1969, 9 I.L.M. 673; *see also* European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment art. 5(1), Nov. 26, 1987; European Convention on Human Rights arts. 19-22, Nov. 4, 1950 (referring to the election of judges to the European Court of Human Rights).

2.2 Suitability Requirements

- In all but one of the treaties examined, there is a requirement for candidates to be of “high moral character.”
- In all but two of the treaties examined, candidates are required to have recognised competence and expertise in the field of work of the respective treaty body.
- In all but two of the treaties examined, there is a requirement for candidates to have the nationality of the nominating State party.
- In half of the treaties examined, there is a requirement for candidates to be independent or impartial.

2.3 Diversity Criteria

- In all but three of the treaties examined, State parties are required to consider the equitable geographic distribution of the respective body’s membership; although it is only the Committee on Economic, Social and Cultural Rights, which is *formally* subject to membership on a regional basis.¹²
- One-third of the treaties examined require State parties to consider equitable gender distribution of the respective body’s membership.
- Just over a third of the treaties examined require State parties to consider different forms of civilization¹³ when considering candidates.
- Almost two-thirds of the treaties examined require State parties to consider different forms of legal systems¹⁴ when considering candidates.
- Restrictions that apply to the nomination and election process in all but three of the treaties examined include:
 - A restriction on the number of nationals that may be nominated per State party; and

¹² See Economic and Social Council [ECOSOC] Res. 1985/17, U.N. Doc. E/RES/1985/17 (May 28, 1985) (“[F]ifteen seats will be equally distributed among the regional groups, while the additional three seats will be allocated in accordance with the increase in the total number of States parties per regional group”).

¹³ Civilization is a term used throughout UN treaties and resolutions without being defined, however it is distinguished from religion, nationality or ethnic group. Academic writing suggests that the term refers to cultural groupings or identities.

¹⁴ Different legal systems include: civil law, common law, Islamic law (Shari’a), customary law (traditional) and mixed legal systems. UNITED NATIONS, HANDBOOK FOR JUDICIAL AFFAIRS OFFICERS IN THE UNITED NATIONS PEACE KEEPING OPERATIONS 87 (2013), http://www.un.org/en/peacekeeping/publications/cljas/handbook_jao.pdf.

- A restriction on the number of members per State party that may be elected on the committee of the relevant treaty body.
- It is only the CRPD which formally requires consultation with persons with disabilities and their representative organizations in the nomination process.¹⁵

2.4 Submission and Election Process

- While some of the treaties examined stipulate criteria which treaty body candidates must meet, none say anything about the kind of procedure that State parties must follow to pick their nominees in the first place.
- Most—but not all—elections for the treaty bodies examined are conducted by a secret ballot of votes.
- The quorum requirement for decisions made by 10 of the treaty bodies examined is two-thirds of all State parties present. Quorum requirements for the remainder require attendance by either: (i) a simple majority; (ii) an absolute majority; (iii) one-third of State parties present; or (iv) some other number.
- UN treaty body nomination processes usually commence at least four months before election;¹⁶ normally between two to three months before elections, the UN Secretary-General formally invites State parties to nominate candidates.¹⁷ In most cases, State parties will elect UN treaty body members at meetings convened at the UN's Headquarters in New York every two years.¹⁸

¹⁵ Although it is sometimes urged upon State parties as an information consideration. *See, e.g.,* Ass'n for the Prevention of Torture & Inter-American Inst. for Human Rights, *Optional Protocol to the UN Convention against Torture: Implementation Manual* 57 (rev. ed. 2010).

¹⁶ OFFICE OF THE U.N. HIGH COMM'R FOR HUMAN RIGHTS, *HANDBOOK FOR HUMAN RIGHTS TREATY BODY MEMBERS* 21 (2015). *See also* African Charter on Human Rights and Peoples' Rights art. 35(1), June 27, 1981, 21 I.L.M. 58.

¹⁷ The Secretary-General's letter to the parties specifies the date by which the Secretariat should receive the nominations. OFFICE OF THE U.N. HIGH COMM'R FOR HUMAN RIGHTS, *supra* note 16, at 22.

¹⁸ *Id.* at 25. Although: elections under the Convention against Torture and its Optional Protocol take place at the United Nations Office at Geneva; elections of the Committee on the Rights of Persons with Disabilities take place during a Conference of States parties, a meeting attended by States, civil society organizations (CSOs) and other stakeholders during which various aspects of the implementation of the Convention are also discussed; and elections for the Committee on Economic, Social and Cultural Rights take place at a meeting of the United Nations Economic and Social Council.

2.5 Terms

- Two-thirds of the treaty bodies examined elect nominees for a term of four years; over half permit individuals to be re-elected at least once to the respective treaty body.
- More than two-thirds of the treaty bodies examined have a provision which provides for staggered terms whereby the terms of members elected at the first election will expire at varying times during the term (*e.g.* halfway through a full term).

Most of the treaty bodies examined do not stipulate the number of terms a member is permitted to serve¹⁹—save for the CRPD, the OPCAT, the CED, and the American Convention on Human Rights, which restrict the number of successive terms.²⁰

3. BEST PRACTICE ANALYSIS

3.1 Nomination Processes

In recent years, significant steps have been taken to improve the processes for nominating and electing individuals to international and regional treaty bodies. The UN High Commissioner for Human Rights, as well as the International Criminal Court, have been particularly active in this area, and their activities provide a rich source of discussion for this section.

Although human rights treaties do not prescribe a specific national nomination procedure, the UN High Commissioner encourages State parties to:

- rely on formal measures of expertise and respect the selection process;
- consider candidates with a proven record of expertise in the relevant area (*e.g.* through relevant work experience, publications and other achievements);

¹⁹ For an example of term limits in a regional treaty, see Article 36 of the African Charter on Human and Peoples' Rights 1986.

²⁰ Convention on the Rights of Persons with Disabilities art. 34(7), Dec. 31, 2006, 2515 U.N.T.S. 3; Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *supra* note 11, art. 9; International Convention for the Protection of All Persons from Enforced Disappearance art. 26(4), Dec. 20, 2006, 2716 U.N.T.S. 3; American Convention on Human Rights, *supra* note 11, arts. 37(1), 54(1); *see also* European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *supra* note 11, art. 5(3).

- consider candidates who are willing to take on the full range of responsibilities required of a treaty body member;
- avoid nominating experts who hold positions that might expose them to pressures or conflicts of interest or generate a real or perceived impression of a lack of independence; and
- limit the terms of service of members to a reasonable number for any given committee, bearing in mind that most recent treaties allow a maximum of two successive terms.²¹

The *Handbook for Human Rights Treaty Body Members*—published by the UN Office of the High Commissioner for Human Rights—further recommends State parties to consider candidates’ availability to prepare for and attend all treaty body meetings, as well as their ability to work confidently in at least one of the working languages of the treaty body.²²

These recommendations can be compared to the practice of the ‘Committee on the Election of Judges to the European Court of Human Rights’, which recommends that:

- State parties should issue public and open calls for candidates; and when submitting candidate names to the Parliamentary Assembly, they must describe the manner in which candidates have been selected²³;
- State parties should consider a model *curriculum vitae* to guide their national nomination processes;
- political groups should aim to include at least 40% women on the Committee;²⁴
- the European Assembly will not consider candidate lists which do not include at least one candidate of each sex, except in certain circumstances;²⁵ and

²¹ OFFICE OF THE U.N. HIGH COMM’R FOR HUMAN RIGHTS, *supra* note 2, § 4.4.2.

²² OFFICE OF THE U.N. HIGH COMM’R FOR HUMAN RIGHTS, *supra* note 16, at 13.

²³ Eur. Parl. Ass., *Nomination of candidates and election of judges to the European Court of Human Rights*, 4th Sitting, Resolution 1646 ¶ 4 (2009).

²⁴ This is the parity threshold that is considered necessary by the Council of Europe to exclude possible gender bias in decision-making processes. Eur. Parl. Ass., *Rules of Procedure of the Assembly*, Complementary texts pt. VIII(v) (2018) (extracting Parliamentary Assembly Resolution 1366 (2004)) (as modified by Resolutions 1426 (2005), 1627 (2008), 1841 (2011) and 2002 (2014)).

²⁵ *Id.* at 4 (“The Assembly will only decide: to consider single-sex lists of candidates when the candidates belong to the sex which is under-represented in the Court (i.e. the sex to which under 40% of the total number of judges belong), or in exceptional circumstances where a Contracting Party has taken all the necessary and appropriate steps to ensure that the list contains candidates of both sexes meeting the requirements of paragraph 1 of Article 21 of the European Convention on Human Rights. Such exceptional circumstances must be duly so considered by a two-thirds majority of the votes cast by members of the Committee on the Election of Judges to the European Court of Human Rights”).

- in the event of the election sub-committee considering two candidates of equal merit, preference should be given to a candidate of the sex under-represented at the Court.

Similarly, in respect of the ECPT committee, the European Assembly recently invited all State parties to review their national nomination procedures, and in particular to introduce:²⁶

- public calls for candidatures to be open equally to male and female candidates, with a preference for candidates of the under-represented sex on the [ECPT committee] in the case of equal merit;
- consultation on suitable candidates with relevant state and non-governmental bodies (for example, ministries of justice, interior and health, prison administration, academic institutions and NGOs active in the fight against torture and in assistance to prisoners and inmates of psychiatric institutions);
- interviews with shortlisted candidates to assess their qualifications, motivation and availability, as well as language skills, possibly carried out by an independent panel of experts;
- an active role, in the final phase of the pre-selection process, for the national delegation to the Parliamentary Assembly; and
- the systematic use of the standard *curriculum vitae* form designed to provide all relevant information on the candidates to national authorities, as well as to the different bodies of the Council of Europe involved in the selection procedure.

The International Criminal Court (“ICC”) also advocates gender diversity and transparent nomination processes. In 2002, the ICC was the first international bench

²⁶ Parliamentary Assembly Resolution 1540 (2007). These initiatives can be traced to Parliamentary Assembly Order 530 (1997), in which the Assembly decided “to pay particular attention to the criteria of professional background, gender and age, in order to ensure a more balanced composition of the committee and, in particular, a greater participation of prison specialists and forensic scientists, as well as an increased number of women among its members.”

which benefited from a female majority.²⁷ Additionally, with regards to staffing at the ICC, in 2017 women represented 49.2% of the Court's professional staff.²⁸

The ICC President Judge Silvia Fernández de Gurmendi has noted that: “[t]he ICC, with an all-female Presidency, a female Prosecutor and several female Judges, is an example of how women can lead in achieving justice and pursuing security.”²⁹

This success and focus on gender diversity comes from the ICC’s nomination and election procedures. The ICC not only requires candidates to satisfy the key nomination and election criteria which include character, experience, fluency and geographic diversity,³⁰ but the ICC also stipulates that State parties should take into account the need for:³¹

- representation of the principal legal systems of the world;
- equitable geographic representation; and
- fair representation of female and male judges.

This requirement of “fair representation of female and male judges” is required by the Rome Statute and is a key part of the ICC’s successful approach towards gender diversity—being one of the first international agreements to stipulate this.³²

Therefore, at least in respect of candidate lists and competitive, open nomination procedures, the Council of Europe and the ICC have gone further than their international and regional counterparts to ensure that individuals are nominated (and elected) to treaty bodies on a gender-balanced and inclusionary basis.

²⁷ Viviana Krsticevic, *Gender Equality in International Tribunals and Bodies: An Achievable Step with Global Impact*, CEJIL/GQUAL, (September 2015), https://www.cejil.org/sites/default/files/gqual_english.pdf; Leigh Swigart & Daniel Terris, *Who are International Judges?*, in OXFORD HANDBOOK OF INTERNATIONAL ADJUDICATION (2014), <http://www.oxfordhandbooks.com/abstract/10.1093/law/9780199660681.001.0001/law-9780199660681-e-28?rskey=F2ESu2&result=3>.

²⁸ ICC Assembly of States Parties, Report of the Bureau on equitable geographical representation and gender balance in the recruitment of staff of the International Criminal Court, ICC-ASP16/35(2017).

²⁹ Press Release, ICC, On International Women’s Day, the ICC calls for a world with no fear or violence (Mar. 8, 2017), <https://www.icc-cpi.int/Pages/item.aspx?name=PR1283>.

³⁰ Rome Statute of the International Criminal Court art. 36, July 17, 1998, 2187 U.N.T.S. 90.

³¹ *Id.*

³² Abhinav Chandrachud, *Diversity and the International Criminal Court: Does Geographic Background Impact Decision Making?*, 38 BROOKLYN J. INT’L L. 487, 508 (2013)

3.2 Election Processes

The concept that State parties should seek gender balance, expertise in areas related to treaty body mandates and balanced geographical composition has widespread UN support.³³ The concept was initially championed³³ by the UN High Commissioner for Human Rights, and is now contained in UN General Assembly Resolution 68/268 (considered below).³⁴ Other UN treaty bodies have taken notice, too; particularly in recognizing the need for “*gender balance*” in electing experts to their decision-making bodies.³⁵ International and regional organisations outside the UN, such as the International Criminal Court, require State parties to account for similar factors when electing members to their respective governing bodies.

Following a comprehensive report prepared by the UN High Commissioner for Human Rights (the “**UNCHR**”) in 2012, the UN General Assembly adopted Resolution 68/268, inviting State parties to:

- give due consideration “*to equitable geographical distribution, the representation of the different forms of civilization and the principal legal systems, balanced gender representation and the participation of experts with disabilities in the membership of the human rights treaty bodies [...]*”;³⁶ and
- include in the documentation prepared for electing treaty body members at meetings of State parties an informational note on current composition, addressing the balance in terms of geographical distribution and gender representation,

³³ The Secretary-General, *Report of the Eighth Meeting of Persons Chairing the Human Rights Treaty Bodies, Human Rights Questions: Implementation of Human Rights Instruments, Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights* ¶ 68, UN Doc. A/52/507 (Oct. 21, 1997).

³⁴ G.A. Res. 68/268, ¶¶ 12-13, (Apr. 9, 2014); *see also* G.A. Res. 66/153, ¶ 1 (Dec. 19, 2011) (calling on States to consider geographical distribution for all treaty bodies).

³⁵ *See, e.g.*, U.N. Framework Convention on Climate Change, Conf. of the Parties Decision 36/CP.7, *Improving the participation of women in the representation of Parties in bodies established under the United Nations Framework Convention on Climate Change or the Kyoto Protocol* at 26, FCCC/CP/2001/13/Add.4; UN Framework Convention on Climate Change, Conf. of the Parties Decision 3/CP.17, *Launching the Green Climate Fund* at 59, FCCC/CP/2011/9/Add.1; U.N. Framework Convention on Climate Change, Conf. of the Parties Decision 14/CP.18, *Arrangements to make the Climate Technology Centre and Network fully operational*, FCCC/CP/2012/8/Add.2, annex II at 15 (“Constitution of the Advisory Board of the Climate Technology Centre and Network”); U.N. Framework Convention on Climate Change, Conf. of the Parties Decision 23/CP.18, *Promoting gender balance and improving the participation of women in UNFCCC negotiations and in the representation of Parties in bodies established pursuant to the Convention or the Kyoto Protocol* at 48, FCCC/CP/2012/8/Add.3.

³⁶ G.A. Res. 68/268, ¶ 13 (Apr. 9, 2014).

professional background and different legal systems, as well as the tenure of current members.³⁷

These recommendations were reinforced by the UN Secretary General in August 2015.³⁸

Resolution 68/268 also established two review mechanisms to strengthen treaty body governance. *First*, the Resolution requests the UN Secretary-General to submit a biennial report to the General Assembly on the state of the UN treaty body system. *Second*, it encourages an overall review of the effectiveness of the measures taken pursuant to Resolution 68/268, which must take place no later than 2020.

The first report of the Secretary-General published in 2016 highlighted several governance problems; notably, gender imbalance and inequality in the geographic distribution of treaty body experts. The report acknowledges that treaty body experts are predominantly male.³⁹ Although it has been known since 2016, many of these deficiencies persist. Three not-for-profit organizations recently pointed out that in June 2016 elections for the CRPD Committee, only one woman was elected among 17 men, starting from 1 January 2017.⁴⁰ Following up on criticisms like these, the *Académie de Droit International Humanitaire et de Droits Humains à Genève* very recently recommended four areas for improvement:⁴¹

- (a) improve gender balance among elected treaty body members (only 3 out of 10 bodies are close to gender balance);
- (b) improve equality of geographic representation among treaty body members (*e.g.* Western Europe is over-represented);
- (c) encourage less prevalent (*e.g.* non-legal) subject-matter expertise for treaty body members; and

³⁷ *Id.* ¶ 12.

³⁸ U.N. Secretary-General, *Promotion of equitable geographical distribution in the membership of the human rights treaty bodies*, UN Doc. A/70/257 (Aug. 3, 2015).

³⁹ U.N. Secretary-General, *Status of the human rights treaty body system*, ¶¶ 79-80, UN Doc. A/71/118 (July 18, 2016).

⁴⁰ *Call to Action to Promote Gender Parity*, INT'L DISABILITY ALLIANCE (Jan. 2017), <http://www.internationaldisabilityalliance.org/activities/call-action-promote-gender-parity>.

⁴¹ GENEVA ACADEMY, *DIVERSITY IN MEMBERSHIP OF THE UN HUMAN RIGHTS TREATY BODIES* 29-31 (2018).

- (d) encourage election of treaty body members from less prevalent national backgrounds (e.g. members with national executive / political experience are over-represented: 44% on average).

Inter-American human rights bodies have been similarly encouraged to consider the need for diversity on the Court and Commission, including gender, ethnicity and sexual orientation.⁴²

Again, the ICC stands out for its commitment to gender diversity at the election level. It sets out minimum voting requirements to ensure gender diversity. For example, during the 2003 elections, the minimum voting requirements were that each State party had to vote for at least six women and at least six men, provided that the number of candidates from each gender is greater than 10. The minimum voting requirements apply to all areas of diversity (geographic, gender and expertise) and are applied to the first four rounds of voting.⁴³

This combined nomination and election focus on gender diversity, as well as the vocal support by the ICC, has resulted in the ICC's success with gender balance. However, it is important to note that the ICC has not yet achieved all of its goals. Although the ICC has reached highs in its gender diversity, the results have not been stable, and in 2017 the number of female judges reduced to six out of eighteen.⁴⁴ Additionally, the Appeals Court of the ICC has not yet reached the level of success of the general court and still features a majority of male judges.⁴⁵ Finally, women remain underrepresented in most senior management positions.⁴⁶ The ICC's governing body,

⁴² INDEPEND. PANEL FOR THE ELECTION OF INTER-AMERICAN COMM'RS & JUDGES, FINAL REPORT OF THE INDEPENDENT PANEL FOR THE ELECTION OF INTER-AMERICAN COMMISSIONERS AND JUDGES 44-45 (2015). *See also* Viviana Krsticevic, *How Best to Strengthen the Inter-American Commission and Court* (Oct. 15, 2012), <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1841&context=hrbrief>.

⁴³ ICC Assembly of States Parties, Procedure for the election of the judges for the International Criminal Court, ICC-ASP/1/Res.3 (2002); *See also Women on the Court Now! ICC Nomination and Election Process*, WOMEN'S CAUCUS FOR GENDER JUSTICE, <http://iccwomen.org/wigjdraft1/Archives/oldWCGJ/Elections/electionprocess.html> (last visited June 14, 2018).

⁴⁴ Josephine Jarpa Dawuni, *Achieving Gender Parity in International Courts and Bodies: Does Diversity Matter?*, INTLAWGRRLS (Feb. 3, 2018), <https://ilg2.org/2018/02/03/achieving-gender-parity-in-international-courts-and-bodies-does-diversity-matter/>; Viviana Krsticevic, *Gender Equality in International Tribunals and Bodies: An Achievable Step with Global Impact*, CEJIL/GQUAL (Sept. 2015), https://www.cejil.org/sites/default/files/gqual_english.pdf.

⁴⁵ ICC: Judges by Judicial Divisions, <https://www.icc-cpi.int/about/judicial-divisions/biographies/pages/divisions.aspx?k=appeals%20division> (last visited June 18, 2018); Chandrachud, *supra* note 30.

⁴⁶ Danya Chaikel, *Does gender matter at the International Criminal Court (ICC)? Reflections on the 100th anniversary of International Women's Day*, HAGUE JUST. PORTAL (Mar. 8, 2011), <http://www.haguejusticeportal.net/index.php?id=12398>.

the Assembly of States Parties, recognised this disparity and recommended the Court “continue to build on the strides it has made in the recruitment of female staff, particularly at senior levels.”⁴⁷

Although international and regional human rights organizations still have a long way to go in wholly eliminating disparities in their nomination and election procedures, the significant attention which has been given (as discussed above) to improving these processes and setting out guidelines provides an extremely helpful backdrop from which best practices can be ascertained.

4. CONCLUSION

Despite several treaties requiring State parties to consider equitable gender distribution before electing individuals, these treaties provide minimal operational guidance as to how this can be achieved.

There is no one approach to nominating and electing individuals to international treaty bodies – even less so for nominating and electing individuals on a diversity basis. To illustrate: while all but three treaties require State parties to consider equitable geographic distribution before electing individuals, only one-third provide the same for equitable gender distribution.⁴⁸ Similarly, while two-thirds of treaties require State parties to consider different forms of legal systems before electing individuals, only one-third provide the same for different forms of civilisation. Moreover, the treaties provide little to no guidance on the nomination process (rather than the election process) at the State level.⁴⁹ In the next section, we will examine case studies to assess best practices for nomination and selection of governing bodies.

* * *

⁴⁷ ICC Assembly of States Parties, Report of the Bureau on equitable geographical representation and gender balance in the recruitment of staff of the International Criminal Court, ICC.ASP/9/30 (2010).

⁴⁸ While resolutions have been adopted to require State parties to consider gender, these resolutions do not have the same binding nature of treaty language.

⁴⁹ Nienke Grossman, Shattering the Glass Ceiling in International Adjudication, 56 VA. J. INT'L L. 339 (2016); *Why so few women on International Courts? It's Time for a Change*, GQUAL (Sept. 2015), <http://www.gqualcampaign.org/why-so-few-women-on-international-courts-its-time-for-a-change/>. For example, according to GQUAL, the lack of gender criteria in nomination procedures at the national level leads to fewer women being nominated, and ultimately elected.

SECTION IV. CURRENT & BEST PRACTICES IN THE PRIVATE SECTOR

This section reviews the current practices for nominating and selecting individuals to governance positions in the private sector for companies in the United States of America (the “US”), Europe and the Rest of the World, and identifies best practices which could be applied to the international treaty body system.

1. UNITED STATES OF AMERICA

1.1 Introduction

This section explores the approach to corporate governance in public companies in the US. US legislation and regulation provides little guidance on corporate governance for public companies on how to assess and establish diversity policies. As described in more detail below, the Securities Exchange Commission (the “SEC”) has developed regulations and policies for both publicly listed companies and regulated entities with regard to diversity, but these initiatives have not been guiding forces in the US. Consequently, American companies have had to address the issue of diversity themselves, often under the influence of investors who have voiced their concerns about diversity, and gender diversity in particular, among board members. This section analyses and draws best practices from the diversity initiatives and guidelines developed by the SEC, investor groups, and non-profit organizations.

1.2 Current Position

At a federal level, the SEC requires publicly listed companies to disclose material financial and other information to the public.⁵⁰ The SEC requires this information so that it can be used by investors to determine whether to buy, sell, or hold a particular security of a public company. The SEC requires public companies to describe their nomination process for electing directors to the board, and whether this process considers diversity.⁵¹ The SEC

⁵⁰ The Securities Act of 1933, ch. 38, 48 Stat. 74 (codified as amended at 15 U.S.C. §§ 77a et seq.); The Securities Exchange Act of 1934, ch. 404, 48 Stat. 881 (codified as amended at 15 U.S.C. §§ 78a et seq.).

⁵¹ 17 C.F.R § 229.407(c)(2)(vi) (2018). The SEC does not provide specific guidelines for private companies.

regulation does not define ‘diversity’ nor does it provide guidance on criteria for companies to consider when assessing the diversity of their boards.⁵²

The SEC also oversees key participants in the securities world, including securities exchanges, securities brokers and dealers, investment advisors, and mutual funds.⁵³ These market participants are referred to as “regulated entities” and in regulating these entities, the SEC is primarily concerned with promoting the disclosure of important market-related information, maintaining fair dealing, and protecting against fraud. In January 2018, the SEC introduced a Diversity Assessment Report for regulated entities that was designed to help regulated entities conduct self-assessments of their diversity policies and practices in order to increase efforts and encourage transparency in this area.⁵⁴ The assessments are completed on a voluntary basis and the SEC intends to use the information shared to highlight diversity policies which have been successful. These self-assessment reports complement the Joint Standards policy statement on diversity issued by the SEC in June 2015 which establishes a joint standard for assessing diversity policies among regulated entities.⁵⁵ The Joint Standards define diversity as including “minorities and women” which potentially brings the focus onto gender diversity, however the policy states that the definition provided is not exclusive.⁵⁶ The Joint Standards highlight transparency, creating diversity policies and taking proactive steps to promote a diverse pool of candidates when recruiting at the senior management level, as key elements to achieving diversity. The Joint Standards are not legally binding and do not have specific requirements on the election of board members but exist as a possible guideline for regulated entities to follow.⁵⁷

⁵² U.S. GOV’T ACCOUNTABILITY OFFICE, CORPORATE BOARDS STRATEGIES TO ADDRESS REPRESENTATION OF WOMEN INCLUDE FEDERAL DISCLOSURE REQUIREMENTS (Dec. 2015) [hereinafter GAO, Corporate Boards: Strategies] (reference to 17 C.F.R. § 229.407(c)(2)(vi)).

⁵³ *What We Do*, SEC.gov (Oct. 13, 2018), <https://www.sec.gov/Article/whatwedo.html>; see also *Joint Standards for Assessing Diversity Policies and Practices - Frequently Asked Questions*, SEC.gov (2018), <https://www.sec.gov/files/DAR-FAQ.pdf>

⁵⁴ Diversity Assessment Report for Entities Regulated by the SEC (Jan. 25, 2018) OMB Control No. 3235-0740.

⁵⁵ Final Inter-Agency Policy Statement Establishing Joint Standards For Assessing The Diversity Policies And Practices Of Entities Regulated By The Agencies, Securities Act Release No. 34-75050, 80 Fed. Reg. 33,016 (proposed June 10, 2015) (the “**Joint Standards**”). See also Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 21 U.S.C. § 5452 (2010) (requiring the SEC and other federal financial agencies to establish an inclusion office, the Office of Minority and Women Inclusion Office “OMWI”, to be responsible for all matters relating to diversity in management, employment and business activities, as well as requiring the OMWI director “to develop standards for the diversity of the workforce and senior management of the agency”)

⁵⁶ *Id.* at 8.

⁵⁷ *Id.* at 7.

Following numerous reports, such as the McKinsey report “Diversity Matters”, American companies have made various improvements to gender diversity in the work place.⁵⁸ By 2014, 75% of women aged 25 through 54 participated in the work force.⁵⁹ However, in 2016, women represented only 16% of the members of the board of US publicly listed companies, which is a mere 2% increase from 2010, where certain European countries have experienced on average a 14% increase in female nominations to boards of directors over the same period.⁶⁰

Unlike certain European countries, the US federal government does not encourage quotas for female representation.⁶¹ Rather than focus on quotas, the Committee for Economic Development advises American companies to widen their pool of candidates, set targets for the nomination of women, report to their shareholders on nomination policies and allow stakeholders to have their views represented in board decisions.⁶²

A 2015 report prepared by the US Government Accountability Office (the “GAO”) on corporate board strategies predicted that, at the rate at which women are being nominated to boards, it would take four decades before the US reached gender parity on company boards of directors. The GAO report criticised SEC regulations, arguing that they were not specific enough and were considered inadequate by stakeholders who seek more diverse boards.⁶³ It suggested that in order to increase the number of women on boards, companies should: (i) require a diverse slate of candidates which include at least one woman; (ii) expand their

⁵⁸ McKinsey report, *supra* note 3, at 2-4. The report analyses company progress reports across the world in relation to the composition of their employee structure, demonstrating that companies with higher diversity, in particular at board level, perform better. McKinsey’s criteria for diversity included gender, ethnicity, and experience. ‘American companies’ in this instance refers to the selection of 186 US publicly listed companies analysed as part of the McKinsey report.

⁵⁹ Marjolein Cuellar et al., *Proven Measures and Hidden Gems for Improving Gender Diversity*, BOSTON CONSULTING GROUP (Sept. 12, 2017), <https://www.bcg.com/en-us/publications/2017/people-organization-behavior-culture-proven-measures-hidden-gems-improving-gender-diversity.aspx>.

⁶⁰ *Employment: Female share of seats on boards of the largest publicly listed companies*, OECD (2017), <http://stats.oecd.org/index.aspx?queryid=54753> [hereinafter OECD statistics (2017)]. According to the OECD, France had 12% women on boards in 2010 and 37% in 2016; the UK went from 13% to 27% and Germany went from 13% to 27% from 2010 to 2016.

⁶¹ See below for an example from the State of California, which has recently signed into law an act to impose gender quotas in the US.

⁶² COMM. FOR ECON. DEV., *FULLFILLING THE PROMISE: HOW MORE WOMEN ON CORPORATE BOARDS WOULD MAKE AMERICA AND AMERICAN COMPANIES MORE COMPETITIVE* (2012). Some EU countries have government quotas, generally with a 30% target for 2020, for women on company boards such as Norway and Germany, and other EU states have soft quotas for gender balance such as the UK and France. See *infra* section III, 2.

⁶³ GAO, *Corporate Boards: Strategies*, *supra* note 52, at 21-25. The report published views and practices from several major stakeholders in major companies, most of which reported that they would like to know more about the diversity criteria of the companies in which they invest and that they would be more willing to invest in companies with higher diversity ratios at board level.

board searches to allow for non-traditional ways of acceding to boards;⁶⁴ and (iii) expand board sizes, adopt term limits and age limits and conduct board performance evaluations.⁶⁵

Following the GAO report, House Representative, Carolyn B. Maloney put forward a bill in March 2016 requiring the SEC to establish a Gender Diversity Advisory Group in order to advise on increasing gender diversity at the board level.⁶⁶ In accordance with the new bill, companies would have to disclose the gender composition of their boards in annual proxy materials. A year later, Representative Maloney put forward another bill with the same purpose.⁶⁷

While there are no gender quotas at the federal level, the State of California has recently enacted the first gender quota law in the US. The law amends the California Corporations Code to impose a quota of at least one woman on the board of publicly listed companies whose principal executive offices are located in California by 2019 and, depending on the size of the existing board, a quota of one to three women on such companies' boards by 2021.⁶⁸ The bill was signed into law on 30 September 2018 and is expected to apply to hundreds of companies of varying sizes, but it may be challenged on constitutional grounds.⁶⁹

⁶⁴ *Id.* at 18. The GAO report demonstrated that there are fewer diversity candidates within the “*traditional pipeline for board positions*” and suggested that candidates should be chosen from a wider pool and not only among a selection of CEO candidates. Selection committees should look for experienced candidates among other senior executive positions, in academic circles, in the non-profit and government sectors in order to increase the number of diversity candidates.

⁶⁵ *Id.* at 19-20.

⁶⁶ The Gender Diversity in Corporate Leadership Act, H.R. 4718, 114th Cong. (2016); *Legislation focuses on gender diversity on corporate boards*, ABA WASH. LETTER (Mar. 2016), https://www.americanbar.org/publications/governmental_affairs_periodicals/washingtonletter/2016/march/corporateboards.html, (citing H.R. 4718, 114th Cong. (2016)).

⁶⁷ Gender Diversity in Corporate Leadership Act of 2017, H.R. 1611, 115th Cong. (2017); Remus Valsan, *US Bill on Gender Diversity in the Boardroom*, ECCLBLOG (Apr. 22, 2016), <http://www.ecclblog.law.ed.ac.uk/2016/04/22/us-bill-on-gender-diversity-in-the-boardroom/>.

⁶⁸ California Senate Bill No. 826 *Corporations: Boards of directors*. The Bill states that the principal executive offices of a corporation will be determined in accordance with that corporation's SEC 10-K form. Section 301.3(b) of the Bill sets different minimum targets for female directors for 2021 depending on the number of directors in the company; where there are four or fewer directors, there shall be a minimum of one female director; where there are five directors, there shall be a minimum of two female directors; where there are six directors or more, there shall be a minimum of three female directors.

⁶⁹ Andrew Ross Sorkin, *Diversify the Boardroom, Just Not Like California*, N.Y. TIMES, Oct. 1, 2018, <https://www.nytimes.com/2018/10/01/business/dealbook/women-corporate-boards-california.html>

1.3 Best Practice Analysis

Several reports have demonstrated that companies perform better when their leadership teams (including in particular board members and management teams) are more diverse.⁷⁰ The below analysis is based on policies and reports which have for the most part focused on gender diversity, however American public companies have applied the measures discussed to increase diversity generally by implementing policies which guarantee a diverse pool of candidates for the board, drive diversity policies from the top down and encourage transparency in selection processes.⁷¹ Below is a list of the best practices implemented by public companies across the US as well as best practices suggested by the GAO report:

- (a) retirement policies which limit term length and limit tenure in order to allow turnover;⁷²
- (b) expanding the size of boards;⁷³
- (c) implementing transparent election policies and publicly measuring and reporting election and selection processes, including through publishing candidate slates to all managerial positions as well as a tracking and evaluating progress;⁷⁴
- (d) adopting a clear diversity policy which tackles inherent bias by systematically including higher level managers in diversity initiatives who lead the policy

⁷⁰ McKinsey report, *supra* note 3; *Gender-diverse companies are more productive*, FIN. TIMES (March 2018) (“average employee productivity growth was higher for companies that employed three or more women at board level between 2012 and 2016 than those that had just a single or no female directors”); BOSTON CONSULTING GRP, HOW DIVERSE LEADERSHIP TEAMS BOOST INNOVATION (2018) (“Companies that reported above-average diversity on their management teams also reported innovation revenue that was 19 percentage points higher than that of companies with below-average leadership diversity—45% of total revenue versus just 26%”).

⁷¹ There are several American non-profit organizations which promote best practices for diversity in the workplace; Catalyst and the 30% Club are two of the most prominent organizations that promote gender diversity at board level. These organizations give awards to companies who have succeeded in their diversity policies and share best practices with other public and private companies globally.

⁷² GAO, *Corporate Boards: Strategies*, *supra* note 52, at 19. The report suggested this option as a potential strategy to reach better diversity ratios, however, it stated that limiting terms and imposing age limits were the least favoured policies according to the stakeholders interviewed. Most stakeholders were not in favour of limiting tenure.

⁷³ *Id.* (the report suggested expanding the board size either permanently or temporarily in order to increase representation of diversity candidates). The GAO report stated that “51 percent of S&P 15000 companies that increased directorships held by women in the last year [2014] did so by increasing board size”, at 19.

⁷⁴ Cuellar et al., *supra* note 57, at 11 (companies need to carefully select meaningful diversity metrics to gauge their progress in order to actively encourage and monitor diversity efforts).

from the top down,⁷⁵ and as such hold partners and senior leaders accountable for achieving such initiatives;⁷⁶

- (e) mentoring and sponsorship programs which encourage leadership skills and lead to a broadening of the pool of candidates to the board;⁷⁷
- (f) shaping a diverse pipeline for future leaders by nominating candidates to leadership programs from across the entire company;⁷⁸
- (g) creating targeted diversity initiatives—policies which apply to gender initiatives may not be suitable for other diversity groups;⁷⁹ and
- (h) promoting flexible working at senior level and promoting return-to-work policies.⁸⁰

2. EUROPE

2.1 Introduction

This section explores the European approach to corporate governance in public companies; focusing specifically on France, Germany, the United Kingdom (the “UK”) and the Nordic countries. It explains current practices for board election procedures in each of these jurisdictions before summarising best practices.

⁷⁵ McKinsey report, *supra* note 3, at 14. The report suggested that companies should have “a clear value proposition for having a diverse and inclusive culture[,] set a few clear targets (not quotas) that balance complexity with cohesiveness [,] [c]ontinuously address potential mindset barriers through systematic change management [and] link diversity to other change management efforts.”

⁷⁶ *The Boston Consulting Group (BCG) – Women @BCG*, CATALYST (Jan. 18, 2018), <http://www.catalyst.org/knowledge/boston-consulting-group-bcg-womenbcg> (2017 Catalyst award winner for gender diversity).

⁷⁷ *Id.*

⁷⁸ *Northrup Grumman Corporation - Building the Best Culture, Leveraging the Power of Women*, CATALYST (Jan. 18 2018), <http://www.catalyst.org/knowledge/northrop-grumman-corporation-building-best-culture-leveraging-power-women> (Catalyst best practice nominee 2018).

⁷⁹ McKinsey report, *supra* note 3, at 14. The report demonstrated that companies which targeted their diversity initiative policies and mentorship groups achieved better results. The focus of policies cannot just be on gender and getting female employees to join in the leadership mentoring schemes, in order to increase ethnic and geographic diversity, companies have to tailor their policies to include the diverse pool of candidates necessary for the selection process.

⁸⁰ CMI Women, *A Blueprint for Balance*, 30PERCENTCLUB (2018), https://30percentclub.org/assets/uploads/UK/Third_Party_Reports/Blueprint_for_Balance_Broken_Windows_Full_Report.pdf 19-20; Cuellar et al., *supra* note 55, at 8. These reports demonstrated that US employees are demanding more flexibility in their work and that promoting more flexible work programmes will help women, in particular, reach higher level management positions, leaving a viable pipeline for future leaders.

2.2 Current Position

2.2.1 France

Introduction

French corporate governance rules can be found in the French Commercial Code; best corporate practices are also set out in the non-binding Afep-Medef Code, which is followed voluntarily by almost all listed companies.⁸¹ France has adopted a proactive approach to gender equality, being one of the few European countries to have imposed a legal quota for women on boards. Further details of French corporate governance requirements are set out below.

Restrictions and Requirements on Directors

There is a prescribed minimum of three directors and a maximum of 18 directors on boards in France.⁸² Although there are no legal requirements on the nationality of directors, chairpersons, CEOs or deputy CEOs,⁸³ the Afep-Medef Code recommends that the board of directors and nomination committee of listed companies take into account nationality when seeking balanced representation.⁸⁴

With regards to gender, under a 2011 law,⁸⁵ the proportion of directors of each gender must be at least at 40% on the board of directors of listed companies and companies with at least 500 employees⁸⁶ and with a turnover of at least EUR50 million for three consecutive financial years. The Afep-Medef Code also recommends that the proportion of directors of each gender be at least 40% on the board of directors of

⁸¹ CODE DE COMMERCE [C. COM.] [COMMERCIAL CODE] (Fr.); ASSOCIATION FRANÇAISE DES ENTREPRISES PRIVEES (AFEP) AND MOUVEMENT DES ENTREPRISES DE FRANCE (MEDEF), CORPORATE GOVERNANCE CODE OF LISTED CORPORATIONS (June 2018) (the “Afep-Medef Code”).

⁸² C. Com. Art. L225-17 (Fr.); Youssef Djehane, *Corporate Governance and Directors' Duties in France: overview*, Thompson/Reuters Practical Law (Dec. 1, 2017); Glass Lewis, *Guidelines: An Overview of the Glass Lewis Approach to Proxy Advice: France 6* (Proxy Paper 2018).

⁸³ Djehane, *supra* note 79.

⁸⁴ Afep-Medef Code, *supra* note 78, at ¶ 16.

⁸⁵ LOI n° 2011-103 du 27 janvier 2011 relative à la représentation équilibrée des femmes et des hommes au sein des conseils d'administration et de surveillance et à l'égalité professionnelle [Law 2011-103 of January 27, 2011 relating to the Equal Representation of Women and Men in Administrative and Oversight Councils and to Professional Equality].

⁸⁶ This threshold will be lowered to 250 employees from January 1, 2020. *Id.*

listed companies and recommends that the board of directors and nomination committee take into account gender when seeking balanced representation.⁸⁷

Listed companies that exceed two of the following thresholds: 250 employees; net turnover of EUR40 million; or a balance sheet of EUR20 million must also disclose in their annual reports a description of their diversity policy for the board of directors in terms of age, gender, qualifications and professional experience.⁸⁸

Appointment and Removal of Directors

Directors are appointed by an ordinary resolution of the shareholders. The board of directors then appoint a chairperson from among the board and a CEO of the company. Directors can be removed by ordinary resolution of the shareholders at any time for any reason. Further, French corporate governance standards recommend that board terms be staggered so as to avoid the replacement of the board as a whole and to favour a smooth replacement of directors.⁸⁹ The legal maximum for a director's term of appointment is six years, but it may be renewed. The Afep-Medef Code recommends that board terms be limited to four years.⁹⁰

Conclusion

France is one of the few European countries to have imposed a gender quota by law. This 'hard' quota approach appears to have been moderately successful, as statistics show an increase in the number of women who hold corporate board seats, increasing from 12% in 2010 to 37% in 2016 for publicly listed companies.⁹¹ Additionally, the gender quota law appears to have had a broader positive effect on French corporate culture, as statistics indicate that a large number of French companies who are not

⁸⁷ Afep-Medef Code, *supra* note 78, at ¶ 16 & Annex 1.

⁸⁸ LOI n° 2011-103, *supra* note 82, Djehane, *supra* note 79; Glass Lewis, *France*, *supra* note 79, at 6.

⁸⁹ Afep-Medef Code, *supra* note 78, at 13; Djehane, *supra* note 79; Glass Lewis, *France*, *supra* note 79, at 6.

⁹⁰ C. Com. Art. L225-18 (Fr.); Afep-Medef Code, *supra* note 78, para 13.

⁹¹ OECD statistics (2017), *supra* note 56.

bound by the 2011 gender quota law have voluntarily increased representation of women on boards.⁹²

2.2.2 Germany

Introduction

Corporate governance rules in Germany can be found in the German Stock Corporation Act and Co-Determination Act, and best practices can be found in the non-binding German Corporate Governance Code.⁹³ Traditionally, Germany has been less prescriptive with its corporate governance principles than other European countries; however, since 2016, it has imposed a legal gender quota for women on boards. Further details of German corporate governance requirements are set out below.

Restrictions and Requirements on Directors

There is a prescribed minimum of two members on the management board, and a prescribed minimum of three and maximum of 21 members on the supervisory board.⁹⁴ Although there are no legal requirements on the nationality of members of the management board and the supervisory board,⁹⁵ the German Corporate Governance Code recommends that the supervisory board consider the principle of diversity when appointing the management board and when determining concrete objectives for its own composition.⁹⁶

⁹² Konstantina Govotsos, *Gender Diversity in Corporate Boards in France: An Analysis 19-22* (May 2017) (Undergraduate thesis, The Wharton School, University of Pennsylvania)(available at https://repository.upenn.edu/joseph_wharton_scholars/29/).

⁹³ Aktiengesetz [AktG, Stock Corporation Act], Sept 6, 1965 BGBl. I (F.R.G.); Gesetz über die Mitbestimmung der Arbeitnehmer [Mitbestimmungsgesetz] [Co-Determination Act], May 4, 1976; Deutscher Corporate Governance Kodex [German Corporate Governance Code], Regierungskommission, Feb. 7, 2017.

⁹⁴ Aktg, Stock Corporation Act, *supra* note 90 at § 95; Christoph H Seibt & Sabrina Kulenkamp, *Corporate Governance and Directors' Duties in Germany: Overview*, Thompson/Reuters Practical Law (Dec 1, 2017); Glass Lewis, *Guidelines: Germany 7* (Proxy Paper 2018); Chris Rushton, *German Gender Quota and Targets – A Study*, GLASS LEWIS (Dec. 8, 2016), <http://www.glasslewis.com/gl-blog-german-gender-quota-targets-study/>.

⁹⁵ Aktg, Stock Corporation Act, *supra* note 90; Seibt & Kulenkamp, *supra* note 91.

⁹⁶ German Corporate Governance *supra* note 90 at ¶¶ 4.1.5 & 5.1.2. The code does not specify what 'diversity' should encompass, but states that board should have "appropriate consideration of women." *Id.* at 4.1.5.

With regards to gender, from January 1, 2016, under a 2015 law, supervisory boards of listed companies subject to specific Co-determination Acts must consist of at least 30% male and 30% female representatives—this applies to the entire board⁹⁷. In addition, there is a ‘softer’ quota for female members of the management and supervisory boards, and the two uppermost levels of the management of companies subject to co-determination, where companies must issue targets relating to gender.⁹⁸

Appointment and Removal of Directors

The supervisory board appoints and removes members of the management board by resolution, but removal requires good cause.⁹⁹ The maximum term of appointment for management board members and supervisory board members is five years, with reappointment possible.¹⁰⁰

Conclusion

Germany has been debating gender quotas since 2001, but only imposed a 30% gender quota by law in 2015. However, among the top 160 German listed companies, women only represented 6.7% of the board members in 2017, a small increase compared to 5.2% in 2015¹⁰¹. While it is still too early to tell how successful Germany’s gender quota law has been, early statistics indicate that the legislation has not, in and of itself, dramatically increased the rate of growth of women on boards.

⁹⁷ Aktg, Stock Corporation Act *supra* note 90, at art. 96(2). The 30% quotas for men and women on boards applies to supervisory boards of listed companies which are subject to the Co-determination Act (Mitbest G), the Coal and Steel Co-determination Act (Montan Mitbest G) or the Supplementary Co-determination Act (Montan Mitbest GErgG). The 30% quotas also apply to management boards in the case of companies which have resulted from a cross-border merger where the above Acts apply.

⁹⁸ Aktg, Stock Corporation Act, *supra* note 90, at §§ 76(4) & 111(5); Seibt & Kulenkamp, *supra* note 91; Glass Lewis, *Germany, supra* note 87, at 7; Rushton, *supra* note 87.

⁹⁹ Aktg, Stock Corporation Act, *supra* note 90, at § 84(3); Seibt & Kulenkamp, *supra* note 91.

¹⁰⁰ Aktg, Stock Corporation Act, *supra* note 90, at § 102; Glass Lewis, *Germany, supra* note 91, at 9; Rushton, *supra* note 91.

¹⁰¹ *Despite Quotas, Germany’s Boardrooms Still “Male-Dominated”*, THE LOCAL (Jan. 9, 2017), <https://www.thelocal.de/20170109/despite-quotas-few-women-make-the-boards-of-top-german-companies>.

2.2.3 The United Kingdom

Introduction

Corporate governance rules in the UK can be found in the Companies Act 2006, the UK Corporate Governance Code, and the non-mandatory Guidance on Board Effectiveness.¹⁰² The UK Corporate Governance Code sets out good practice, but it is a ‘comply or explain’ code rather than a set of rigid rules. This means that whilst compliance is not mandatory, companies with premium listings are required to explain in their annual reports how they have applied the UK Corporate Governance Code. The UK generally takes a softer approach in comparison to its European counterparts to gender equality, rejecting gender quotas by law and instead opting for softer targets.¹⁰³ Further details of UK corporate governance requirements are set out below.

Restrictions and Requirements on Directors

There are no restrictions in the legislation on the number of directors a UK company may have.¹⁰⁴ There are also no legal requirements on the nationality of members of the board.¹⁰⁵ However, there are recommendations from the Parker Report for FTSE 350 companies to increase the ethnic diversity of UK boards and develop candidates for the pipeline.¹⁰⁶

With regards to gender, the UK has not imposed any mandatory gender quotas, following a series of reviews. However, the UK Corporate Governance Code does require companies with a premium listing of equity shares to report on their diversity

¹⁰² Companies Act 2006 (UK) [hereinafter UK Companies Act 2006]; UK Corporate Governance Code 2018; FINANCIAL REPORTING COUNCIL, GUIDANCE ON BOARD EFFECTIVENESS (2018) (UK).

¹⁰³ LORD DAVIES OF ABERSOCH, WOMEN ON BOARD 18 (Feb. 2011), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/31480/11-745-women-on-boards.pdf; Nick Gibbon et al., ‘Corporate Governance and Directors’ Duties in the U.K. (England and Wales): Overview, Thompson/Reuters Practical Law (Mar. 1, 2018).

¹⁰⁴ UK Companies Act 2006; Gibbon et al., *supra* note 100.

¹⁰⁵ UK Companies Act 2006; Gibbon et al., *supra* note 100.

¹⁰⁶ SIR JOHN PARKER, THE PARKER REVIEW COMM., A REPORT INTO THE ETHNIC DIVERSITY OF UK BOARDS (2017), [http://www.ey.com/Publication/vwLUAssets/The_Parker_Review/\\$FILE/EY-Parker-Review-2017-FINAL%20REPORT.pdf](http://www.ey.com/Publication/vwLUAssets/The_Parker_Review/$FILE/EY-Parker-Review-2017-FINAL%20REPORT.pdf).

policy, including on gender.¹⁰⁷ This should include any measurable objectives that have been set for implementing the policy, and progress on achieving the objectives. Voluntary targets for women on boards and in executive positions have been confirmed in the Hampton-Alexander Review on improving gender balance in FTSE leadership (Nov 2016)—these include a minimum of 33% of boards being women by 2020.¹⁰⁸ A report prepared by Lord Davis of Abersoch, ‘Women on Boards’, sets out the following recommendations for increasing gender diversity on public boards:¹⁰⁹

- (a) all Chairpersons of FTSE 350 companies should set out the percentage of women they aim to have on their boards in the short term. FTSE 100 boards should initially aim for a minimum of 25% female representation. Chairpersons should announce their aspirational goals within the next six months and review such goals;
- (b) quoted companies should be required to disclose each year the proportion of women on the board, women in Senior Executive positions and female employees in the whole organisation;
- (c) the Financial Reporting Council should amend the UK Corporate Governance Code to require listed companies to establish a policy concerning boardroom diversity, including measurable objectives for implementing the policy, and disclose annually a summary of the policy and the progress made in achieving the objectives;
- (d) companies should report on the recommendations above in their next Corporate Governance Statement whether or not the underlying regulatory changes are in place. In addition, Chairpersons will be encouraged to sign a charter supporting the recommendations;

¹⁰⁷ UK Corporate Governance Code 2018, § 23.

¹⁰⁸ SIR PHILIP HAMPTON, HAMPTON-ALEXANDER REVIEW: FTSE WOMEN LEADERS – IMPROVING GENDER BALANCE IN FTSE LEADERSHIP 8-9 (2017), https://ftsewomenleaders.com/wp-content/uploads/2017/11/Hampton_Alexander_Review_Report_FINAL_8.11.17.pdf.

¹⁰⁹ LORD DAVIES OF ABERSOCH, *supra* note 100.

- (e) chairpersons should disclose meaningful information about the company's appointment process and how it addresses diversity in the company's annual report, including a description of the search and nominations process;
- (f) investors should pay close attention to the recommendations above when considering company reporting and appointments to the board;
- (g) companies should be encouraged to periodically advertise non-executive board positions to encourage greater diversity in applications;
- (h) executive search firms should draw up a Voluntary Code of Conduct addressing gender diversity and best practices, which covers the relevant search criteria and processes relating to FTSE 350 board level appointments;
- (i) recognition and development of two different populations of women who are well-qualified to be appointed to UK boards should be considered:
 - executives from within the corporate sector, for whom there are many different training and mentoring opportunities; and
 - women from outside the corporate mainstream, including entrepreneurs, academics, civil servants and senior women with professional service backgrounds, for whom there are many fewer opportunities to take up corporate board positions;
- (j) a combination of entrepreneurs, existing providers and individuals needs to come together to consolidate and improve the provision of training and development for potential board members; and
- (k) the steering board that drafted the 'Women on Boards' report should meet every six months to consider progress against these above measures and report annually with an assessment of whether sufficient progress is being made.

Appointment and Removal of Directors

For listed companies, the UK Corporate Governance Code recommends that a nomination committee, made up predominantly of independent non-executive

directors, should lead the process for board appointments and make recommendations to the board.¹¹⁰ The Code recommends that this process be transparent.

There are no restrictions under the Companies Act 2006 on the term of appointment of directors.¹¹¹ However, for listed companies, the UK Corporate Governance Code states that all directors should stand for re-election by shareholders annually.¹¹² Finally, removal of a director can be carried out by ordinary resolution at a general meeting.¹¹³

Conclusion

The UK has thus far adopted a voluntary approach towards gender equality on company boards, in contrast to other European countries. Although this approach is constantly being monitored through various government-led reviews,¹¹⁴ statistics indicate that it has not been as successful as initially anticipated, and several changes to the UK Corporate Governance Code relating to diversity and gender have been proposed.¹¹⁵

2.2.4 Nordic Countries

Introduction

Corporate governance in the Nordic countries is examined here as a group, given their similar procedures.¹¹⁶ Corporate governance rules in Sweden, Norway, Denmark and Finland can be found in the Swedish Companies Act, the Norwegian Public Limited Liability Companies Act, the Danish Companies Act and the Finnish Limited

¹¹⁰ UK Corporate Governance Code 2018, § 17.

¹¹¹ UK Companies Act 2006; Gibbon et al., *supra* note 100.

¹¹² UK Corporate Governance Code 2018, § 18.

¹¹³ UK Companies Act 2006 §168 ; Gibbon et al., *supra* note 100.

¹¹⁴ LORD DAVIES OF ABERSOCH, *supra* note 100; SUSAN VINNICOMBE ET AL., WOMEN ON BOARDS: BACK ON TRACK?: THE FEMALE FTSE BOARD REPORT 2017 (2017), <https://www.cranfield.ac.uk/som/expertise/changing-world-of-work/gender-and-leadership/female-ftse-index> (access link at The Female FTSE Board Report 2017).

¹¹⁵ OECD statistics (2017), *supra* note 58. Women on boards of publicly listed companies has increased from 13% to 27% from 2010 and 2016.

¹¹⁶ Trond Randøy et al., *A Nordic Perspective on Corporate Board Diversity* (Nordic Innovation Centre project no. 05030, Nov. 2006), www.nordicinnovation.org/Global/_Publications/Reports/2006/The%20performance%20effects%20of%20board%20diversity%20in%20Nordic%20Firms.pdf; Steen Thomsen, *Nordic Corporate Governance Revisited*, 65 *Nordic J. Bus.*, no. 1, 4, 4-12 (2016).

Liabilities Companies Act, respectively.¹¹⁷ Best corporate practices can also be found in the Swedish Corporate Governance Code, the Norwegian Code of Practice for Corporate Governance, the Danish Corporate Governance Code and the Finnish Corporate Governance Code.¹¹⁸ The provisions in these codes are not mandatory, relying instead on a ‘comply or explain’ principle. Norway is the pioneer among European countries in gender requirements, being the first country to impose gender quotas by law for public limited company board members. The remaining Nordic countries have not followed the approach of imposing board quotas. Further details of Nordic corporate governance requirements are set out below.

Restrictions and Requirements on Directors

In Norway and Sweden, there is a prescribed minimum of three directors on boards, and no prescribed maximum.¹¹⁹ In Finland, there is a prescribed minimum of one director and a prescribed maximum of five directors on boards.¹²⁰ Regarding nationality of members, in Norway, the general manager and at least half of the board members must be Norwegian residents or EEA citizens residing within the EEA.¹²¹ In Sweden, not less than half of the directors must be resident within the EEA.¹²² In Finland, at least one of the members of the board of directors must be resident within

¹¹⁷ Aktiebolagslag [Companies Act] (SFS 2005:551) (Swed.) [hereinafter Swedish Companies Act]; Lov om allmennaksjeselskaper (Allmennaksjeloven) [Public Limited Liability Companies Act] (1997) (Nor.) [hereinafter Norwegian Companies Act]; Lov om aktie- og anpartsselskaber (selskabsloven) [Act on Public and Private Limited Companies] (Companies Act) (2009) (Den.) [hereinafter Danish Companies Act]; Osakeyhtiölaki [Limited Liability Companies Act] (624/2006) (Fin.) [hereinafter Finnish Companies Act].

¹¹⁸ Kollegiet för Svensk Bolagsstyrning [Swed. Corp. Governance Bd.], Svensk Kod för Bolagsstyrning [The Swedish Corporate Governance Code] (2016), http://www.corporategovernanceboard.se/UserFiles/Archive/486/The_Swedish_Corporate_Governance_Code_1_December_2016.pdf; Norsk Utvalg for Eierstyring og Selskapsledelse (NUES) [Nor. Corp. Governance Bd. (NCGB)], Norsk Anbefaling – Eierstyring og Selskapsledelse [The Norwegian Code of Practice for Corporate Governance] (2014), <http://wpstatic.idium.no/nues.no/2017/06/2014-10-30Code2014ENGweb.pdf>; Komitéen for God Selskapsledelse [Comm. on Corp. Governance], Anbefalinger for God Selskapsledelse [Recommendations on Corporate Governance] (2017) (Den.) [hereinafter The Danish Corporate Governance Code], https://corporategovernance.dk/sites/default/files/180927_clean_recommendations_version260918_002.pdf; Arvopaperimarkkinayhdistys ry [Sec. Mkt. Ass’n], Hallinnointikoodi Corporate Governance 2015 [The Finnish Corporate Governance Code] (2015), <https://cgfinland.fi/wp-content/uploads/sites/6/2015/10/hallinnointikoodi-2015eng.pdf>.

¹¹⁹ Norwegian Companies Act, *supra* note 114, at § 6.1; Swedish Companies Act, *supra* note 114, at ch. 8, § 46

¹²⁰ Finnish Companies Act, *supra* note 114, at ch. 6 § 8.

¹²¹ Norwegian Companies Act, *supra* note 114, at § 6.11.

¹²² Swedish Companies Act, *supra* note 114, at ch. 8, § 9.

the EEA.¹²³ There are no legal requirements on the nationality of members for Denmark.

With regards to gender, the position is split amongst the Nordic countries. Only Norway imposes legal gender quotas. Norway was the first country to pass a gender quota law which was enacted in 2003 and has been in force since 2006, reflecting a more progressive attitude towards gender parity board representation.¹²⁴ Under the Swedish Corporate Governance Code, boards are to exhibit diversity, breadth of qualification, experience and background, and listed companies should strive for equal gender distribution on their boards.¹²⁵ In Denmark, larger companies must establish board diversity targets to increase the underrepresented gender and adopt diversity policies for every management level of the company. Danish companies are also required to report on progress towards fulfilling targets, which must incorporate diversity in relation to age, international experience and gender.¹²⁶ Under the Finnish Corporate Governance Code, companies must specify objectives for ensuring that both genders are represented on the board, the means to achieve the objectives, and to provide an account of the progress. The Finnish Corporate Governance Code also requires companies to have both genders represented on their board of directors.¹²⁷

The Norwegian Public Limited Liability Companies Act stipulates that the board, and deputy members of the board, must represent both genders as follows: (i) if the board has two or three members, both genders must be represented; (ii) if the board has four or five members, each gender must be represented by at least two; (iii) if the board has six to eight members, each gender must be represented by at least three; (iv) if the board has nine members, each gender must be represented by at least four; and (v) if

¹²³ Finnish Companies Act, *supra* note 114, at ch. 6 § 10.

¹²⁴ Alexander Gidlund & Tommy Lund, *The Norwegian Gender Quota Law and its Effects on Corporate Boards* 5 (2017) (Master thesis, Umeå Sch. Bus. & Econ.), <http://www.diva-portal.org/smash/get/diva2:1119270/FULLTEXT01.pdf>.

¹²⁵ The Swedish Corporate Governance Code, *supra* note 115, at (III)(4.1); Glass Lewis, *Guidelines: Sweden* 4 (Proxy Paper 2018).

¹²⁶ The Danish Corporate Governance Code, *supra* note 115, at 3.1; Glass Lewis, *Guidelines: Denmark* 5 (Proxy Paper 2018).

¹²⁷ The Finnish Corporate Governance Code, *supra* note 115, at 24-25; Glass Lewis, *Guidelines: Finland* 4 (Proxy Paper 2017).

the board has more than nine members, each gender must be represented by at least 40%.¹²⁸

Appointment and Removal of Directors

In all of these Nordic countries, board members are appointed by the shareholders at the general meeting by a simple majority vote (51%). In Sweden, directors are elected for one-year terms.¹²⁹ In Norway, despite the Norwegian Public Limited Liability Companies Act allowing directors to serve for up to four years if proscribed in the articles of association, the Norwegian Corporate Governance Code recommends that directors are elected for terms of no more than two years.¹³⁰ In Denmark, a director can be re-elected an unlimited number of times, with each term not exceeding four years. It is recommended, however, that directors be up for re-election each year, unless the articles of associate provide for a different term, which may not exceed four financial years.¹³¹ In Finland, directors of public companies are elected for one-year terms, unless a different term is provided by the company's articles of association, with no restrictions on the number of successive terms of office.¹³²

In all of these Nordic countries, boards may be dismissed by the shareholders at any time within its mandate period. Executive management may be appointed and dismissed at the sole discretion of the board.

Conclusion

Examination of the Nordic approach to corporate governance and gender diversity specifically raises questions about the different approaches and success of gender quotas by law. All of the Nordic countries have much higher levels of female board representation than their global counterparts. Finland and Sweden do not have a hard

¹²⁸ Norwegian Companies Act, *supra* note 114, at § 6.11a.

¹²⁹ Swedish Companies Act, *supra* note 114, at ch. 8 § 13; Glass Lewis, *Sweden*, *supra* note 122 at 6.

¹³⁰ Norwegian Companies Act, *supra* note 114, at § 6.6; The Norwegian Code of Practice for Corporate Governance, *supra* note 115, at ch. 8; Glass Lewis, *Guidelines: Norway 6* (Proxy Paper 2018).

¹³¹ Danish Companies Act, *supra* note 114, at § 120(4); The Danish Corporate Governance Code, *supra* note 115, at § 3.1.6; Glass Lewis, *Denmark*, *supra* note 123, at 6.

¹³² Finnish Companies Act, *supra* note 114, at ch. 6 §11; Glass Lewis, *Finland*, *supra* note 124, at 5.

law quota, and so a willingness to comply with the soft law and enhance gender parity on boards is driving the relatively high number of woman directors. Sweden and Finland are among the countries with the highest number of women on boards, despite having no targets regarding gender diversity. Norway is also a market leader with its ‘hard’ approach in having a gender quota, resulting in an average of 42% diversity on Norwegian boards in 2016.¹³³

2.3 Best Practice Analysis

In summation, European best corporate practice can be described as follows:

- (a) Where not already suggested by governmental regulations and policies, companies should set ‘soft’ targets to achieve a diverse group at management level;
- (b) Diversity policies should be extensive and mandatory, covering all possible forms of discrimination (*e.g.* age, gender, sexual orientation etc.);
- (c) Companies should be as transparent as possible regarding their approach to diversity, and should be required to publish an annual statement setting out their diversity statistics, diversity aims for the future and actions taken; and
- (d) Director terms should not be unlimited, but instead restricted to a maximum of four years to enable turnover, which should foster diversity amongst directors.

The success of Nordic countries in achieving gender balance may largely be due to societal norms and culture, rather than solely due to either a ‘hard’ or ‘soft’ approach. For the countries with more diverse boards, much of this is driven by cultural norms in the market, which are often reflected in the policies and educational programs that are in place to facilitate participation by women in the workplace. Nordic countries have laws in place which facilitate women in combining careers and family life, indicating the strong supportive culture for women. The policies of Nordic countries

¹³³ Institutional S’holder Servs., Inc., *Gender Parity on Boards Around the World*, HARV. LAW SCH. FORUM ON CORP. GOVERNANCE & FIN. REG., (Jan. 5, 2017), <https://corpgov.law.harvard.edu/2017/01/05/gender-parity-on-boards-around-the-world/>.

demonstrate that there is no right or wrong position regarding gender quotas, and that the approach taken needs to be looked at alongside societal norms within each country. In other countries that have a high degree of success in increasing representation of men and women to near equal levels without regulation, simple ‘guidance’ for diversity can be enough instead of quotas, but in other countries, a quota may be required.

3. THE REST OF WORLD

3.1 Introduction

This section explores measures taken in the private sector in countries which are outside of Europe and the United States (the “**Rest of World**”). This Report is not intended to be a global or regional review, but rather focuses on several country case studies, notably Canada, New Zealand, India and Malaysia, which were selected for their specific policies and initiatives on gender balance and diversity. Each of these countries provides a different insight into measures taken to address the question of diversity and differing levels of success as a consequence of such policies.

3.2 Current Position

3.2.1 Canada

Canada’s federal and state authorities have taken a mostly legislative approach to the question of corporate governance and diversity on boards.

Federal

In April 2013, the Canadian federal government established an advisory council comprised of business leaders to advance the participation of women on corporate boards. In September 2016, the Canadian federal government proposed Bill C-25 in order to amend the Canada Business Corporations Act (“**CBCA**”). The proposed amendments included: (i) reforming the process of electing directors of certain corporations; (ii) modernising communications between corporations and their

shareholders; and (iii) requiring disclosure of information in relation to diversity among directors and senior management.¹³⁴ One key proposal that has been recognised as a progressive reform of corporate governance is the proposal for a requirement for corporations governed by the CBCA to annually disclose the gender composition of boards and senior management, and a ‘comply or explain’ approach to the disclosure of diversity initiatives. The Bill became law on May 1, 2018.¹³⁵ Its impact will be interesting to monitor.

Provincial

Most pertinently, in 2011, the provincial government of Quebec implemented a 50% quota for women on boards of government-owned enterprises.¹³⁶ In May 2013, the Ontario provincial government commissioned a report to investigate potential initiatives aimed at gender diversity at major businesses, not-for-profits and other large organizations. As a consequence, in June 2016, the Ontario provincial government set a target that by 2019, women will make up at least 40% of all appointments to every board and agency.¹³⁷

3.2.2 New Zealand

New Zealand has not implemented any legislation which provides a quota for the participation of women on boards. However, there have been other initiatives which aim to increase the number of women on boards of New Zealand companies. In 2017, the New Zealand Stock Exchange (“NZX”) released a new corporate governance code which applies to NZX-listed companies.¹³⁸ One key change made was the

¹³⁴ An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act and the Competition Act, 2018 S.C., ch. 8 (Can.); Andrew MacDougall et al., *Significant Corporate Governance Changes in Proposed Amendments to the Canada Business Corporations Act*, OSLER (Oct. 25, 2016), www.osler.com/en/blogs/risk/october-2016/significant-corporate-governance-changes-in-propos.

¹³⁵ An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act and the Competition Act, 2018 S.C., ch. 8 (Can.) (received Royal Assent May 1, 2018).

¹³⁶ Act respecting the governance of state-owned enterprises, C.Q.L.R., c G-1.02 (Qué.).

¹³⁷ Catalyst, *Gender Diversity on Boards in Canada: Recommendations for Accelerating Progress* (2016) (commissioned by the Government of Ontario), http://www.catalyst.org/system/files/gender_diversity_on_boards_in_canada_final_pdf_version.pdf; News Release, Office of the Premier (Ont.), *Ontario Sets Gender Diversity Targets*, ONTARIO NEWSROOM (June 7, 2016), <https://news.ontario.ca/opo/en/2016/06/ontario-sets-gender-diversity-targets.html>.

¹³⁸ NZX, *NZX Corporate Governance Code* (2017), <https://www.nzx.com/files/attachments/257864.pdf>.

expectation for all NZX-listed companies to establish a diversity policy with measurable objectives and to assess their progress against these objectives each year. These policies and objectives should be made public and the companies are required to publicly report on gender parity at the board level, senior management level and across the company. The code also imposes a ‘comply or explain’ requirement on NZX-listed companies. In response to the NZX corporate governance code, some organizations working to promote gender diversity have been pushing for a target of 30% of women on boards of NZX-listed companies. In December 2017, the percentage of women on NZX-listed companies was 19%, up from 17% in the previous year;¹³⁹ however, the 30% target has not yet been taken up by the NZX.

3.2.3 India

India has addressed the challenge of gender diversity primarily through legislation and related initiatives. In August 2013, the Indian Companies Act was amended such that every listed company is required to have at least one woman director.¹⁴⁰ Furthermore, the Act provides for punitive action for non-compliant companies.¹⁴¹ As at December 2017, prosecutions were filed against 202 non-compliant companies.¹⁴²

Similarly, the Securities and Exchange Board of India (“SEBI”), which regulates the securities market, amended the SEBI Listing Obligations and Disclosure Requirements Legislation 2015 to require the boards of all listed companies to appoint at least one woman director to the board.¹⁴³ According to Deloitte, these legislative provisions, which are driven by parliament, the regulators and industry, have increased the number of women appointed to boards of listed companies.¹⁴⁴

¹³⁹ NZX, *Gender Diversity Statistics* (Jan. 2018) (reviewing statistics as at Dec. 31, 2017), https://diversityworks.nz.org.nz/wp-content/uploads/2018/01/NZX-Gender_diversity_statistics_as_at_31_December_2017.pdf.

¹⁴⁰ The Companies Act, 2013, § 149, No. 18, Acts of Parliament, 2013 (India).

¹⁴¹ *Id.* § 172.

¹⁴² eMinds Legal, *Listed Companies Must Comply on Appointing Women Board Directors: MCA*, CORP. L. REP. (Dec. 27, 2017), <http://corporatelawreporter.com/2017/12/27/67952/>.

¹⁴³ Securities and Exchange Board of India, Listing Obligations and Disclosure Requirements, No. SEBI/LAD-NRO/GN/2015-16/013 § 17 (2015).

¹⁴⁴ DELOITTE GLOBAL CTR. FOR CORP. GOVERNANCE, *WOMEN IN THE BOARDROOM: A GLOBAL PERSPECTIVE* 24 (5th ed. 2017), <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/Women%20in%20the%20boardroom%20a%20global%20perspective%20fifth%20edition.pdf>.

3.2.4 Malaysia

Malaysia has also addressed the challenge of gender diversity on boards of directors of companies in the private sector through legislative and regulatory initiatives. In 2011, the Malaysian cabinet issued a policy to reduce gender imbalance on the boards of publicly listed companies under the Tenth Malaysia Plan (2011-2015).¹⁴⁵ One key aim of the Tenth Malaysia Plan was to have at least 30% of women in “decision-making roles” by 2015. The target was extended to 2020 in the Eleventh Malaysia Plan (2016-2020).¹⁴⁶ Figures indicate that when the policy under the Tenth Malaysia Plan was announced, only 7.7% of “decision-makers” in the corporate sector were women; this number increased to 11.5% in June 2016.¹⁴⁷ Similarly, the percentage of women on boards of Malaysia top 100 public listed companies increased from 14% to 16.1% between September 2015 and September 2016.¹⁴⁸

In the private sector in Malaysia, the 30 Percent Club was established in 2015 with the founding goal of achieving more women representation in leadership positions. The group consists of chairpersons and industrial and business leaders and has increased efforts to coordinate with similar associations in other countries.¹⁴⁹ Lastly, it is worth noting that the Malaysian government has allocated funds specifically to improve the position of women in Malaysia’s workforce: RM2.26 billion was allocated in the 2015 national budget.¹⁵⁰

3.3 Best Practice Analysis

As can be seen from an overview of the measures taken in Canada, New Zealand, India and Malaysia, governments, regulators and industry leaders have attempted to

¹⁴⁵ Econ. Planning Unit, Prime Minister’s Dep’t, *Tenth Malaysia Plan (2011-2015)* 181 (2010).

¹⁴⁶ Najib Razak, Prime Minister of Malaysia, Speech by the Prime Minister in the Dewan Rakyat: Eleventh Malaysia Plan (2016-2020) Anchoring Growth on People (May 21, 2015) (transcript available at https://www.pmo.gov.my/dokumenattached/speech/files/RMK11_Speech.pdf), at 11.

¹⁴⁷ *We’re on Track*, THE STAR (Nov. 20, 2016), www.thestar.com.my/news/nation/2016/11/20/were-on-track/.

¹⁴⁸ Ganeshwaran Kana, *More Women to Power the Boardroom*, THE STAR (Nov. 8, 2016), www.thestar.com.my/business/business-news/2016/11/08/more-women-to-power-the-boardroom/.

¹⁴⁹ *Rohani: More Women in Workforce Vital for Progress*, THE STAR (Nov. 22, 2016), www.thestar.com.my/news/nation/2016/11/22/rohani-more-women-in-workforce-vital-for-progress/.

¹⁵⁰ Akankasha Dewan, *The Industries with the Most Women Bosses in Malaysia*, HUMAN RESOURCES (June 24, 2015), <http://www.humanresourcesonline.net/industries-women-bosses-malaysia/>.

tackle gender inequality on the boards of directors of companies in different ways. The most direct measure is legislation, either in the form of quotas (as in certain regions in Canada and India) and also targets (as provided for under Malaysian government plans). Alternative, ‘softer’ measures have included amending corporate governance codes applying to public companies. As many of these measures have been implemented in recent years, it might be premature to advance a theory as to the success of legislative measures beyond the statistical data which shows that, in numerical terms, the number of women on the boards of applicable companies have increased in this period. Such figures should be measured against the question of shifts in cultural and business attitudes in relation to diversity and the overall picture in relation to the position of women in decision-making positions generally. It is recommended that the examples provided by Canada, New Zealand, India and Malaysia are considered cumulatively to provide a range of measures to address the challenge of diversifying the membership of individuals on international and regional treaty bodies.

* * *

SECTION V. RECOMMENDATIONS

1. INTRODUCTION

In 2012, the UN High Commissioner set out his vision for the treaty body system, which he described as:

*“An effective and sustainable treaty body system contributing to a national debate and international dialogue through predictable, periodic, non-politicized, non-discriminatory and expert-led independent review of the implementation of legally binding treaty obligations by States, harmonized with other human rights mechanisms, namely, the Special Procedures and the Universal Periodic Review, and enhancing the protection of human rights for all.”*¹⁵¹

A series of recommendations, and accompanying rationales, are set out below, having assessed the current practices of certain treaty bodies against best practices across a range of jurisdictions. Notably, the treaty bodies examined do not have written guidelines for State parties to govern their election procedures. First and foremost, we recommend that treaty bodies adopt guidelines and hold State parties to such guidelines when nominating candidates. The recommendations that follow can be incorporated into proposed guidelines to provide the mechanics through which treaty bodies can achieve greater diversity among their elected members.

Diversity in the context of these recommendations refers to a broad concept of diversity which encompasses among other criteria, gender, sexual orientation, geography, ethnicity and skill. While certain recommendations refer specifically to gender diversity, the overall objective of the recommendations is to provide a working set of nomination and election mechanics which can be applied by treaty bodies in order to ensure a diverse set of candidates, and from those nominees, a diverse set of elected experts.

¹⁵¹ Report by U.N. High Comm’r for Human Rights, *United Nations Reform: Measures and Proposals*, UN Doc. A/66/860, at 12 (June 26, 2012), https://digitallibrary.un.org/record/730152/files/A_66_860-EN.pdf.

2. RECOMMENDATIONS AND ANALYSIS

NOMINATION

- (a) State parties are encouraged to adopt **formal, open, and transparent** procedures for nominating candidates for election to treaty bodies, for example, State parties and candidate selection bodies should:
 - (i) Seek to reflect the gender balance and diversity of the population of the State party at the candidate selection stage;
 - (ii) Ensure that the pool of candidates at the State party level is gender balanced and take into account the diversity of candidates, including geography, ethnicity, age, and LGBTQ+;
 - (iii) Rely on formal measures of expertise and respecting the selection process;
 - (iv) Consider candidates with various types of expertise in the relevant area (*e.g.* relevant work experience, publications and other achievements);
 - (v) Avoid nominating candidates who hold positions that might expose them to pressures, conflict of interests or generate a real or perceived impression of a lack of independence;
 - (vi) Limit the terms of service of elected members to a reasonable number for any given committee, bearing in mind that the most recent treaties allow for a maximum of two successive terms. A term of no more than four years is recommended; and
 - (vii) Use a model *curriculum vitae* to guide the nomination process.

This recommendation is aimed at making the nomination process more transparent as, at present, there is very little by way of guidance. In particular, this recommendation addresses diversity in a wider sense than just gender parity and limits terms of directors to increase chances of diversity.

- (b) State parties are encouraged to both nominate and elect treaty body members with **subject matter expertise** by looking a wide-variety of types of experience that is relevant to the objects and purpose of the treaty body.

This recommendation is to ensure that nomination processes prioritize expertise and are meritocratic, but also looks to non-traditional areas of expertise in an effort to include more women candidates.

- (c) When nominating these individuals, State parties should fully take into account **gender representation**, with a view to ensuring sufficiently broad opportunity for the body to achieve, based on meritocratic assessment of all candidates, approximate gender balance.

This recommendation directly addresses gender diversity by setting a ‘soft’ target, due to the difficulties in implementing and policing ‘hard’ targets at the international level.

- (d) State parties who provide candidate lists to the UN Secretariat without following the proposed guidelines, or do not submit candidates in line with designated diversity targets (e.g. 50% women), should be prepared to issue a publicly available statement explaining their decision and in particular the reason they were unable to follow guidelines or meet designated diversity targets.

This recommendation is based on the ‘comply or explain’ strategy used globally, and requires State parties to account for failing to take into account diversity. It is a way of monitoring compliance, as implementing sanctions for non-compliance in the international sphere are not possible.

- (e) State parties should also be encouraged to consider candidates' **availability** to prepare for and attend all treaty body meetings, as well as their ability to work confidently in at least one of the working languages of the treaty body.

This recommendation comes from international practice and ensures that candidates are chosen specifically for the needs of the treaty bodies.

- (f) Where possible, State parties should nominate **more than one** individual for election. It is recommended that each State party nominates a minimum of two individuals and a maximum of four individuals, with an **even number** of individuals being nominated overall.

This recommendation is aimed at increasing chances of diversity amongst nominees, as well as increasing the opportunity for gender parity by requiring an even number of nominees.

ELECTION

- (a) The UN Secretariat should remind State parties of diversity objectives before electing candidates to treaty bodies; for example:
- (i) The current gender balance of the treaty body and how many men and women are leaving their positions;
 - (ii) The equitable geographical / regional distribution of treaty body members, as well as equitable ethnic, age, sexual orientation, and other diversity;
 - (iii) The extent of representation of different forms of civilisation and principal legal systems among treaty body members;
 - (iv) Participation of treaty body members from traditionally less represented backgrounds (*i.e.* other than politics, academia or law);
 - (v) Open ballots; and

- (vi) In the event a state party is considering the election of two candidates of equal merit, preference should be given to the candidate that is under-represented in the present constitution of the treaty body.

This recommendation emphasizes diversity in the broader sense rather than just gender parity, and ensures it is accounted for both at the nomination and election levels of the process.

DISCLOSURE AND TRANSPARENCY

- (a) The documentation prepared for electing treaty body members at meetings of State parties should include an **information note** on the treaty body's composition, considering ethnic diversity, geographical distribution, gender representation, professional backgrounds, legal cultures, and tenure of current members.
- (b) For treaty bodies with no official mandate for gender balance or diversity in the text of the treaty, it is recommended that the treaty body puts a **Diversity Policy**¹⁵² in place, which clearly sets out diversity targets (*e.g.* gender balance by 2020). The treaty body should produce a statement annually, which sets out measurable objectives it has and will take in implementing the diversity policy, an annual progress report on diversity, and full disclosure of annual diversity statistics.

These recommendations are based on corporate governance requirements and place the onus on the treaty body to ensure that it sets out clearly its approach to diversity.

¹⁵² 'Diversity Policy' means a nomination and election policy which considers the value of and actively works towards the inclusion of Diversity Candidates (a "**Diversity Policy**").

SECTION VI. ANNEXURE – SUMMARY TABLES

The following tables summarise the governance provisions as set out in the treaty texts of each of the treaty bodies examined.

The tables use the following acronyms:

ACHPR - the African Charter on Human and Peoples' Rights;

ACtHPR - the African Commission on Human and Peoples' Rights, and African Court on Human and Peoples' Rights;

CAT - the Committee against Torture;

CED - the Committee on Enforced Disappearances;

CEDAW - the Committee which monitors the Convention on the Elimination of Discrimination against Women;

CERD - the Committee on the Elimination of Racial Discrimination, which monitors the ICERD;

CMW - the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families;

CRC - the Committee on the Rights of the Child;

CRPD - the Committee on the Rights of Persons with Disabilities;

ECtHR - the Committee on the Election of Judges to the European Court of Human Rights;

ECPT – the Committee on the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

IACHR - the Inter-American Commission on Human Rights;

IACtHR - the Inter-American Court of Human Rights;

ICC - the International Criminal Court constituted under the Rome Statute of the International Criminal Court;

ICC Assembly - the International Criminal Court Assembly constituted under the Rome Statute of the International Criminal Court;

ICCPR - the Committee which monitors the International Covenant on Civil and Political Rights;

ICERD - the International Convention on the Elimination of Racial Discrimination;

ICESCR - the Committee on Economic, Social and Cultural Rights, which monitors the International Covenant on Economic, Social and Cultural Rights;

OPCAT - the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

SPT - the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which monitors OPCAT.

PART 1

Body	Number Of Members / Nominees Per State	Character / Expertise / Nationality Requirements	Geographical Distribution / Gender Distribution	Form Of Civilization / Legal System Considerations	Restrictions
ICCPR	18 / 2	Yes / Yes / Yes	Yes / No	Yes / Yes	No more than one nominee per State may serve on the Committee
CEDAW	23 / 1	Yes / Yes / Yes	Yes / No	No / Yes	No
CMW	14 / 1	Yes / Yes / Yes	Yes / No	Yes / Yes	No
SPT	25 / 2	Yes / Yes / Yes	Yes / Yes	Yes / Yes	No more than one nominee per State may serve on the Committee
ICC	18 / 1	Yes / Yes / Yes	Yes / Yes	No / Yes	One judge per State
ICC Assembly	18 (plus a President and two Vice Presidents) / 1 (plus alternates and advisers)	Yes / No / No	Yes / No	No / Yes	No
CAT	10 / 1	Yes / Yes / Yes	Yes / No	No / No	No
CRPD	12 / N/A	Yes / Yes / Yes	Yes / Yes	Yes / Yes	No
ICESCR	18 / N/A	N/A / Yes / Not clear	Yes / No	Yes / Yes	No
ECtHR	Equal to number of the Member States / 3	Yes / Yes / Yes	Yes / Yes	No / No	No candidate should be submitted whose election might result in the need to appoint an ad hoc judge
ECPT	Equal to number of the Parties / 3	Yes / Yes / Yes	No / No	No / No	No

Body	Number Of Members / Nominees Per State	Character / Expertise / Nationality Requirements	Geographical Distribution / Gender Distribution	Form Of Civilization / Legal System Considerations	Restrictions
ACHPR	11 / Max 2	Yes / Yes / Yes	Yes / No	No / No	Only one national of the same State
CERD	18 / 1	Yes / No / Yes	Yes / No	Yes / Yes	No more than one nominee per State may serve on the Committee
CRC	18 / 1	Yes / Yes / Yes	Yes / No	No / Yes	No more than one nominee per State may serve on the Committee
CED	10 / N/A	Yes / Yes / Yes	Yes / Yes	No / No	No
IACHR	7 / 3	Yes / Yes / Yes	No / No	No / No	Only one national per State
IACtHR	7 / 3	Yes / Yes / Yes	No / No	No / No	Only one national per State
ACtHPR	11 / 3	Yes / Yes / Yes	Yes / Yes	No / Yes	Only one national per State

PART 2

Body	Timeline For Invitation	Quorum	Election	Term (Years) / Staggered Terms	Re-Nomination Permitted / Eligible For Reelection	Vacancy Provisions	Removal
ICCPR	Min 4 months	2/3 of the State parties	Secret Ballot	4 / Yes	Yes / Yes	Yes	Unanimous opinion / for cause
CEDAW	Min 3 months	2/3 of the State parties	Secret Ballot	4 / Yes	No / No	Yes	No
CMW	Min 4 months	2/3 of the State parties	Secret Ballot	4 / Yes	Yes / Yes	Yes	No
SPT	Min 5 months	2/3 of the State parties at the meeting convened by the Secretary General	Secret Ballot	4 / Yes	- / Yes	Yes	No
ICC	N/A	Absolute majority	Secret Ballot	9 / Yes	No / No	Yes	In the case of a judge, by 2/3 majority of State parties upon a recommendation adopted by 2/3 majority of other judges
ICC Assembly	No	1/3 of the State parties participating in the session	Secret Ballot	3 / No	No / No	No	No
CAT	Min 4 months	2/3 of State parties	Secret Ballot	4 / Yes	Yes / Yes	Yes	No
CRPD	Min 4 months	2/3 of State parties	Secret Ballot	4 / Yes	Yes / Yes	Yes	No
ICESCR	One month	Not clear	N/A	4 / Not clear	Yes / Yes	No	No
ECHR	No	2/3 of the elected judges in office	Secret Ballot	9 / No	No / No	Yes	Yes, by a majority of 2/3 of the other judges that the judge has ceased to fulfil the required

Body	Timeline For Invitation	Quorum	Election	Term (Years) / Staggered Terms	Re-Nomination Permitted / Eligible For Reelection	Vacancy Provisions	Removal
							conditions
ECPT	No	Simple majority	Absolute majority of votes	4-6 / Yes	Yes / Yes	Yes	No
ACHPR	Min 4 months	7	Secret Ballot	6 / Yes	Yes / Yes	Yes	Unanimous opinion / for cause
CERD	Min 3 months	2/3 of the State parties	Secret Ballot	4 / Yes	No / No	Yes	No
CRC	Min 4 months	2/3 of the State parties to the present Covenant	Secret Ballot	4 / Yes	Yes / Yes	Yes	No
CED	Min 4 months	2/3 of the State parties	Secret Ballot	4 / Yes	No / Yes	Yes	No
IACHR	Min 6 months	Absolute majority	Secret Ballot	4 / No	No / Yes	Yes	Commission to have affirmative vote of 5 Members, and then submit case to General Assembly
IACtHR	Min 6 months	Absolute majority	Secret Ballot	6 / No	No / Yes	Yes	President's decision, and if disagreement then the Court shall decide
ACtHPR	Min 90 days	N/A	Secret Ballot	6 / Yes	No / Yes	Yes	Unanimous decision of other judges

PART 3

Body	Restrictions	Selection Timing	Submission Process	Selection Process	Vacancy Procedure
ICCPR	No more than one nominee per State may serve on the Committee	List submitted at least 1 month prior to election	Candidates listed alphabetically with a notation of States selecting nominee sent	Largest number of votes and absolute majority of votes of States present and voting	Election in same fashion, but new member finishes term of vacating member
CEDAW	No	List submitted 2 months after invitation	Candidates listed alphabetically with a notation of States selecting nominee sent	Largest number of votes and absolute majority of votes of States present and voting	The State party whose expert has ceased to function as a Member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee
CMW	No	List submitted at least 1 month prior to election	Candidates listed alphabetically with CV and a notation of States selecting nominee sent	Largest number of votes and absolute majority of votes of States present and voting	The State party who nominated the vacating expert shall appoint another expert from among its own nationals for the remaining part of the term, subject to the approval of the Committee
SPT	No more than one nominee per State may serve on the Committee	List submitted 3 months after invitation	Candidates listed alphabetically with a notation of States selecting nominee sent	Primary consideration shall be given to fulfillment of requirements in Art. 5 (experience, geography, legal system, gender). Largest number of votes and absolute majority of votes of States present and voting. If two nationals of a State party are selected, the national with the most votes shall serve and if there is a tie, that national selected by the State party shall serve or if both or neither candidate is nominated by the State party, there shall be a secret ballot	The State party who nominated the vacating expert shall nominate another eligible person possessing the qualifications in Art. 5 for the remaining part of the term, subject to the approval of the Committee. Approval shall be considered given unless half or more of the State parties respond negatively within six weeks after having been informed of the proposed appointment
ICC	One judge per State	No	Either (i) by the procedure for appointment to the highest judicial offices in the state in question; or (ii) by the procedure provided for the nomination of candidates for the ICJ	Highest number of votes and a 2/3 majority of the State parties present and voting	An election shall be held in accordance with Art. 36 to fill the vacancy. A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term and if that is less than three years the new judge shall be eligible for

Body	Restrictions	Selection Timing	Submission Process	Selection Process	Vacancy Procedure
			in its statute.		re-election for a full term.
ICC Assembly	No	No	The credentials of representatives and their alternates and advisers shall be submitted to the Secretariat	No	No
CAT	No	List submitted at least 1 month prior to election	Candidates listed alphabetically with a notation of States selecting nominee sent	Largest number of votes and an absolute majority of the votes of the representatives of State parties present and voting	The State party shall appoint another expert from among its nationals to serve for the remainder of the vacating Member's term, subject to the approval of the majority of the State parties
CRPD	No	List submitted at least 2 months prior to election	Candidates listed alphabetically with a notation of States selecting nominee sent	Largest number of votes and an absolute majority of the votes of the representatives of State parties present and voting.	The State party shall appoint another expert possessing the qualifications and relevant requirements set out in Art. 34 and will serve the remainder of the term
ICESCR	No	List submitted at least 1 month prior to election	Not clear	Not clear	No
ECHR	No candidate should be submitted whose election might result in the need to appoint an ad hoc judge	N/A	Only those persons entered as candidates before the opening of the first ballot will be taken into account in calculating the number of votes cast.	Majority of votes cast from a list of 3 candidates nominated by the Member State	No
ECPT	No	N/A	Each national delegation of the parties in the consultative assembly put forward 3 candidates	No	Same procedure as for elections
ACHPR	Only one national	List submitted at least 1 month before the	Candidates listed alphabetically	Majority of Members	The Assembly of Heads of State and Government shall replace the Member whose seat became vacant for the remaining period of

Body	Restrictions	Selection Timing	Submission Process	Selection Process	Vacancy Procedure
	of the same State	elections			his term unless the period is less than 6 months
CERD	No more than 1 nominee per State may serve on the Committee	List submitted at least 2 months prior to election	Candidates listed alphabetically	Largest number of votes and absolute majority of votes of States present and voting	State party whose expert has ceased to function as a Member of Committee shall appoint another expert from its own nationals, subject to approval of Committee
CRC	No more than 1 nominee per State may serve on the Committee	List submitted at least 2 months prior to election	Candidates listed alphabetically	Largest number of votes and absolute majority of votes of States present and voting	State party whose expert has ceased to function as a Member of Committee shall appoint another expert from its own nationals to serve remainder of term, subject to approval of Committee
CED	No	List submitted at least 3 months prior to election	Candidates listed alphabetically	Largest number of votes and absolute majority of votes of States present and voting	State party who nominated Member, shall, in accordance with selection criteria, appoint another candidate from its nationals to serve remainder of term, subject to approval of majority of State parties
IACHR	Only 1 national per State	List submitted at least 30 days prior to Assembly	Candidates listed alphabetically	Largest number of votes and an absolute majority of votes of Member States	Each government to propose a candidate within 30 days from date of receipt of communication of vacancy
IACtHR	Only 1 national per State	List submitted at least 30 days prior to Assembly	Candidates listed alphabetically	Largest number of votes and absolute majority	Election in same fashion, but time periods shortened to a period deemed reasonable
ACtHPR	Only 1 national per State	List submitted at least 30 days prior to Assembly	Candidates listed alphabetically	N/A	Election in same fashion, but new member finishes term of vacating member