



UNITED NATIONS  
**HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER

**HUMAN RIGHTS**

# The United Nations Human Rights Treaty System

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## INTRODUCTION

This Fact Sheet provides a general introduction to the core international human rights treaties and the committees, or “treaty bodies”, that monitor their implementation by State parties.<sup>1</sup> The nine core international human rights treaties covered in this Fact Sheet set international standards for the protection and promotion of human rights to which States can subscribe by becoming a party. These treaties are:

- The International Convention on the Elimination of All Forms of Racial Discrimination;
- The International Covenant on Economic, Social and Cultural Rights;
- The International Covenant on Civil and Political Rights;
- The Convention on the Elimination of All Forms of Discrimination against Women;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The Convention on the Rights of the Child;
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;
- The Convention on the Rights of Persons with Disabilities;
- The International Convention for the Protection of All Persons from Enforced Disappearance.

Each State party has an obligation to take steps to ensure that everyone in the State can enjoy the rights set out in the treaty. The treaty body helps them to do this by monitoring implementation and recommending further action. Although each treaty is a separate legal instrument, which States may or may not choose to accept, and each treaty body is a committee of experts independent from the others, this Fact Sheet presents them as the United Nations human rights “treaty system”. The extent to which the treaties and the treaty bodies can function together as a system depends on two factors: first, States need to accept all the core international human rights treaties systematically and put their provisions into operation (universal and effective ratification); and, second, the treaty bodies

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<sup>1</sup> It has become accepted to describe the committees established under the treaties as the human rights “treaty bodies”, even though the provisions of each treaty refer exclusively to its “committee”. It should be noted that the Committee on Economic, Social and Cultural Rights is not technically a treaty body, since it was not established directly under the terms of the Covenant but was created by Economic and Social Council resolution 1985/17.

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need to coordinate their activities so as to present a consistent and systematic approach to monitoring the implementation of human rights at the national level.

The Office of the United Nations High Commissioner for Human Rights (OHCHR) has published specific fact sheets on most of the international treaties and treaty bodies referred to here. Those interested in a particular treaty or treaty body should refer to them (see list at the end). The present Fact Sheet takes a more general approach: surveying all the treaties and treaty bodies to see to what extent they can, and do, function together as a single, holistic and integrated system for the promotion and protection of human rights.

Chapter I presents the nine core international human rights treaties currently in force and their optional protocols. These treaties are the product of more than half a century of continuous elaboration since the adoption of the Universal Declaration of Human Rights by the United Nations General Assembly in 1948.

Chapter II presents the work of the ten<sup>2</sup> human rights treaty bodies established under the terms of these treaties. These treaty bodies monitor the implementation of the rights set out in the treaties by the States that have accepted them. The treaty body system constitutes a key mechanism through which States are obliged to engage, at an international forum, in a rigorous, but constructive, dialogue on the state of human rights implementation in their countries. All of the treaty bodies are considered together, concentrating on the common elements of their mandates and working methods, but also outlining some major differences. Further details on their practical differences can be found in the specific fact sheets.

Chapter III surveys the challenges facing the human rights treaty system. It considers efforts to make the system more effective, in particular by streamlining the reporting procedure. The implications for the treaty system of the new emphasis on the creation of and support to national protection systems are also discussed.

A glossary of technical terms is also provided to assist readers with the terminology used in relation to the treaties and the treaty bodies.

The Universal Declaration of Human Rights makes it clear that all human rights are indivisible and interrelated, and equal importance should be attached to each and every right. All States are committed to promoting respect for the

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<sup>2</sup> One for each of the nine treaties plus the Subcommittee on Prevention of Torture, established by the Optional Protocol to the Convention against Torture.

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rights and freedoms set out in the Declaration and to taking measures, both nationally and internationally, to secure their universal and effective recognition and observance. The nine international human rights treaties constitute a comprehensive legal framework within which States can, with the support of the treaty bodies, meet that commitment.

## **I. DEVELOPING HUMAN RIGHTS STANDARDS: THE TREATIES AND THEIR OPTIONAL PROTOCOLS**

In the early twentieth century, the protection of human rights became an issue of concern to the international community. Under the League of Nations, established at the end of the First World War, attempts were made to develop an international legal framework, along with international monitoring mechanisms, to protect minorities. The horrors perpetrated during the Second World War motivated the international community to ensure that such atrocities would never be repeated and provided the impetus for the modern movement to establish an international system of binding human rights protection.

### **A. Universal Declaration of Human Rights (1948)**

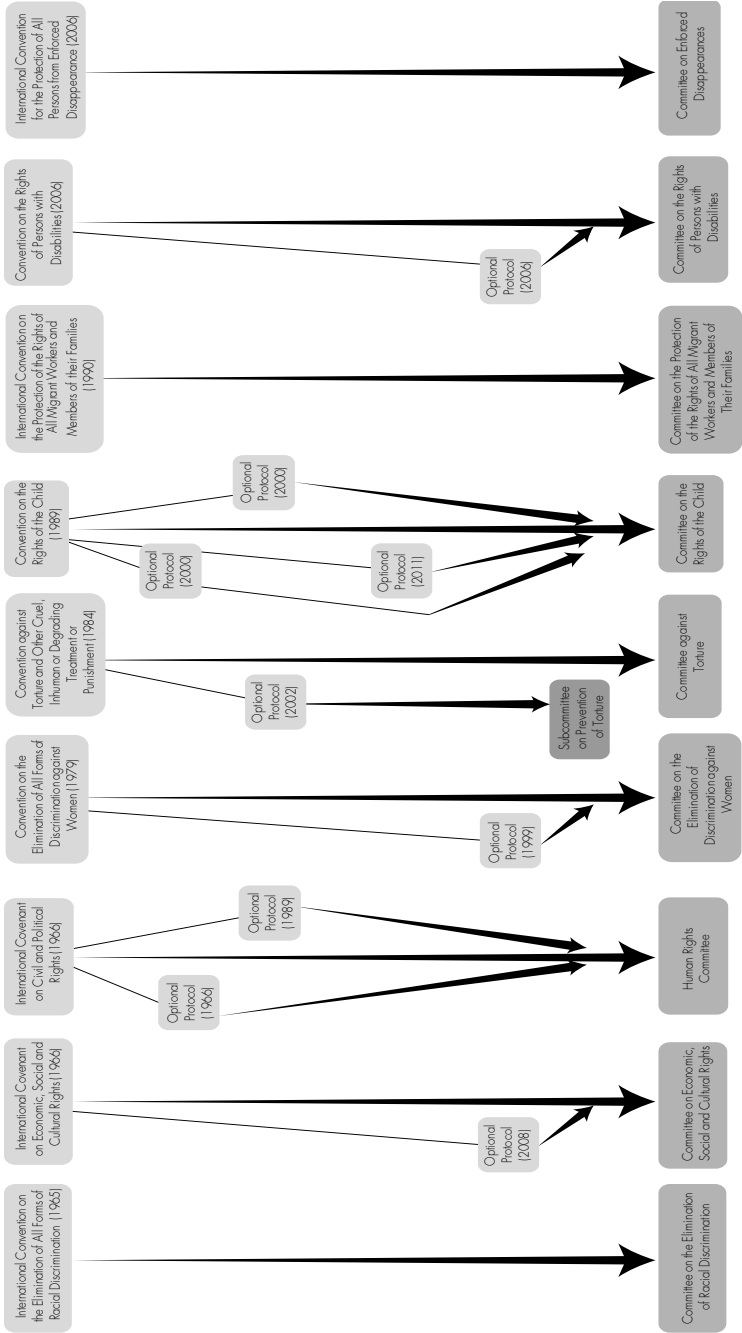
The Charter of the United Nations of 1945 proclaims that one of the purposes of the United Nations is to promote and encourage respect for human rights and fundamental freedoms for all. With the energetic support of Eleanor Roosevelt, alongside figures such as René Cassin, Charles Malik, Peng Chun Chang and John Humphrey, States sought to set out in a single document, for the first time, the range of fundamental rights and freedoms that belonged to all by virtue of their status as human beings. These efforts resulted in the Universal Declaration of Human Rights, adopted by the General Assembly on 10 December 1948, henceforth Human Rights Day. This document, expressed as “a common standard of achievement for all peoples and all nations”, sets out a wide span of rights covering all aspects of life. Its article 1 famously describes the idea of fundamental human rights: “All human beings are born free and equal in dignity and rights.”

#### **The Declaration as customary international law?**

It is widely accepted that some of the Declaration’s provisions are now rules of customary international law. Examples include the bans on torture and on racial discrimination. These are norms which, through the practice of States, have come to be seen as legally binding rules, well before their incorporation in specific treaties. Indeed, some commentators argue that the entire Declaration possesses this status.



# The United Nations human rights treaty system



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After setting out a general prohibition of discrimination, the Declaration enumerates specific groups of rights: civil, cultural, economic, political and social. Articles 3 to 21 describe classic civil and political rights (including the right to asylum and the right to property). Articles 22 to 28 guarantee a range of economic, social and cultural rights, with the important recognition in article 28 that: “Everyone has the right to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

### **Non-discrimination in the enjoyment of human rights**

All the core human rights treaties reflect the general principle of the Universal Declaration of Human Rights that the rights they set out should be enjoyed without distinction of any kind. Article 2 of the Declaration sets out a non-exhaustive list of prohibited grounds for discrimination:

- Race or colour;
- Sex;
- Language;
- Religion;
- Political or other opinion;
- National or social origin;
- Property, birth or other status.

The same list is included in article 2 of both Covenants. Subsequent treaties have expanded the list further. Three are specifically aimed at eliminating certain forms of discrimination: racial discrimination, discrimination against women and discrimination against persons with disabilities.

While the Declaration is, as its name suggests, not a directly legally binding treaty, its importance should not be underestimated. It is of high moral force, representing as it does the first internationally agreed definition of the rights of all people, adopted in the shadow of a period of massive violations of the rights it describes. The Declaration also laid the groundwork for the treaty structure that emerged in the following decades. Moreover, by comprehensively drawing together the different types of rights, the Declaration emphasizes the commonality, interrelatedness and interdependence of all rights, a fundamental point reaffirmed many years later in the 1993 Vienna Declaration of the World Conference on Human Rights.

## **B. International Convention on the Elimination of All Forms of Racial Discrimination (1965)**

When the Universal Declaration of Human Rights was adopted, broad agreement already existed that the rights it contained should be translated into legal form as treaties, which would directly bind those States that agreed to their terms. This led to extended negotiations in the Commission on Human Rights, a political body composed of State representatives, which until 2006

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met annually in Geneva to discuss a wide variety of human rights issues.<sup>3</sup> Given the political imperatives of the day arising from the apartheid regime in South Africa, the first treaty to be agreed, the International Convention on the Elimination of All Forms of Racial Discrimination, dealt with the specific phenomenon of racial discrimination. It was adopted by the General Assembly in December 1965.

After defining racial discrimination, the Convention sets out in six detailed articles the obligations of State parties to combat this scourge. As well as the obvious requirements that the State itself, at all levels, must refrain from such

**What is racial discrimination?**

“Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life” (art. 1).

acts, the Convention also requires a State to take appropriate measures against racial discrimination rooted in society, including the propagation of racist ideas advocated by groups and organizations. The Convention also sets out an extensive series of specific human rights—in the civil and political and in the economic, social and cultural spheres, most of which are enumerated in the Declaration—that must be guaranteed without distinction

on racial grounds. Finally, the Convention establishes as a basic right an effective remedy, whether through the courts or other institutions, against acts of racial discrimination.

The Convention, in part II, requires all State parties to report periodically to the Committee on the Elimination of Racial Discrimination on the measures they have taken to give effect to the Convention. Under article 14, States may also choose to recognize the Committee’s competence to consider complaints from individuals, while a system of inter-State complaints is set out in articles 11, 12 and 13.

### **C. International Bill of Human Rights**

As the International Convention on the Elimination of All Forms of Racial Discrimination was being agreed, negotiations were continuing on two other major treaties: the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The process of drafting a legally binding instrument enshrining the rights of the Universal Declaration of Human Rights had started immediately after

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<sup>3</sup> The Commission has since been replaced by the Human Rights Council, which meets three times a year (General Assembly resolution 60/251).

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the Declaration's adoption in 1948. Initially, a single covenant encompassing all human rights was envisaged. However, after long discussion, the General Assembly requested the Commission on Human Rights to draw up two separate covenants, specifying that the two instruments should contain as many similar provisions as possible to "emphasize the unity of the aim in view".<sup>4</sup> The two Covenants were ultimately adopted by the General Assembly in December 1966 and entered into force in 1976. Together with the Universal Declaration, the Covenants are referred to as the International Bill of Human Rights.

The two Covenants have a similar structure and some of their articles adopt the same, or very similar, wording. The preambles to both recognize the interdependence of all human rights, stating that the human rights ideal can be achieved only if conditions are created whereby everyone may enjoy their economic, social, cultural, civil and political rights. Part I of both Covenants, on the right of all peoples to self-determination and to freely dispose of their natural wealth and resources, is identical. In both, part II sets out general provisions prohibiting discrimination and asserting the equal rights of men and women with regard to the enjoyment of the rights set forth in each Covenant, as well as the permissible limitations on such enjoyment. Part III of each Covenant contains the substantive provisions, which elaborate on rights contained in the Universal Declaration of Human Rights.

**Key economic, social and cultural rights:**

- Right to non-discrimination
- Right to work
- Just and favourable conditions of work
- Trade union rights
- Right to social security
- Protection of the family
- Right to an adequate standard of living
- Right to health
- Right to education
- Right to participate in cultural life

**1. International Covenant on Economic, Social and Cultural Rights (1966)**

The International Covenant on Economic, Social and Cultural Rights develops the corresponding rights in the Universal Declaration in considerable detail, specifying the steps required for their full realization. For example, on the right to education, it mirrors the language of the Universal Declaration of Human Rights, but devotes articles 13 and 14 to its different dimensions, specifying the obligation to secure compulsory primary education free of charge and to take steps towards achieving free secondary and

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<sup>4</sup> Resolution 543 (VI), para. 1.

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higher education. The right to health, which the Declaration covers as part of an adequate standard of living, has a separate article in the Covenant: article 12 recognizes the right to the highest attainable standard of physical and mental health, and includes specific health-related issues such as environmental hygiene and epidemic and occupational diseases. Article 6 on the right to work is complemented by article 7, elaborating the right to just and favourable conditions of work, providing for health and safety at work, equal opportunities for promotion and remuneration for public holidays.

One notable difference between the two Covenants is the principle of progressive realization in part II of the International Covenant on Economic, Social and Cultural Rights. Its article 2 (1) specifies that a State party “undertakes to take steps, [...] to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in [the Covenant]”. The principle of progressive realization acknowledges the financial constraints State parties may face. However, it also imposes an immediate obligation to take deliberate, concrete and targeted steps towards the full realization of the rights of the Covenant. The Covenant also recognizes the wider role of the international community (arts. 2 (1), 11 (2), 15 (4), 22 and 23), building on the principles in articles 22 and 28 of the Universal Declaration of Human Rights.

Part IV requires all State parties to report periodically to the Economic and Social Council. In 1985, the Council created the Committee on Economic, Social and Cultural Rights to receive reports from State parties on the measures they have taken to give effect to the Covenant and the progress they have made.<sup>5</sup>

Its **Optional Protocol**, of 2008, enables State parties to accept additional procedures. It establishes a fully fledged complaint procedure, including individual petitions, inquiries and inter-State complaints.

## **2. International Covenant on Civil and Political Rights (1966)**

The International Covenant on Civil and Political Rights, like the International Covenant on Economic, Social and Cultural Rights, elaborates the civil and political rights set out in the Declaration, with the exception of the right to property and the right to asylum (which was covered separately in the 1951 Convention relating to the Status of Refugees). It also includes additional rights, such as the rights of detainees (art. 10) and the protection of minorities (art. 27).

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<sup>5</sup> Resolution 1985/17.

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In addition to articles 2 (1) and 3 on non-discrimination (which are mirrored in arts. 2 (2) and 3 of the International Covenant on Economic, Social and Cultural Rights), article 26 ensures equality before the law and non-discriminatory protection of the law generally in force in a State. In addition, like the International Convention on the Elimination of All Forms of Racial Discrimination, article 2 provides for the right to an effective remedy for violations of Covenant rights, including an independent and impartial forum before which allegations of such violations can be brought. The Covenant then covers the key civil and political rights and freedoms. Its article 25 guarantees the right freely to take part in public affairs, particularly through fair and periodic elections.

The Covenant, in part IV, requires all State parties to report periodically to the Human Rights Committee.

Two **Optional Protocols** supplement the Covenant and allow State parties to accept additional obligations. The first Optional Protocol, of 1966, provides for a right to individual petition; the second, of 1989, promotes the abolition of the death penalty.

## **D. Convention on the Elimination of All Forms of Discrimination against Women (1979)**

In 1979, the international community adopted a new treaty to address discrimination against women on the basis of sex. Sex discrimination, like racial discrimination, is proscribed under the two Covenants in general terms. However, the Convention on the Elimination of All Forms of Discrimination against Women sets out in more detail what is meant by sex discrimination from the perspective of equality between women and men. It addresses a range of programmatic and policy aspects.

### **What is discrimination against women?**

“Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field” (art. 1).

The Convention’s format was modelled on that of the International Convention on the Elimination of All Forms of Racial Discrimination, but contained a number of innovations, reflecting developments in the 15 years since the latter had been adopted. The Convention on the Elimination of All Forms of Discrimination against Women, too, begins by defining discrimination on the basis of sex. The initial articles oblige State parties both to refrain from

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sex-based discrimination in their own dealings and to take measures towards achieving factual as well as legal equality in all spheres of life, including by breaking down discriminatory attitudes, customs and practices in society. Article 6 explicitly requires them to suppress all forms of trafficking in women and exploitation of prostitution, even though these phenomena may implicitly fall within the prohibition of slavery and forced labour covered by other instruments. Articles 7 and 8 detail obligations to ensure equal participation of women and men in public and political life. Articles 9 and 10 expand on equality in relation to nationality and education, while articles 11, 12 and 13 elaborate on women's rights to employment, health and other areas of economic and social life. Applying general principles to a particular situation, article 14 is the only provision in human rights treaties to address the particular problems faced by women in rural areas. Articles 15 and 16 expand on the right to equality before the law and in marriage and family relations.

The Convention, in part V, requires all State parties to report periodically to the Committee on the Elimination of Discrimination against Women on the measures they have taken to give effect to the Convention.

Its **Optional Protocol** enables State parties to accept individual petitions and inquiry procedures.

## **E. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)**

### **What is torture?**

"Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity" (art. 1).

In 1984, another treaty was adopted to deal with torture and other ill-treatment. Article 7 of the International Covenant on Civil and Political Rights already banned torture and cruel, inhuman or degrading treatment or punishment, but the Convention goes much further and develops a legal scheme aimed at both preventing and punishing these practices. After defining torture, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment makes clear that no circumstances of any kind, including orders from a superior, can justify an act of torture—the ban is absolute. Closely related to

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this is the key provision, in article 3, on “non-refoulement”: if there are substantial grounds for believing that an individual will be tortured in a country, that person cannot be extradited, deported or otherwise returned to that country. A State party must criminalize torture and punish it appropriately.

As acts of torture need to be punished even if the perpetrators have fled abroad, articles 4 to 9 establish a scheme whereby a State in which torture is committed or whose nationals are involved as perpetrators or victims has jurisdiction over the crime. Such a State can ask for the extradition of the alleged offender from any other country, which must itself submit the alleged offender for prosecution if it turns down the request for extradition. The aim is to ensure that there is no place to hide for the perpetrators of the acts prohibited by the treaty. Articles 10 and 11 cover the education of law enforcement personnel and the systematic review of their methods to prevent torture. Instead of a general “right to an effective remedy” for violations, as contained in other treaties, the Convention against Torture sets out, in articles 12 to 14, rights to prompt and impartial investigations of allegations of torture, with fair and adequate compensation as well as full rehabilitation being due to a victim. According to article 15, evidence gathered through torture cannot be used in court. Finally, article 16 requires State parties to prevent acts of cruel, inhuman or degrading treatment or punishment that do not amount to torture.

The Convention, in Part II, requires each State party to report periodically to the Committee against Torture. Under articles 21 and 22, States may also choose to accept the Committee’s competence to consider complaints from other State parties and from individuals.

The **Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** was adopted in 2002 and entered into force in June 2006. It provides for a system of regular visits by international and national mechanisms to prevent torture and other cruel, inhuman or degrading treatment or punishment of people who are deprived of their liberty. It establishes the Subcommittee on Prevention of Torture as the international preventive mechanism with a global remit and requires each State party to set up, designate or maintain one or several national preventive mechanisms or visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment. As provided for under article 11, the Subcommittee:

- (a) Visits places where people are or may be deprived of their liberty;
- (b) Advises and assists State parties establishing national preventive mechanisms, when necessary; maintains direct contact with these mechanisms in evaluating the needs and the means necessary to improve safeguards against ill-treatment; and makes recommendations



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and observations to State parties with a view to strengthening the capacity and mandate of the national preventive mechanisms; and

- (c) Cooperates with relevant United Nations bodies as well as international, regional and national bodies for the prevention of ill-treatment.

## **F. Convention on the Rights of the Child (1989)**

The first treaty to deal comprehensively with the rights of children was the Convention on the Rights of the Child. While children, as human beings

### **Four “general principles” for implementing children’s rights**

The Committee on the Rights of the Child has identified four general principles contained in the Convention which should guide the way States implement children’s rights:

1. **Non-discrimination:** the obligation of States to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind (art. 2);
2. **The best interests of the child:** that the best interests of the child should be a primary consideration in all actions concerning the child (art. 3);
3. **The right to life, survival and development:** the child’s inherent right to life and State parties’ obligation to ensure to the maximum extent possible the survival and development of the child (art. 6);
4. **The views of the child about his or her own situation:** the child’s right to express his or her views freely in “all matters affecting the child”, those views being given due weight “in accordance with the age and maturity of the child” (art. 12).

For more information, see the Committee’s general comment No. 5 (2003).

under 18 years of age, of course enjoy all of the human rights set out in the other treaties, restating these rights in a single comprehensive document with emphasis on the particular circumstances of children and the conditions required for them to enjoy their rights provided an opportunity to develop additional provisions relevant to them.

Both article 24 of the International Covenant on Civil and Political Rights and article 10 of the International Covenant on Economic, Social and Cultural Rights provide that children are entitled to any special measures of protection that they require as children. The Convention on the Rights of the Child sets out these measures in much greater detail. For example, particular provisions cover the child’s right to an identity (arts. 7 and 8), separation from parents (art. 9), family reunification (art. 10), the illicit transfer of children (art. 11), protection from abuse (art. 19) and adoption (art. 21). Article 22 addresses the particular situation of child refugees. Recognizing the particular vulnerabilities of chil-

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dren, the Convention explicitly stipulates their protection from economic exploitation (art. 32), drug abuse (art. 33), sexual exploitation (art. 34), and abduction, sale and trafficking (art. 35). Article 23 provides particularly for the care of children with disabilities. Article 38 reaffirms States' obligations in armed conflict under international humanitarian law, and requires them not to recruit and, where possible, not to use children under 15 years of age as soldiers in conflict.

Beyond the provisions that assert children's rights in terms of protection, the Convention broke new ground by elaborating the child's perspective with regard to the "classic" civil and political rights and economic, social and cultural rights set out in the two Covenants. The Convention recognizes children as subjects of rights capable of exercising their own rights in accordance with their evolving capacity, age and maturity. For example, children have full rights to freedom of expression (art. 13), to freedom of thought, conscience and religion (art. 14), to free association and peaceful assembly (art. 15), to privacy (art. 16), to access to information (art. 17), as well as to health (art. 24), social security (art. 26) and an adequate standard of living (art. 27).

The Convention, in part II, requires all State parties to report periodically to the Committee on the Rights of the Child.

The involvement of children in armed conflict, the sale of children, child prostitution and child pornography are covered in more detail in two optional protocols to the Convention, adopted in 2000.

The **Optional Protocol on the involvement of children in armed conflict** complements article 38 of the Convention as well as international humanitarian law. It establishes that no person under the age of 18 shall be subject to compulsory recruitment into regular armed forces (art. 2) and imposes an obligation on States to raise the minimum age for voluntary recruitment further (art. 3). Upon ratification of, or accession to, the Optional Protocol, State parties must deposit a binding declaration stating their minimum age for voluntary recruitment and the safeguards in place to ensure that recruitment is voluntary. State parties to the Protocol shall also ensure that members of their armed forces under 18 years of age do not take a direct part in hostilities (art. 1). In addition, armed groups distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18. State parties are required to take all feasible measures to prevent the recruitment and use of children by such groups, including the criminalization of such practices (art. 4).

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The **Optional Protocol on the sale of children, child prostitution and child pornography** extends the measures that State parties must take to protect children from these violations of their human rights. The Optional Protocol not only defines the sale of children, child pornography and child prostitution (art. 2), but also provides a non-exhaustive list of acts and activities that State parties must criminalize (art. 3). This criminalization should also cover attempts to commit such acts or activities and complicity and participation in them. Articles 4 and 5 set forth the basis for State parties to assert jurisdiction over actionable practices relating to the sale of children, child prostitution and child pornography (including extraterritorial legislation) and provides for the extradition of alleged offenders. Based on the principle of the best interests of the child, the Optional Protocol also sets forth provisions for protecting and assisting child victims during all stages of the criminal justice process (art. 8). In addition, preventive measures against the sale of children, child prostitution and child pornography, as well as redress, rehabilitation and recovery of child victims, are foreseen in articles 8 and 9. For the implementation of all these provisions, the Optional Protocol asks for close collaboration among State parties (arts. 6 and 10).

Finally, the **Optional Protocol on a communications procedure** was adopted by the General Assembly in December 2011 and will be open for signature in 2012. It establishes the right to individual petition, inquiries and inter-State complaints.

## **G. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)**

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families) was adopted in December 1990. It applies to the entire migration process, from preparation for migration, departure and transit to the total period of stay and remunerated activity in the State of employment and the return to the State of origin or of habitual residence. Most rights are relevant to the receiving State, although the sending State also has specific obligations.

The Convention begins with the prohibition of discrimination in the enjoyment of the Convention's rights. It then sets out the rights, first, of *all* migrant workers and members of their families, irrespective of their migration status, and, second, the additional rights of *documented* migrant workers and their families. In defining the civil and political rights of migrant workers, the Convention follows the language of the International Covenant on Civil and Political Rights very closely. Some articles restate the rights of the Covenant taking into account the particular situation of migrant workers, such as consular

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notification rights upon arrest and specific provisions concerning breaches of migration law, the destruction of identity documents and the prohibition of collective expulsion. In addition, the Convention mentions the right to property, originally protected in the Declaration although not contained in the Covenant.

The Convention defines the economic, social and cultural rights of migrant workers in the light of their particular situation. For example, at a minimum, urgent medical care must be provided, as it would be provided to a national, and the children of migrant workers have the basic right of access to education, irrespective of their legal status. Additional rights exist for workers who are properly documented and to particular classes of migrant workers, such as frontier, seasonal, itinerant and project-tied workers.

The Convention, in part VII, requires all State parties to report periodically to the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, established to review its application. Articles 76 and 77 also provide for a right of complaint by a State party against another State party or by individuals, provided the State party concerned accepts the Committee's competence in this regard.

## **H. Convention on the Rights of Persons with Disabilities (2006)**

The Convention on the Rights of Persons with Disabilities entered into force in 2008. Its purpose is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

The Convention does not define persons with disabilities. It instead identifies that "persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others". It therefore views disability as the result of an interaction between an individual's condition and an inaccessible society. The barriers confronting persons with disabilities are many—for example, they might be environmental such as a staircase, or attitudinal such as a belief that persons with disabilities cannot learn. Such barriers can obstruct the enjoyment of rights. The Convention therefore identifies these barriers as discriminatory and requires their removal. In adopting a rights-based approach to disability, the Convention moves away from viewing disability as a sickness inherent in the individual requiring either a medical intervention (medical approach) to fix the person, or a charitable intervention (charity approach) based on voluntary assistance rather than individual right.

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The Convention sets out general principles, including respect for inherent dignity and freedom of choice and independence; non-discrimination; participation and inclusion; respect for difference and diversity; equality of opportunity; accessibility; equality between men and women; and respect for the evolving capacities of children.

It recognizes that all persons with disabilities enjoy civil, cultural, economic, political and social rights on an equal basis with others. In this sense, it does not recognize new rights for persons with disabilities but states that persons with disabilities should enjoy rights without discrimination. In addition, the Convention sets out a series of obligations on States to enable persons with disabilities to enjoy their rights, in diverse areas such as access to justice, awareness-raising, accessibility, data and statistics and international cooperation. It also has specific provisions on women with disabilities and children with disabilities.

The Convention establishes the Committee on the Rights of Persons with Disabilities, to which State parties report periodically on the measures they have taken to give effect to the Convention.

The **Optional Protocol** to the Convention entered into force in 2008. It gives the Committee the authority to receive communications from individuals alleging violations of any of the provisions of the Convention. It also allows the Committee to undertake inquiries when it receives reliable information indicating grave or systematic violations of the Convention.

## **I. International Convention for the Protection of All Persons from Enforced Disappearance (2006)**

The International Convention for the Protection of All Persons from Enforced Disappearance was adopted by the General Assembly in December 2006 and entered into force four years later. The Convention is unique in that it combines traditional human rights provisions with international humanitarian and criminal law provisions.

### **What is enforced disappearance?**

"The arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law" (art. 2).

The Convention is unique in that it combines traditional human rights provisions with international humanitarian and criminal law provisions.

In article 1, the Convention defines the non-derogable right not to be subjected to an enforced disappearance and affirms the prohibition of enforced disappearance as a non-revocable provision:

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*No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.*

The Convention also affirms that enforced disappearance constitutes a crime against humanity when practised in a widespread or systematic manner (art. 5).

Among the measures intended to prevent enforced disappearances, the Convention mentions the express prohibition of secret detention and the maintenance of official registers of persons deprived of their liberty. It also establishes that, when an alleged perpetrator of an enforced disappearance is present in any territory under the jurisdiction of a State party, that State shall take the necessary measures to establish its jurisdiction over the offence.

Article 24 includes, in the definition of a victim of enforced disappearance, “the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance”, such as family members. The same article also establishes the right to the truth “regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person”. Although this right had been recognized in humanitarian law and by some international bodies, the Convention is the first international human rights instrument to expressly state it.

The Convention requires State parties to criminalize acts of enforced disappearance, to conduct investigations and to take effective legislative and other measures to prevent such acts from happening (arts. 6–17, 25).

The Convention also accords special protection to children who are direct victims of enforced disappearance, whose parents or legal guardians are subjected to enforced disappearance, or who are born during the captivity of a mother subjected to enforced disappearance (art. 25).

The Convention establishes under article 26 the Committee on Enforced Disappearances, to which State parties must periodically report on the measures they have taken to give effect to the Convention.

Individuals may submit complaints to the Committee, provided that the relevant State has accepted the competence of the Committee under article 31. Article 32 gives competence to the Committee to entertain inter-State complaints.

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As explained in more detail in chapter II, the Committee may also take urgent action if it receives urgent requests that a disappeared person should be sought and found. It may conduct inquiry procedures into a State party if it receives reliable information about serious violations of the Convention and may bring these to the urgent attention of the General Assembly if they are widespread or systematic.

Finally, article 27 foresees that the State parties will assess the functioning of the Committee and may decide to transfer its functions to another monitoring body.

## **J. Reading the treaties as a whole**

To understand a State's obligations under these treaties fully, it is necessary to read *all* the human rights treaties to which a State has become a party *together*. Although separate and free-standing, the treaties also complement each other, with a number of principles binding them together. Each lays down, explicitly or implicitly, the basic principles of non-discrimination and equality, effective protection against violations, special protection for the particularly vulnerable, and an understanding of the human being as an active and informed participant in the public life of the State where he or she is located and in decisions affecting him or her, rather than a passive object of the authorities' decisions. All the treaties based on these common principles are interdependent, interrelated and mutually reinforcing, so that no right can be fully enjoyed in isolation, but depends on the enjoyment of all the other rights. This interdependence is one reason why the human rights treaty bodies are crafting a more coordinated approach to their activities, in particular by encouraging State parties to see implementation of the provisions of all these treaties as a single objective.

These treaties do not purport to be a definitive catalogue of a State's human rights obligations. Many States, beyond their participation in the United Nations human rights treaty system, are also a party to regional human rights instruments, which may further expand the protection offered to persons within their jurisdiction. In addition, other treaties, including the Convention relating to the Status of Refugees and the conventions of the International Labour Organization (ILO), such as ILO Conventions No. 138 concerning Minimum Age for Admission to Employment and No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, or ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, are instruments with obvious and important human rights dimensions. All these international legal obligations should be considered together when evaluating a State's responsibility to protect human rights.

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## II. IMPLEMENTATION OF HUMAN RIGHTS STANDARDS: THE TREATY BODIES

The treaty bodies are the committees of independent experts that review the reports by the State parties on their application of the provisions of the core human rights treaties. Chapter II sets out to explain their work and why it is relevant to the lives of people around the world.

### A. What are the human rights treaty bodies?

The international human rights treaties described in chapter I create legal obligations on State parties to promote and protect human rights at the national level. When a country accepts a treaty through ratification, accession or succession, it assumes a legal obligation to implement the rights set out in it. But this is only the first step, because recognizing rights on paper does not guarantee that they will be enjoyed in practice. When the first treaty was adopted, it was recognized that State parties would require encouragement and assistance in meeting their international obligations to put in place the necessary measures to ensure the enjoyment of the rights provided in the treaty by everyone under their jurisdiction. Each treaty therefore creates an international committee of independent experts to monitor, by various means, the implementation of its provisions.

The application of the human rights treaties listed in chapter I is monitored by the following committees:

1. The **Committee on the Elimination of Racial Discrimination**, the first treaty body to be established, has reviewed the application of the International Convention on the Elimination of All Forms of Racial Discrimination since 1969. It has 18 members.
2. The **Committee on Economic, Social and Cultural Rights** was created in 1985 to carry out the functions of the Economic and Social Council under the International Covenant on Economic, Social and Cultural Rights. It has 18 members.
3. The **Human Rights Committee** was created in 1976 to review the application of the International Covenant on Civil and Political Rights. It has 18 members.
4. The **Committee on the Elimination of Discrimination against Women** has reviewed the application of the Convention on the Elimination of All Forms of Discrimination against Women by its State parties since 1981. It has 23 members.



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5. The **Committee against Torture**, created in 1987, reviews the application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It has 10 members.
  6. The **Subcommittee on Prevention of Torture** held its first session in February 2007. Its mandate is twofold: to visit all places of detention in State parties; and to provide assistance and advice to both States parties and their independent national bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, the national preventive mechanisms. It has 25 members.
  7. The **Committee on the Rights of the Child** has, since 1991, reviewed the application of the Convention on the Rights of the Child, as well as its Optional Protocols relating to the involvement of children in armed conflict and to the sale of children, child prostitution and child pornography, by their State parties. It has 18 members.
  8. The **Committee on Migrant Workers** held its first session in March 2004 and reviews the application of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. It has 14 members.
  9. The **Committee on the Rights of Persons with Disabilities**, established in November 2008, held its first session in February 2009. It has 18 members.
  10. The **Committee on Enforced Disappearances** was created in June 2011 following the entry into force on 23 December 2010 of the International Convention for the Protection of All Persons from Enforced Disappearance. It has 10 members.

Each committee is composed of independent experts of recognized competence in human rights, who are nominated and elected for fixed, renewable terms of four years by State parties. Elections for half the members take place every two years. The terms of the members of the newest treaty bodies (Subcommittee on Prevention of Torture, Committee on the Rights of Persons with Disabilities and Committee on Enforced Disappearances) are renewable only once.

The treaty bodies generally meet at the United Nations Office at Geneva, although the Human Rights Committee and the Committee on the Elimination of Discrimination against Women usually hold one of their sessions in New York every year. All the treaty bodies receive support from the Human Rights Treaties Division of OHCHR in Geneva.

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## **B. What do the human rights treaty bodies do?**

The treaty bodies perform a number of functions aimed at monitoring how the treaties are being implemented by their State parties. All treaty bodies, with the exception of the Subcommittee on Prevention of Torture, are mandated to receive and consider reports submitted periodically by State parties detailing how they are applying the treaty provisions nationally. The treaty bodies issue guidelines to assist States with the preparation of their reports, draft general comments interpreting the treaty provisions and organize discussions on themes related to the treaties. Some, but not all, treaty bodies also perform a number of additional functions aimed at strengthening the implementation of the treaties by their State parties. Most treaty bodies may consider complaints or communications from individuals alleging that their rights have been violated by a State party, provided that State has opted into this procedure. Some may also conduct inquiries and consider inter-State complaints.

The following surveys the activities undertaken by the treaty bodies in accordance with their mandates. Although the ten treaty bodies listed above are presented together as part of a coordinated treaty monitoring system, it should be noted that each treaty body is an independent committee of experts, which has a mandate related to a specific treaty. The treaty bodies nevertheless continue their efforts to coordinate their activities, even if their procedures and practices may differ as a result of variations in their individual mandates under the relevant treaty or optional protocol.<sup>6</sup>

## **C. Consideration of State parties' reports**

The primary mandate of all the committees, except the Subcommittee on Prevention of Torture, is to review the reports submitted periodically by State parties in accordance with the treaties' provisions. Within this basic mandate, the treaty bodies have developed practices and procedures that have proved remarkably effective in scrutinizing the extent to which States have met their obligations under the human rights treaties to which they are a party and encouraging further implementation. The following presents the essential common features of the consideration of State reports by the treaty bodies:

### *The State's obligation to report*

In addition to their obligation to implement the substantive provisions of the treaty, each State party is also under an obligation to submit regular reports to the relevant treaty body on how the rights are being implemented.

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<sup>6</sup> More precise information relating to a specific treaty body's procedures can be found in the relevant fact sheet for that committee. Most committees' working methods are also posted on the OHCHR website ([www.ohchr.org](http://www.ohchr.org)).

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The idea of monitoring human rights by reviewing such State reports originated in a 1956 resolution of the Economic and Social Council, which requested United Nations Member States to submit periodic reports on progress made in the advancement of human rights.<sup>7</sup> The model was incorporated into the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, the two International Covenants of 1966, and every core international human rights treaty since. In order to meet its reporting obligation, each State party must submit a comprehensive initial report within one or two years of the treaty entering into force for it (see table). It must then continue to report periodically, usually every four or five years, in accordance with the provisions of the treaty on further measures taken to implement it (with the exception of the International Convention for the Protection of All Persons from Enforced Disappearance). The reports must set out the legal, administrative and judicial measures taken by the State to give effect to the treaty, and should also mention any factors or difficulties encountered in implementing the rights. In order to ensure that reports contain adequate information to allow the committees to do their work, each committee issues guidelines on the form and content of State reports. These guidelines are issued in a compilation document (HRI/GEN/2), which is updated regularly.

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<sup>7</sup> Resolution 624 B (XXII).

Reporting periodicities		
Treaty	Initial report within	Periodic reports every
International Convention on the Elimination of All Forms of Racial Discrimination	1 year	2 years
International Covenant on Economic, Social and Cultural Rights <sup>a</sup>	2 years	5 years
International Covenant on Civil and Political Rights	1 year	4 years <sup>b</sup>
Convention on the Elimination of All Forms of Discrimination against Women	1 year	4 years
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	1 year	4 years
Convention on the Rights of the Child	2 years	5 years
• Optional Protocol on the sale of children, child prostitution and child pornography	2 years	5 years or with next report under the Convention
• Optional Protocol on the involvement of children in armed conflict	2 years	5 years or with next report under the Convention
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	1 year	5 years
Convention on the Rights of Persons with Disabilities	2 years	4 years
International Convention for the Protection of All Persons from Enforced Disappearance	2 years	Additional information as requested by the Committee (art. 29 (4))

<sup>a</sup> Article 17 of the Covenant does not establish a reporting periodicity, but gives the Economic and Social Council discretion to establish its own reporting programme.

<sup>b</sup> Article 40 of the Covenant gives the Human Rights Committee discretion to decide when periodic reports shall be submitted. In general, these are required every four years.

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### *The purpose of reporting*

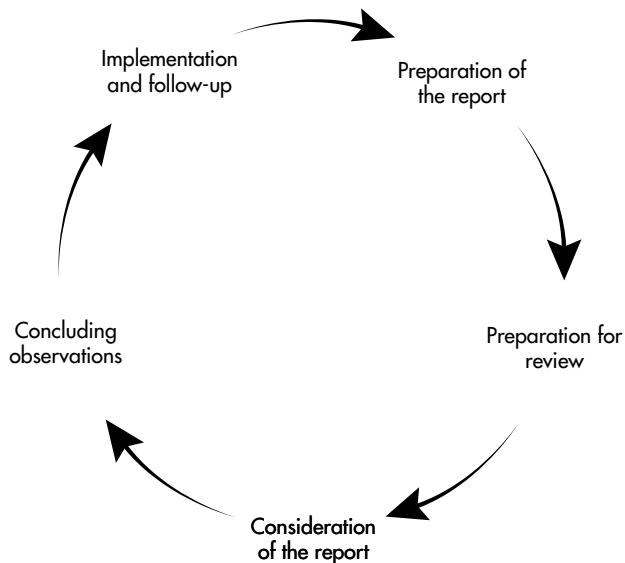
State parties are encouraged to see the process of preparing their reports for the treaty bodies not only as the fulfilment of an international obligation, but also as an opportunity to take stock of the state of human rights protection within their jurisdiction for the purpose of policy planning and implementation. The preparation offers an occasion for each State party to:

- (a) Conduct a comprehensive review of the measures it has taken to harmonize domestic law and policy with the provisions of the international human rights treaties to which it is a party;
- (b) Monitor progress made in promoting the enjoyment of the rights set forth in the treaties in the context of the promotion of human rights in general;
- (c) Identify problems and shortcomings in its approach to the implementation of the treaties;
- (d) Assess future needs and goals for more effective implementation of the treaties; and
- (e) Plan and develop appropriate policies to achieve these goals.<sup>8</sup>

Seen in this way, the reporting system is an important tool for a State to assess what it has achieved and what more it needs to do to promote and protect human rights in the country. The reporting process should encourage and facilitate, at the national level, public participation, public scrutiny of State policies, laws and programmes, and constructive engagement with civil society in a spirit of cooperation and mutual respect, with the aim of advancing the enjoyment by all of the rights protected by the relevant treaty. Some States incorporate comments and criticism from NGOs in their reports; others submit their reports to parliamentary scrutiny before submitting them to the Secretary-General of the United Nations for consideration by the relevant treaty body.

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<sup>8</sup> HRI/MC/2004/3, para. 9. A full explanation of the objectives of reporting can be found in general comment No. 1 (1989) of the Committee on Economic, Social and Cultural Rights.



*How does each treaty body examine a State party's report?*

Although there are variations in the procedures adopted by each committee in considering a State party's report, the following basic stages are common to all treaty bodies.

**What is a common core document?**

State reports consist of the common core document and a treaty-specific document.

The common core document contains general and factual information relating to the implementation of the treaties which may be of relevance to all or several treaty bodies (see HRI/MC/2006/3). A treaty body may request that the common core document be updated if it considers that the information it contains is out of date.

The treaty-specific document contains information relating to the implementation of the treaty which the relevant committee monitors.

1. Submission of the initial report

The report must be submitted to the Secretary-General (represented by OHCHR) in one of the six official languages of the United Nations. It is then processed by the Secretariat, and translated into the committee's working languages. Once processed, the report is scheduled for consideration by the committee at one of its regular sessions. It may take time before a report can be considered, as some treaty bodies face a two-year backlog. Most committees try to give priority to initial reports or to reports from States that have not reported for a long time.

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## 2. List of issues/list of themes

Before the session at which it will formally consider a report, a committee draws up a **list of issues**, which is submitted to the State party. This list provides an opportunity for the committee to request from the State party any additional information, which may have been omitted from the report or which members consider necessary for the committee to assess the state of implementation of the treaty in the country concerned. The list of issues also enables the committee to begin the process of questioning the State party in more detail on specific issues raised by the report which are of particular concern to members. Many State parties find the list of issues a useful guide to the line of questioning they are likely to face when their report is formally considered. This enables their delegations to prepare themselves and makes their dialogue with the committee more constructive, informed and concrete.

Lists of issues are drafted before the session at which a report will be considered. Depending on the treaty body, they are drafted either in a pre-sessional working group convened immediately before or after a regular session or during the plenary session. Most committees appoint one or more of their members to act as country rapporteurs to take the lead in drafting the list of issues for a specific country.

The Committee on the Elimination of Racial Discrimination has adopted the so-called **list of themes**, to which no responses are required. The country rapporteur will send a State party a short list of themes with a view to guiding and focusing the dialogue between its delegation and the Committee during the consideration of the State party's report.

## 3. Written response to list of issues

The written responses to the list of issues supplement the report, and are especially important if it has taken a committee a long time to take up the report.

## 4. List of issues prior to reporting

In 2007, the Committee against Torture adopted a new optional reporting procedure (the so-called **list of issues prior to reporting**) which consists in the adoption of lists of issues to help State parties to prepare their periodic reports.

The State party's response to this list of issues constitutes its periodic report under article 19 of the Convention against Torture.

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The procedure does not apply to initial reports. The Committee is of the view that this procedure will assist State parties to prepare and submit more focused reports, guiding their content, facilitating the reporting process and strengthening State parties' capacity to fulfil their reporting obligations in a timely and effective manner.

During 2009, the Human Rights Committee also decided to use lists of issues prior to reporting as an optional reporting procedure for State parties.

## 5. Other sources of information

In addition to the State parties' reports, the treaty bodies may receive information on a country's human rights situation from other sources, including United Nations agencies, other intergovernmental organizations, national human rights institutions (NHRIs), non-governmental organizations (NGOs), both international and national, and professional groups and academic institutions. Most committees allocate specific plenary time to hearing submissions from United Nations agencies and most also receive NGOs. Depending on when the information is submitted, issues raised by these organizations may be incorporated in the list of issues or inform the questions that members ask the State delegation. In the light of all the information available, the committee examines the report.

A number of treaties provide for a special role for specific United Nations bodies in the consideration of reports. Article 45 of the Convention on the Rights of the Child specifically mentions the role of the United Nations Children's Fund (UNICEF), along with other United Nations agencies and bodies. Article 74 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families similarly provides for the participation of the International Labour Office/Organization. Article 38 of the Convention on the Rights of Persons with Disabilities and article 28 of the International Convention for the Protection of All Persons from Enforced Disappearance also provide for active cooperation with relevant United Nations bodies.

### **Official languages and working languages**

While the official United Nations languages are Arabic, Chinese, English, French, Russian and Spanish, the committees generally choose to work in only some of these languages, depending on their membership and in order to cut costs in relation to documentation. Core documents, such as concluding observations, rules of procedure and reporting guidelines, are always translated into all six.

The working languages of the Secretariat at Geneva are English and French.



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## 6. Formal consideration of the report: constructive dialogue between the treaty body and the State party

All treaty bodies have developed the practice, pioneered by the Committee on the Elimination of Racial Discrimination, of inviting State parties to send a delegation to attend the session at which the committee will consider their report in order to allow them to respond to members' questions and provide additional information on their efforts to implement the provisions of the relevant treaty. This procedure is not adversarial and the committee does not pass judgement on the State party. Rather, the aim is to engage in a constructive dialogue in order to assist the State in its efforts to implement the treaty as fully and effectively as possible. The notion of constructive dialogue reflects the fact that the treaty bodies are not judicial bodies, but were created to monitor the implementation of the treaties and provide encouragement and advice to States. If a State party does not send a delegation, a committee may nevertheless proceed with the consideration of that State party's report.

## 7. Concluding observations and recommendations

The examination of a report culminates in the adoption of "concluding observations" intended to give the reporting State practical advice and encouragement on further steps to implement the rights contained in the treaty. In its concluding observations, a treaty bodies will acknowledge the positive steps taken by the State, but also identify areas of concern, where more needs to be done to give full effect to the treaty's provisions. The treaty bodies seek to make their recommendations as concrete and practicable as possible. States are required to publicize the concluding observations within the country so as to inform public debate on how to move forward.

## 8. Implementation of concluding observations and submission of the next periodic report

A committee's adoption of its concluding observations brings the formal consideration of a report to a close; but the process does not end there. The implementation of the rights contained in the treaties requires continuous effort on the part of States. After the submission of their initial reports, States are required to submit further reports to the treaty bodies at regular intervals. These are referred to as "periodic reports". Periodic reports are normally not as long as the more comprehensive initial report, but must contain all information necessary for a committee to continue its work of monitoring the ongoing implementation of a treaty in the country concerned. An important element of any periodic report will be reporting back to the committee on concrete measures taken by a State party to implement the treaty body's

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recommendations in the concluding observations on the previous report, so as to close the reporting cycle.

*The importance of follow-up to treaty body recommendations*

Treaty bodies have no means of enforcing their recommendations. Nevertheless, most States take the reporting process seriously, and the committees have proved successful in raising concerns relating to the implementation of the treaties in many States.

In order to assist States in implementing their recommendations, the treaty bodies have begun to introduce procedures to ensure effective follow-up to their concluding observations. Some (Committee on the Elimination of Racial Discrimination, Human Rights Committee, Committee on the Elimination of Discrimination against Women and Committee against Torture) request, in their concluding observations, that States report back to the country rapporteur or follow-up rapporteur within one year (sometimes two (Committee on the Elimination of Discrimination against Women)) on the measures taken in response to specific recommendations or "priority concerns" that are rapidly implementable. The rapporteur then reports back to the committee.

Some members of treaty bodies have undertaken visits to State parties, at their invitation, in order to follow up on the report and the implementation of concluding observations.

*What happens if a State party does not report?*

Reporting to the treaty bodies can be a considerable challenge. A State that has ratified all nine core international human rights treaties is expected to produce more than 20 human rights reports over a ten-year period: that is one every six months. States must also produce responses to lists of

**The "review procedure" – review of implementation without a report**

According to this procedure, a committee may proceed with the examination of the state of implementation of the relevant treaty by the State party even though it has not received any State report. The committee may formulate a list of issues and questions for the State party, which is invited to send a delegation to attend the session. Information may be received from United Nations partners and NGOs and, on the basis of this information and the dialogue with the State party, the committee will issue its concluding observations including recommendations. The review may proceed even if the State party declines to send a delegation to the session. The review procedure is used only in exceptional cases; in very many cases, notification by the committee that it intends to consider the situation in a country in the absence of a report is sufficient to persuade the State party to produce a report within a short period of time.

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issues and prepare to attend treaty body sessions, and will then perhaps need to submit further reports on follow-up to concluding observations. In addition, States might also have obligations at regional level. This adds up to a considerable reporting burden, so it is perhaps not surprising that States can fall behind in their reporting schedules or, in some cases, fail to report at all.

The treaty bodies recognize these difficulties and have been considering ways of facilitating the task of State parties (see chap. III below). Nevertheless, the obligation to report, like the other obligations arising from the ratification of these treaties, is an international legal obligation, freely entered into by the State. The treaty bodies seek to encourage States to report in a timely manner. States may seek technical assistance from OHCHR if they face particular difficulties. But, if a State has failed to report over a long period and has not responded to a committee's requests to report, the committee considers the situation in the country without a report—sometimes referred to as the “review procedure” (see box).

## **D. Consideration of complaints from individuals**

Except for the Subcommittee on Prevention of Torture, the treaty bodies listed in section A above may, under certain circumstances, consider complaints or communications from individuals who believe their rights have been violated by a State party:

- The Committee on the Elimination of Racial Discrimination may consider individual communications brought against State parties that have made the requisite declaration under article 14 of the Convention;
- The Human Rights Committee may consider individual communications brought against State parties to the first Optional Protocol to the Covenant;
- The Committee on the Elimination of Discrimination against Women may consider individual communications brought against State parties to the Optional Protocol to the Convention;
- The Committee against Torture may consider individual communications brought against State parties that have made the requisite declaration under article 22 of the Convention;
- The Committee on the Rights of Persons with Disabilities may consider individual communications brought against State parties to the Optional Protocol to the Convention;

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- The Committee on Enforced Disappearances may consider individual communications brought against State parties that have made the requisite declaration under article 31 of the Convention;
  - The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,<sup>9</sup> the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights<sup>10</sup> and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure<sup>11</sup> also contain provisions for individual communications to be considered by their respective committees, but these are not yet operative.

The procedure is optional for State parties: a treaty body cannot consider complaints relating to a State party unless that State has expressly recognized the treaty body's competence in this regard, either by a declaration under the treaty's relevant article or by accepting the relevant optional protocol. Although in some respects the procedure is "quasi-judicial", the decisions cannot be enforced directly by the committees. In many cases, however, State parties have implemented the committees' recommendations and granted a remedy to the complainants.

### *Who can complain?*

Any individual who claims that her or his rights under a treaty have been violated by a State party to that treaty may bring a communication before the relevant committee, provided that the State has recognized the competence of the committee to receive such complaints. Complaints may also be brought by third parties if the individuals themselves have given their written consent or are incapable of giving such consent.

### *How do I lodge a complaint?*

Detailed information about the treaty bodies' individual complaints procedures, including advice and instructions on how to complain, can be found in Fact Sheet No. 7 and on the OHCHR website.

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<sup>9</sup> To come into effect, the procedure under article 77 on individual communications requires a minimum of 10 State parties to make the requisite declaration.

<sup>10</sup> The Optional Protocol was adopted by the General Assembly in December 2008 and opened for signature in 2009. It requires ten State parties to enter into force.

<sup>11</sup> The Optional Protocol on a communications procedure was adopted by the General Assembly in December 2011. It will be open for signature in 2012. It, too, requires ten State parties to enter into force.

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## E. Inquiries

Five treaty bodies—the Committee against Torture, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of Persons with Disabilities, the Committee on Enforced Disappearances, and the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child (when the relevant optional protocols enter into force)—may initiate inquiries if they receive reliable information containing well-founded indications of serious, grave or systematic violations of the conventions in a State party.

### *Which States may be subject to inquiries?*

With the exception of inquiries by the Committee on Enforced Disappearances, for which State parties automatically accept the Committee's competence when they ratify the Convention, inquiries may be undertaken by the other committees only with respect to State parties that have separately and additionally recognized their competence in this regard. At the time of signature, ratification or accession, State parties to the Convention against Torture may opt out by making a declaration under article 28. State parties to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women may similarly exclude the competence of the Committee by making a declaration under article 10. State parties to the Optional Protocol to the Convention on the Rights of Persons with Disabilities may also opt out by making a declaration under article 8 at the time of signature, ratification or accession. Any State which opts out of the procedure in this way may decide to accept it at a later stage.

### *Inquiry procedure*

The Convention against Torture (art. 20), the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (arts. 8–9), the International Convention for the Protection of All Persons from Enforced Disappearance (art. 33), the Optional Protocols to the Convention on the Rights of Persons with Disabilities (arts. 6–7), to the International Covenant on Economic, Social and Cultural Rights (art. 11) and to the Convention on the Rights of the Child (art. 13) set out the following basic procedure for their committees to undertake urgent inquiries:

1. The procedure may be initiated if a committee receives reliable information indicating that the rights contained in the treaty are being systematically violated by a State party. For inquiries under the Convention against Torture, the information should contain well-founded indications that torture is being systematically practised in the territory of the State

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party; for inquiries under the Convention on the Elimination of All Forms of Discrimination against Women, the information should indicate grave or systematic violations of the rights set forth in the Convention by a State party;

2. A committee first invites the State party to cooperate in the examination of the information by submitting observations;
3. A committee may, on the basis of the State party's observations and other relevant information available to it, decide to designate one or more of its members to make a confidential inquiry and report to the committee urgently. The procedures under the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities specifically authorize a visit to the territory of the State concerned, if warranted and with the State's consent; visits are also envisaged by the procedure under the Convention against Torture;
4. The findings of the member(s) are then examined by the committee and transmitted to the State party together with any appropriate comments or suggestions/recommendations;
5. The procedures under the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities set a six-month deadline for the State party to respond with its own observations on the Committee's findings, comments and recommendations and to inform the Committee of the measures taken in response to the inquiry if the Committee invites it to do so;
6. A committee may decide, in consultation with the State party, to include a summary account of the results of the proceedings in its annual report. If the State party agrees, the full inquiry and the State party's response may be made public;
7. The cooperation of the State party must be sought throughout the proceedings.

## **F. Urgent action and urgent appeals to the General Assembly under the International Convention for the Protection of All Persons from Enforced Disappearance**

As briefly mentioned in chapter I, the International Convention for the Protection of All Persons from Enforced Disappearance enables its Committee to take urgent action. Under article 30, the Committee may receive urgent

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requests from relatives of a disappeared person or their legal representatives, their counsel or any person authorized by them, as well as by any other person having a legitimate interest, that a disappeared person should be sought and found. The Committee will transmit the communication to the State party concerned, requesting it to provide observations and comments within a time limit set by the Committee.

Moreover, if the violations amount to widespread or systematic acts (i.e., crimes against humanity), the Committee may, after seeking from the State party concerned all relevant information on the situation, bring the matter to the urgent attention of the United Nations General Assembly through the Secretary-General under article 34.

### **G. Early warning and urgent action by the Committee on the Elimination of All Forms of Racial Discrimination**

Although not provided for in the Convention, in 1993 the Committee on the Elimination of All Forms of Racial Discrimination established an early warning and urgent action procedure for the prevention of serious violations of its Convention. Under this procedure, the Committee may seek information from State parties and may adopt a decision expressing specific concerns, addressed not only to the States in question, but also to the Human Rights Council and its special procedures, the Special Adviser of the Secretary-General on the Prevention of Genocide, as well as the High Commissioner for Human Rights and the Secretary-General, with a recommendation that the matter should be brought to the attention of the Security Council. The Committee can take action under the procedure on its own initiative or on the basis of information submitted by third parties.

### **H. Optional Protocol to the Convention against Torture and the Subcommittee on Prevention of Torture**

The Optional Protocol to the Convention against Torture provides a practical means to assist State parties in meeting their obligations to prevent and combat torture and other forms of ill-treatment by establishing a global system of regular visits to all places where persons are, or may be, deprived of their liberty. Its innovative two-pronged approach relies on an international body, the Subcommittee on Prevention of Torture, as well as on national preventive mechanisms which must be established or designated by each State party. In order for the Subcommittee to fulfil its mandate, it is granted considerable powers under article 14 of the Optional Protocol. Each State party is required to allow visits by the Subcommittee to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its

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consent and acquiescence. The Subcommittee has unrestricted access to all places of detention, their installations and facilities, and to all relevant information relating to the treatment and conditions of detention of persons deprived of their liberty. The Subcommittee conducts private interviews without witnesses. Similar powers are to be granted to the national preventive mechanisms. After a visit, the Subcommittee issues a confidential report with a series of recommendations to the relevant State authorities, with a view to improving the treatment of detainees, including their conditions of detention. The report on a visit is part of the dialogue between the Subcommittee and the authorities of the State party concerned, aimed at preventing torture. The Subcommittee will publish the report whenever it is requested to do so by the State party concerned. Furthermore, the Subcommittee's mandate includes advising and assisting States in the establishment of national preventive mechanisms. The Subcommittee also provides these mechanisms with advice on and assistance in reinforcing their independence and capacities and strengthening domestic safeguards against ill-treatment of persons deprived of their liberty.

*For more information on the Optional Protocol to the Convention against Torture and the Subcommittee on Prevention of Torture, see the OHCHR website.*

## **I. Inter-State communications**

Although this procedure has never been used, five human rights treaties<sup>12</sup> allow their State parties to complain to the relevant treaty body about alleged violations of the treaty by another State party. The Convention against Torture (art. 21), the International Convention for the Protection of All Persons from Enforced Disappearance (art. 32) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (art. 76) set out such a procedure. However, domestic remedies need to be exhausted first and the procedure applies only to State parties that have made a declaration accepting the competence of the relevant committee in this regard. The International Convention on the Elimination of All Forms of Racial Discrimination (arts. 11–13) and the International Covenant on Civil and Political Rights (arts. 41–43) set out a more elaborate procedure for the resolution of such disputes between State parties through the establishment of an ad hoc conciliation commission. This procedure also requires domestic remedies to be exhausted first. It normally applies to all State parties to

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<sup>12</sup> Once the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure enter into force, their respective committees will also be able to entertain State-to-State complaints regarding State parties that have formally accepted this competence under article 10 and article 12, respectively.



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the International Convention on the Elimination of All Forms of Racial Discrimination, but, under the Covenant, it applies only to those State parties that have formally accepted it.

*Resolution of inter-State disputes concerning interpretation or application of a convention*

The Convention on the Elimination of All Forms of Discrimination against Women (art. 29), the International Convention for the Protection of All Persons from Enforced Disappearance (art. 42), the Convention against Torture (art. 30), the International Convention on the Elimination of All Forms of Racial Discrimination (art. 22) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (art. 92) provide for disputes between State parties concerning the interpretation or application of these conventions to be resolved in the first instance by negotiation or, failing that, by arbitration. One of the States involved may refer the dispute to the International Court of Justice if the parties fail to agree on the terms of arbitration within six months. State parties may opt out of this procedure by making a declaration at the time of ratification or accession, in which case, in accordance with the principle of reciprocity, they are barred from bringing cases against other State parties. This procedure has so far been used twice: in a case opposing the Democratic Republic of the Congo and Rwanda<sup>13</sup> and in another opposing Georgia and the Russian Federation<sup>14</sup> before the International Court of Justice.

## **J. General comments**

Each of the treaty bodies publishes its interpretation of the provisions of its respective human rights treaty in the form of “general comments” or “general recommendations”. These cover a wide range of subjects, from the comprehensive interpretation of substantive provisions, such as the right to life or the right to adequate food, to general guidance on the information that should be submitted in State reports relating to specific articles of the treaties. General comments have also dealt with wider, cross-cutting issues, such as the role of national human rights institutions, the rights of persons with disabilities, violence against women and the rights of minorities.

All are available from the OHCHR website ([www.ohchr.org](http://www.ohchr.org)).

<sup>13</sup> See *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006, p. 39, para. 87.

<sup>14</sup> See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Judgment of 1 April 2011.

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## **K. Days of general discussion/thematic debates**

Some treaty bodies hold days of general discussion on a particular theme of concern to them. These discussions are usually open to external participants, such as United Nations partners, delegations from State parties, NGOs and individual experts. Their outcome may lead the treaty body to draft a new general comment.

The Convention on the Rights of the Child provides for its Committee to recommend to the General Assembly that it request the Secretary-General to undertake on its behalf studies on specific issues (art. 45 (c)). So far the Committee has made two such requests: on children and armed conflict and on violence against children. The Secretary-General has issued related studies and the General Assembly subsequently established two mechanisms: the Special Representative of the Secretary-General for children and armed conflict; and the Special Representative of the Secretary-General on Violence against Children.

## **L. Meetings of State parties and meetings with State parties**

Each treaty (except the International Covenant on Economic, Social and Cultural Rights) provides for a formal meeting of State parties to be held every two years, usually at United Nations Headquarters, in order to elect half the members of the treaty body.

The Convention on the Rights of Persons with Disabilities is the first treaty that provides explicitly for such meetings to be held for other purposes, too.

The Convention on the Rights of the Child (art. 50), the Convention on the Rights of Persons with Disabilities (art. 47) and the International Convention for the Protection of All Persons from Enforced Disappearance (art. 44) provide for a conference of State parties to be convened to vote on any proposed amendments to their provisions.

Most committees also hold regular informal meetings with the State parties to their respective treaties to discuss matters of common concern related to their work and the implementation of the treaties.

## **M. Coordination among the treaty bodies**

### *Annual meeting of chairpersons*

The General Assembly recognized the need for coordination among the human rights treaty bodies in 1983, when it called on their chairpersons to meet in order to discuss how to enhance their work. The first such meeting

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took place in 1984. Since 1995, the chairpersons of the treaty bodies have met annually.

The meeting provides a forum for the chairpersons of the ten human rights treaty bodies to discuss their work and consider ways to make the treaty body system as a whole more effective. Issues addressed at these meetings have included the streamlining and overall improvement of human rights reporting procedures, harmonization and efficiency of the committees' methods of work, follow-up to world conferences and financial issues.

Informal consultations with State parties as well as United Nations partners, NHRIs and NGOs have also been a feature of these meetings. Since 1999, the chairpersons have held meetings with special procedures mandate holders (with either thematic or country mandates). Their discussions have focused on technical questions, such as increasing the exchange of information and best practices between treaty bodies and special procedures, cross-referencing and joint follow-up to their respective recommendations.

In 2010, the meeting was held for the first time outside of Geneva, in Brussels. The idea was to bring the treaty bodies closer to the level where they are implemented and to raise awareness at the regional level of their work so as to strengthen linkages and synergies between international and regional human rights mechanisms and institutions. It was agreed to hold the meeting in a different region every other year.

### *The inter-committee meeting*

Between 2002 and 2011, the annual meeting of chairpersons was complemented by an "inter-committee meeting", which included the chairpersons and two additional members from each committee. The first such meeting focused on the harmonization of working methods. The State parties welcomed the institution of the inter-committee meeting. The stronger representation of the committees allowed for more detailed discussion of recommendations on working methods than had been possible at the meetings of chairpersons.

One of the chairs of the treaty bodies usually chairs both the inter-committee meeting and the meeting of chairpersons, on a rotating basis.

Following a recommendation of the meeting of chairpersons in 2010, a working group of the inter-committee meeting on follow-up was established, composed of both the rapporteurs on follow-up to concluding observations and the rapporteurs on follow-up to individual communications of each treaty body, if applicable, or the members responsible for follow-up activities. The meeting of chairpersons further recommended that other thematic working

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groups should be established and requested the Secretariat to organize their meetings within available resources.

In June 2011, the meeting of chairpersons agreed that the inter-committee meeting's format should be changed. For instance, ad hoc thematic working groups could be established at the request of the chairpersons. Such working groups could discuss issues of common interest, including the harmonization of treaty body jurisprudence and working methods.

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### **III. DEVELOPMENT OF THE UNITED NATIONS HUMAN RIGHTS TREATY SYSTEM**

Although the Universal Declaration of Human Rights was drafted over 60 years ago, and the drafting of the International Bill of Human Rights (the Universal Declaration plus the two Covenants) was completed by 1966, the international human rights treaty system has continued to grow with the adoption of new instruments and the creation of new treaty bodies. The broad range of instruments and bodies has ensured greater promotion and protection of human rights in a range of specific areas of concern to the international community, but has also presented the system with an important challenge: how best to ensure that the different elements of the expanding system work effectively together?

#### **A. The expansion of the human rights treaty system and the need for strengthening it**

Since 2004, the human rights treaty body system has almost doubled in size with the addition of four new treaty bodies and three new optional protocols for individual complaints, of which one is already in force. There have been increases in the membership of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families since the beginning of 2010 and of the Committee on the Rights of Persons with Disabilities and the Subcommittee on Prevention of Torture from January 2011, bringing the total number of treaty body experts to 172 (up from 125 at the end of 2009). Meeting time has also been on the rise. Among the most recent developments is the entry into force of the International Convention for the Protection of All Persons from Enforced Disappearance on 23 December 2010. In addition, and also as a positive side effect of the new universal periodic review (UPR), States have increased ratification and reporting under international human rights treaties. For instance, in 2010, the nine human rights treaty bodies with a reporting procedure covered over 130 country reviews and examined over 100 individual complaints.

This growth has prompted the United Nations High Commissioner for Human Rights to request all stakeholders to rethink the future of treaty bodies and to come up with innovative and creative ideas to strengthen the system.

The treaty bodies have been successful in pursuing their mandates, in particular by engaging States in open and frank discussion on the problems of realizing human rights through the reporting process. Nevertheless, until fairly recently, each treaty body tended to approach its work independently of the others, even though in many respects their activities overlap. Because the

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committees were created separately under their respective treaties, they have been free to develop their own procedures and practices and, although there are broad similarities in the way in which they function, the considerable variations have sometimes led to confusion and lack of coherence.

The treaty bodies have sought to become more effective by streamlining and harmonizing their working methods and practices for many years, including through the inter-committee meetings. At the same time, it is recognized that some variations in practice are justified, or even required in strict accordance with the relevant treaty.

*The role of the human rights treaty system in strengthening national human rights protection systems*

The human rights treaties are legal instruments that set international standards for promoting and protecting human rights worldwide. By ratifying the treaties, States subscribe to these standards and commit themselves to implementing the rights at the national level. The treaty bodies encourage and support States in this effort. Such an approach may seem focused on the international level; yet, clearly, it is at the national level that the promotion and protection of human rights matter most so that they may be enjoyed by all men, women and children in each country.

The treaty bodies have an important role in supporting efforts to strengthen the protection of human rights at the national level. Firstly, reporting to the treaty bodies is itself an important part of the development of a national human rights protection system. Secondly, the output of the treaty bodies (including the mandate of the Subcommittee on Prevention of Torture on the ground) provides States with practical advice and assistance on how best to implement the treaties.

Importance of the reporting process at the national level

Efforts to encourage States to take a holistic approach to reporting by looking at the complete range of obligations to which they have subscribed are not aimed solely at making it easier for States. Although the reports are required by an international body, the process to produce them is very important nationally. In meeting their reporting obligations under the treaties, States engage in a process of self-assessment to gauge the extent to which they effectively protect human rights. Gathering information on national implementation helps States plan and put in place human rights-based programmes. Many States are engaged in parallel processes of treaty reporting, formulating a national human rights action plan and implementing national development plans. Linking these processes can ensure that human rights are at the

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heart of national strategic planning, thereby guaranteeing more effective implementation of human rights standards nationally. The reporting process, from the preparation of the report, through the international process of its consideration, to the national response to the treaty body's recommendations, can also stimulate national debate on human rights within civil society and create new human rights constituencies.

### Practical advice and assistance from the treaty bodies

The output of the treaty bodies can provide States, as well as United Nations country teams and donors, with useful guidance on where more action is required to strengthen the protection of human rights. Once a State party's reports have been produced and considered by the treaty bodies, practical and targeted concluding observations and recommendations provide precise advice on specific areas which may require attention. The opinions expressed by the committees in response to individual complaints are another source of specific guidance, focused on particular problems that need action. The general comments of the treaty bodies provide additional information of a more elaborate nature on how the treaties should be implemented.

Such output can have a significant impact on a State, helping to ensure more effective implementation of the treaties through, for example, the proposal of new legislation or the provision of better human rights training to State officials. The impact depends not only on the Government, but also on parliament and the judiciary as well as on others that can influence the way in which human rights are protected and promoted within the country, such as national and regional parliaments, NHRIs, judges and lawyers, as well as civil society.

The impact of the treaty body system on strengthening the protection and promotion of human rights at the national level can further be illustrated by the preventive and operative mandate of the Subcommittee on Prevention of Torture, as well as the objectives of the Optional Protocol to the Convention against Torture. The Subcommittee's preventive field visits directly assist State parties, providing them with observations on the situation on the ground and recommendations for the protection of persons deprived of their liberty and the prevention of torture. Furthermore, the Subcommittee contributes to national institution-building, i.e., by advising and assisting State parties in the establishment of independent national preventive mechanisms. Such national mechanisms are themselves mandated to regularly examine the treatment of persons deprived of their liberty in the country, and to make recommendations to the State authorities to improve the conditions of detention.

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## **B. The role and interaction of civil society and national human rights institutions with the treaty body system**

Civil society is made up of organizations and individuals that voluntarily engage in public participation and action around shared interests, purposes or values that are compatible with the goals of the United Nations. A number of such civil society organizations concerned with the promotion and protection of universal human rights play an important role in providing the treaty bodies with reliable independent information about situations and developments in State parties, as well as in monitoring the implementation of treaty bodies' recommendations. Civil society actors involved and interacting with treaty bodies may be: human rights defenders; human rights organizations (NGOs, associations, victim groups); coalitions and networks (women's rights, children's rights, environmental rights); community-based groups (indigenous peoples, minorities); unions (trade unions as well as professional associations such as journalist associations, bar associations, magistrate associations, student unions); social movements (peace movements, student movements, pro-democracy movements); relatives of victims; and academic institutions.

National human rights institutions are institutions created by States to promote and protect human rights, and are an important part of any national human rights protection system. They act independently from government control. A set of international standards, known as the Paris Principles,<sup>15</sup> has been agreed to guide their independence and integrity.

Civil society as well as national human rights institutions contribute to the review of reports of State parties by submitting their own reports and briefing committees on the status of human rights protection in the State party whose report is under review. They contribute to the discussion of lists of issues, lists of issues prior to reporting, as well as to the constructive dialogue with the State party concerned, and to the adoption of recommendations. Their submissions enable committees to put the human rights situation in the State party in context. These organizations also follow up the national implementation of the recommendations of treaty bodies and can report on its success or failure. Their contributions to days of general discussions and general comments are also relevant.

*More information on the role of NGOs in the work of specific committees can be found in Working with the United Nations Human Rights Programme: A Handbook for Civil Society. Additional information on the interaction between NHRIs and treaty bodies is also available in National*

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<sup>15</sup> General Assembly resolution 48/134.



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Human Rights Institutions: History, Principles, Roles and Responsibilities, *Professional Training Series No. 4/Rev.1* (United Nations publication, Sales N<sup>o</sup>. E.09.XIV.4) and on the OHCHR website at:

<http://nhri.ohchr.org/EN/IHRS/TreatyBodies/Pages/default.aspx>.

### **C. The contribution of the universal periodic review to the work of the treaty bodies**

The universal periodic review (UPR) is the inter-State cooperative mechanism, established by the General Assembly in 2006 as one of the procedures of the Human Rights Council, to review the human rights performance of all States.

The mechanism is based on an interactive dialogue between the State under review and the member and observer States of the Council.

It operates on a four-and-a-half-year cycle and is composed of several stages, including the preparation of the documents that reviews are based on, the review itself, and follow-up to the conclusions and recommendations. The second and subsequent cycles will focus especially on the implementation of the recommendations that States have accepted in the previous cycle and on further developments in their human rights situation. Civil society organizations, NHRIs and United Nations agencies actively participate in the process.

This review and the treaty bodies complement each other. The review has been extremely useful in bringing to the attention of State parties the need to submit their reports to the committees regularly and to implement their recommendations. On their side the treaty bodies also remind State parties of the need to implement the recommendations of the universal periodic review.

### **D. The contribution of the special procedures to the work of the treaty bodies**

"Special procedures" is the name given to the mechanisms established initially by the Commission on Human Rights and assumed since 2006 by the Human Rights Council to examine, monitor, advise and publicly report on human rights situations in specific countries or territories (country mandates), or on major phenomena of human rights violations worldwide (thematic mandates). As of February 2012, there are 45 special procedures (35 thematic mandates and 10 country mandates). Special procedure mandate holders are either individuals (known as "special rapporteurs" or "independent experts") or working groups with five members, one from each region. They serve in their personal capacity and receive no remuneration. Their methods

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of work include: acting on human rights concerns either in individual cases or on more general issues through direct communications with Governments; undertaking fact-finding missions to countries and issuing reports with recommendations; preparing thematic studies that provide information on the situation, clarify relevant norms and standards and provide guidance on their implementation; and raising public awareness through a variety of promotional activities on issues within their mandates.

As a Charter-based mechanism of protection of human rights, special procedures unlike the treaty bodies can be activated even if a State has not ratified any relevant instrument or treaty, and it is not necessary to have exhausted domestic remedies to access the special procedures.

Special procedures and treaty bodies complement each other. They regularly share information and follow up on their respective recommendations: concerns raised by special procedures are taken into account by the treaty bodies and vice versa. They may also issue joint statements on key issues of international concern, and they sometimes hold joint meetings to discuss ways of improving and coordinating their work.

## **E. More information about the United Nations human rights treaty system**

For more information about the treaties and the treaty bodies, visit the OHCHR website and click on “human rights bodies”. The site contains information on the State reporting process, including the reporting status by country. Treaty body documents, including State party reports and concluding observations, can be downloaded from the site.

OHCHR has published the following relevant fact sheets:

*Combating Torture (No. 4);*

*Enforced or Involuntary Disappearances (No. 6/Rev.3);*

*Complaint Procedures (No. 7);*

*The Rights of the Child (No. 10);*

*The Committee on the Elimination of Racial Discrimination (No. 12);*

*Civil and Political Rights: The Human Rights Committee (No. 15);*

*The Committee on Economic, Social and Cultural Rights (No. 16);*

*The Committee against Torture (No. 17);*

*Discrimination against Women: The Convention and the Committee (No. 22); and*

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*The International Convention on Migrant Workers and its Committee  
(No. 24/Rev. 1).*

These fact sheets are available free of charge from the OHCHR publications desk, or online at [www.ohchr.org](http://www.ohchr.org). Please note that some are being updated.

### **Newsletter**

The Newsletter of the Human Rights Treaties Division has been a quarterly since 2008. It aims to provide more in-depth and specific information on the work of the treaty bodies and includes interviews, analysis of decisions, activities and reports from OHCHR field presences.<sup>16</sup>

#### **E-mail notification**

If you are interested in the work of the treaty bodies and would like to be kept informed about their activities, why not subscribe to the free e-mail updates from the OHCHR Civil Society Section? You will receive regular notification by e-mail of treaty body recommendations, including concluding observations, general comments, decisions on individual complaints and other activities. To subscribe, visit [www.ohchr.org/EN/AboutUs/Pages/CivilSociety.aspx](http://www.ohchr.org/EN/AboutUs/Pages/CivilSociety.aspx).

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<sup>16</sup> The Newsletter is available from the OHCHR website:

[http://www2.ohchr.org/english/bodies/treaty/newsletter\\_treaty\\_bodies.htm](http://www2.ohchr.org/english/bodies/treaty/newsletter_treaty_bodies.htm)  
(accessed 28 February 2012).

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## **Annex I**

### **Glossary of technical terms related to the treaty bodies**

#### **Backlog**

Despite the problems of late and non-reporting by State parties, some treaty bodies have found it difficult to keep up with the high number of reports that they have to consider each year. The resulting backlog means up to two years may go by between the submission of a report by a State party and its examination by the committee. The need to request updated information is one reason for the practice of issuing lists of questions (see below). More efficient working methods can reduce the backlog, and some committees have proposed innovative approaches. The Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women, for example, occasionally meet in two parallel chambers.

#### **Bureau**

The bureau usually consists of the chair, the vice-chairs, the rapporteur or any other designated member of a committee, and meets to decide procedural and administrative matters related to that committee's work.

#### **Chair**

Each treaty body elects one of its members to act as chair for a term of two years. He or she chairs each meeting in accordance with the agreed rules of procedure. The chairs of all the treaty bodies meet once a year to coordinate the activities of the treaty bodies.

#### **Common core document**

A document submitted by a State party to the Secretary-General containing information of a general nature about the country which is relevant to all the treaties, such as information on land and population, on the political structure, on the general legal framework within which human rights are protected in the State, and on non-discrimination, equality and effective remedies. It constitutes the common initial part of all the State reports to the treaty bodies. The core document was introduced in 1991 by the meeting of chairpersons as a way of reducing some of the repetition in the reports. The guidelines for this document were reviewed in 2006 (HRI/GEN/2/Rev.6).

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## **Concluding comments**

See “concluding observations”.

## **Concluding observations**

The observations and recommendations issued by a treaty body after it has considered a State party’s report. Concluding observations refer both to the positive aspects of a State’s implementation of the treaty and to areas of concern, where the treaty body recommends that further action needs to be taken by the State. The treaty bodies are committed to issuing concluding observations that are concrete, focused and implementable, and are paying increasing attention to measures to ensure effective follow-up to their concluding observations.

## **Consideration of a country situation in the absence of a report**

See “review procedure”.

## **Constructive dialogue**

The practice, adopted by all treaty bodies, of inviting State parties to send a delegation to the session at which their report will be considered in order to enable them to respond to members’ questions and provide additional information on their efforts to implement the provisions of the relevant treaty. The notion of constructive dialogue emphasizes the fact that the treaty bodies are not judicial bodies (even if some of their functions are quasi-judicial), but are created to review the implementation of the treaties.

## **Country rapporteur**

Most committees appoint one or two members as country rapporteurs for each State party report under consideration. The country rapporteur usually takes the lead in drafting the list of issues, in putting questions to the delegation during the session, and in drafting concluding observations to be discussed and adopted by the committee.

## **Country task force**

The Human Rights Committee has assigned the preparatory work for the consideration of reports, previously done in its pre-sessional working group, to country report task forces, which meet during the plenary session. The country report task force consists of four to six members, nominated by the chair and one of whom is the country rapporteur with overall responsibility for drafting the list of issues.

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## **Declaration**

A State may choose, or be required, to make a declaration concerning a treaty to which it has become a party. There are several types of declarations:

- **Interpretative declarations**

A State may make a declaration about its understanding of a matter contained in, or the interpretation of, a particular provision in a treaty. Unlike reservations, such declarations do not purport to exclude or modify the legal effects of a treaty. The purpose is merely to clarify the State's position as to the meaning of certain provisions or of the entire treaty.

- **Optional and mandatory declarations**

Treaties may provide for States to make optional and/or mandatory declarations. These declarations are legally binding on the declarants. Thus, for example, under article 41 of the International Covenant on Civil and Political Rights, States may make an optional declaration that they accept the Human Rights Committee's competence to consider inter-State complaints. Similarly, State parties to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict are required, under its article 3 (2), to make a binding declaration setting out the minimum age at which they will permit voluntary recruitment into their national armed forces and a description of the safeguards that they have adopted to ensure that such recruitment is not forced or coerced.

## **Derogation**

A derogation is a measure adopted by a State party to partially suspend the application of one or more provisions of a treaty, at least temporarily. Some human rights treaties allow State parties, in a public emergency which threatens the life of the nation, to derogate exceptionally and temporarily from a number of rights to the extent strictly required by the situation. The State party, however, may not derogate from certain specific rights and may not take discriminatory measures. States are generally obliged to inform other State parties of such derogations and give reasons for the derogations, and to set a date on which the derogation will expire. (See the Human Rights Committee's general comment No. 29 (2001).)

## **Follow-up procedures**

The procedures put in place to ensure that State parties act on the recommendations contained in the concluding observations of the treaty bodies or their

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decisions on cases brought under the complaints procedures. The Committee against Torture, the Committee on the Elimination of Racial Discrimination, the Human Rights Committee and the Committee on the Elimination of Discrimination against Women have adopted formal follow-up procedures, and all committees require States to address follow-up in their periodic reports. Parliaments, the judiciary, NHRIs, NGOs and civil society, all have an important role to play in follow-up.

### **General comment**

A treaty body's interpretation of human rights treaty provisions, thematic issues or its methods of work. General comments often seek to clarify the reporting duties of State parties with respect to certain provisions and suggest approaches to implementing treaty provisions. Also called "general recommendation" (Committee on the Elimination of Racial Discrimination and Committee on the Elimination of Discrimination against Women).

### **General recommendation**

See "general comment".

### **Human Rights Treaties Division**

Within OHCHR, the Human Rights Treaties Division provides secretariat support to all the treaty bodies and the United Nations Voluntary Fund for Victims of Torture. It is based in Palais Wilson, Geneva.

### **Individual communication**

See "individual complaint".

### **Individual complaint**

A formal complaint, from an individual who claims that her or his rights under one of the treaties have been violated by a State party, which most of the treaty bodies are competent to consider. The right of the treaty bodies to consider individual complaints must be expressly conceded by the State party concerned in one of three ways:

- (a) By making a declaration under the relevant article of the treaty (this procedure applies to the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families);

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- (b) By ratifying or acceding to the treaty itself (this procedure applies to the International Convention for the Protection of All Persons from Enforced Disappearance; or
  - (c) By ratifying or acceding to the relevant optional protocol to a treaty providing for a right of individual complaint (this procedure applies to the two International Covenants, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities).

## **Late reporting**

Each treaty envisages regular submission of reports by its State parties; in practice, many States find it difficult to keep up with their reporting obligations in strict conformity with the periodicity foreseen in the treaties to which they are parties. Late reporting has been identified as one of the main challenges facing the treaty reporting system and the treaty bodies have been seeking ways to make it easier for States to report, for instance through streamlining the reporting process.

*Information on the reporting status of the State parties to each treaty is available from the treaty body database on the OHCHR website.*

## **List of issues and/or questions**

A list of issues or questions, formulated by a treaty body on the basis of a State party report and other information available to it (information from United Nations specialized agencies, NHRIs, NGOs, etc.), which is transmitted to the State party in advance of the session at which the treaty body will consider the report. The list of issues provides the framework for a constructive dialogue with the State party's delegation. Some committees encourage State parties to submit written responses beforehand, allowing the dialogue to move more quickly to specificities. The list of issues provides a source of up-to-date information for a committee with regard to a State whose report may have been awaiting consideration for as much as two years.

## **List of issues prior to reporting**

A list of issues submitted by the Committee against Torture or the Human Rights Committee to a State party preparing to submit its periodic report so as to facilitate this preparation. The State party's response to this list of issues constitutes its report to one of these two treaty bodies.



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## **List of themes**

A list of themes or topics for which no responses are required, intended to guide and focus the dialogue between a State party's delegation and the Committee on the Elimination of Racial Discrimination during the consideration of the State party's report.

## **National human rights institutions**

Many countries have created national human rights institutions (NHRIs) to promote and protect human rights. Such institutions are increasingly recognized as an important part of any national human rights protection system, provided their independence from government control can be assured. A set of international standards, known as the Paris Principles, has been agreed by which to gauge the independence and integrity of NHRIs.

*For more information on NHRIs, see National Human Rights Institutions: History, Principles, Roles and Responsibilities, Professional Training Series No. 4/Rev.1 (United Nations publication, Sales No. E.09.XIV.4).*

## **Non-governmental organizations**

Non-governmental organizations (NGOs) may be involved in promoting human rights, either generally or with a focus on a specific issue. A framework exists for the participation of NGOs in many United Nations human rights mechanisms, such as the granting of consultative status with the Economic and Social Council, which allows them to participate in the Human Rights Council. Both international and national NGOs follow the work of the treaty bodies closely and most treaty bodies provide them with an opportunity to contribute to the reporting process through the submission, for example, of additional information relating to the implementation of the treaties in a particular country (sometimes referred to as "alternative" or "parallel" reports). There are differences in the way the treaty bodies treat this information.

International and national NGOs also have an important role in following up the implementation of the treaty bodies' recommendations contained in their concluding observations at the national level and in fostering national public debate on human rights implementation when the report is drafted and afterwards. NGOs have also made an important contribution to promoting the ratification of the human rights treaties worldwide.

## **Non-reporting**

Despite having freely assumed the legal obligations attached to the human rights treaties that they have ratified, some States fail to submit their reports

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to the treaty bodies. There may be many reasons why States fail to report, ranging from war and civil strife to limited resources. Technical assistance is available from OHCHR to assist States in meeting their reporting obligations. The treaty bodies have also adopted procedures to ensure that the implementation of the treaties by non-reporting States parties is reviewed, if the latter have not responded to a treaty body's requests for information. In particular, committees are prepared to consider the situation in a country in the absence of a report.

*Information on the reporting status of the State parties to each treaty is available from the treaty body database on the OHCHR website or in HRI/GEN/4, which is updated annually. The website also provides information on the technical assistance available to State parties.*

### **Optional protocol**

An international instrument which is linked to a principal instrument and imposes additional legal obligations on States that choose to accept them. Optional protocols may be drafted at the same time as the main treaty or after the main treaty has entered into force. Optional protocols to the human rights treaties have been adopted for a number of reasons: to allow State parties to sign up to additional obligations relating to international monitoring of implementation (first Optional Protocol to the International Covenant on Civil and Political Rights, optional protocols to the Convention on the Elimination of All Forms of Discrimination against Women, to the Convention against Torture, to the Convention on the Rights of Persons with Disabilities, and to the International Covenant on Economic, Social and Cultural Rights, and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure); to allow States to assume additional obligations that were not in the main treaty (Second Optional Protocol to the International Covenant on Civil and Political Rights); or to address particular problems in more detail (the first two optional protocols to the Convention on the Rights of the Child).

### **Periodicity**

The timetable for the submission of initial and periodic reports by State parties to the treaty bodies is set out in each treaty or decided by the individual committees in accordance with the terms of the treaty. An initial report is required within a fixed period after the treaty enters into force for the State concerned; periodic reports are then required at regular intervals. The periodicity differs from treaty to treaty. (See table in chap. II, sect. C.)

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## **Petitions**

A collective term embracing the various procedures for bringing complaints before treaty bodies. Petitions may consist of complaints from individuals alleging violations of a treaty by a State party or from State parties alleging violations of a treaty by another State party (inter-State complaints).

## **Pre-sessional working group**

A working group convened by some treaty bodies before or after each plenary session in order to plan their work for future sessions. The work of the pre-sessional working groups differs from committee to committee: some draft lists of issues and questions to be submitted to each State party before its report is considered; some committees with competence to consider individual complaints use their working groups to make initial recommendations on cases and other matters related to the complaints procedures. Pre-sessional working groups usually meet in closed session.

## **Recommendation**

A formal recommendation or decision issued by a treaty body. The term has been used inconsistently to describe formal decisions on specific matters or resolutions of a more general nature, such as those resulting from a day of general discussion. Concluding observations contain specific recommendations and the term "treaty body recommendation" is sometimes used synonymously with "concluding observation". The Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women also refer to their general comments as "general recommendations".

## **Reporting guidelines for State parties**

Written guidelines produced for State parties by each treaty body on the form and content of the reports that States are obliged to submit under the relevant treaty. Some committees provide detailed guidance article by article, whereas others give more general guidance (see HRI/GEN/2/Rev.6).

## **Reservation**

A reservation is a statement, however phrased or named, made by a State by which it purports to exclude or alter the legal effect of certain provisions of a treaty in their application to that State. A reservation may enable a State to participate in a multilateral treaty in which it would otherwise be unable or unwilling to do so. States can make reservations to a treaty when they sign,

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ratify, accept, approve or accede to it. When a State makes a reservation upon signing, it must confirm the reservation upon ratification, acceptance or approval.

Reservations are governed by the Vienna Convention on the Law of Treaties, and cannot be contrary to the object and purpose of the treaty. Consequently, when signing, ratifying, accepting, approving or acceding to a treaty, States may make a reservation unless (a) the reservation is prohibited by the treaty; or (b) the treaty provides that only certain reservations may be made and these do not include the reservation in question. Other State parties may lodge objections to a State party's reservations. Reservations may be withdrawn completely or partially by the State party at any time.

### **Review procedure**

A procedure by which a treaty body will consider the situation in a country in the absence of a report from the State party. The procedure is used if a report is long overdue and the State party has not responded to the treaty body's reminders. In many cases, State parties submit their reports to avoid the review procedure; in others, they send a delegation to the treaty body's session and answer questions from the treaty body even though they have not been able to submit a report. The review procedure was first adopted by the Committee on the Elimination of Racial Discrimination in 1991. Other committees use the expression "consideration of country situation in the absence of a State report". Some committees forward a list of issues to the State party, even though there is no report. Most committees produce concluding observations at the end of the process, although these may be kept confidential temporarily should the State party wish to submit its report.

### **Rules of procedure**

The formal rules adopted by a treaty body to govern the way in which it undertakes its business. With the exception of the Committee on Economic, Social and Cultural Rights, committees are empowered by their respective treaties to adopt their own rules of procedure. These usually cover such matters as the election of officers and the procedures for adopting decisions especially if no consensus can be reached. Rules of procedure are related to, but distinct from, working methods.

### **Secretary/secretariat**

Each treaty requires the Secretary-General of the United Nations to provide secretariat support to its treaty body. Every treaty body has a secretariat, consisting of a secretary and other international civil servants, based within

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the United Nations Secretariat, who manage the agenda of the committee and coordinate its programme of work. The secretariats of all treaty bodies are based in Geneva at OHCHR.

## **Specialized agencies, funds and programmes**

The various specialized agencies, funds and programmes of the United Nations system that carry out much of the work of the United Nations, including promoting and protecting human rights. All treaty bodies permit United Nations agencies to provide additional country information in the context of the consideration of a particular State report. Some specialized agencies also provide technical assistance to States, both in the implementation of treaty obligations and in the writing of reports for the treaty bodies. Some of the United Nations specialized agencies, funds and programmes involved in the human rights treaty system are: the Food and Agriculture Organization of the United Nations, the International Labour Organization, the Office for the Coordination of Humanitarian Affairs, the Joint United Nations Programme on HIV/AIDS, the United Nations Development Programme, the United Nations Educational, Scientific and Cultural Organization, the United Nations Population Fund, the United Nations Human Settlements Programme, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund, the United Nations Entity for Gender Equality and the Empowerment of Women, and the World Health Organization. United Nations country teams also participate increasingly in the work of human rights treaty bodies.

## **State party report**

The report that each State party to a human rights treaty is required, under the provisions of that treaty, to submit regularly to the treaty body, indicating the measures it has adopted to implement the treaty and the difficulties it has encountered. All treaties require a comprehensive initial report within a fixed time after ratification and, with the exception of the International Convention for the Protection of All Persons from Enforced Disappearance, also subsequent periodic reports at regular intervals.

## **Targeted or focused report**

See "treaty-specific report".

## **Treaty, convention, covenant or instrument**

Legally, there is no difference between a treaty, a convention or a covenant. All are international legal instruments which, in international law, legally

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bind those States that choose to accept the obligations contained in them by becoming a party in accordance with the final clauses of these instruments.

### **Treaty body or committee**

A committee of independent experts appointed to review the implementation by State parties of a core international human rights treaty. The treaties use the term “committee” throughout, but the committees are widely known as “treaty bodies” because they are created in accordance with the provisions of the treaty which they oversee. In many important respects, they are independent of the United Nations system, although they receive support from the United Nations Secretariat and report to the General Assembly. Sometimes also called “treaty-monitoring body”.

### **Treaty-specific report/document**

The common core document is submitted to a treaty body in tandem with a targeted treaty-specific document, focusing on issues related specifically to the treaty concerned. Although often referred to as a “treaty-specific report”, the report to each treaty body in fact consist of a common document, which is the same for all committees, and a treaty-specific document for each specific treaty body. The two documents, read together, constitute the State party’s report.

### **Working methods**

The procedures and practices developed by each treaty body to facilitate its work. Such practices are not always formally adopted in the rules of procedure. Each treaty body’s working methods change in response to the workload and other factors. In recent years, there has been a move, through the annual meeting of chairpersons, to streamline and harmonize working methods, especially if the different approaches of the committees cause confusion and inconsistency.

### **Written response/replies to list of issues**

A State party’s written replies to a treaty body’s list of issues and questions submitted before the session at which its report will be considered. Written responses to a list of issues supplement the State party report or bring it up to date.

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## Annex II

### How a State becomes a party to a treaty

This annex explains the process by which a State binds itself by the provisions of a treaty in international law as a State party. Further details may be obtained from the United Nations Office of Legal Affairs (<http://untreaty.un.org>).

#### State party

A State party is a State which has agreed to be bound by a treaty under international law. The State must have expressed its consent to be bound by the treaty through an act of **ratification, acceptance, approval or accession**, and the **date of entry into force** of the treaty for that particular State must have passed. Some treaties, such as the human rights treaties described in this Fact Sheet, are open only to States, whereas others are also open to other entities with treaty-making capacity. Both Covenants and the International Convention on the Elimination of All Forms of Racial Discrimination are open to signature and ratification by "any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations". The other core human rights treaties are open to all States. The optional protocols are all restricted to the State parties to the parent treaty, except the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, to which any State may accede.

#### How does a State become a party to a treaty?

Each human rights treaty contains provisions setting out, first, how States must proceed to bind themselves by the substantive provisions of the treaty and, second, when the treaty will enter into force.

In order to become a party to a multilateral treaty, a State must demonstrate, through a concrete act, its willingness to abide by the legal rights and obligations contained in the treaty. In other words, it must express its consent to be bound by it. In accordance with the final clauses of the relevant treaty, a State can do this either through **signature** followed by **ratification, acceptance or approval**, or through **accession**. Under certain circumstances, a State may also bind itself through **succession**.

Many treaties require a minimum number of State parties before they can enter into force in international law.

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## Signature

Multilateral treaties, like the human rights treaties, usually provide for signature subject to **ratification, acceptance or approval**. In such cases, the act of signing does not impose legal obligations on the State. However, signature does indicate the State's intention to take steps to be bound by the treaty at a later date. In other words, signature is a preparatory step on the way to ratification. Signature also creates an obligation to refrain in good faith from acts that would defeat the object and purpose of the treaty.

Providing for signature subject to ratification gives States time to seek domestic approval for the treaty and enact any legislation necessary to implement the treaty domestically, before undertaking the international obligations under the treaty.

## Ratification, acceptance or approval

Definitive acts, undertaken at the international level, whereby a State establishes its consent to be bound by a treaty *which it has already signed*. It does this by depositing an "instrument of ratification" with the Secretary-General of the United Nations. To ratify a treaty, the State must have signed the treaty first; if a State expresses its consent to be bound without first having signed the treaty, the process is called **accession** (see below). Upon ratification, the State becomes legally bound by the treaty as one of its State parties.

Generally, there is no time limit within which a State is requested to ratify a treaty which it has signed. Once a State has ratified a treaty at the international level, it must give effect to it domestically.

Ratification at the international level, which indicates to the international community a State's commitment to undertake the obligations under a treaty, should not be confused with ratification at the national level, which a State may be required to undertake in accordance with its own constitutional provisions before it expresses consent to be bound internationally. Ratification at the national level is insufficient to establish a State's intention to be legally bound at the international level.

## Accession

Accession is the act whereby a State that has not signed a treaty expresses its consent to become a party to that treaty by depositing an "instrument of accession" with the Secretary-General of the United Nations. Accession has the same legal effect as **ratification, acceptance or approval**. However,



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unlike ratification, which must be preceded by **signature** to create binding legal obligations under international law, accession requires only one step, namely, the deposit of an instrument of accession.

The conditions under which accession may occur and the procedure involved depend on the provisions of the treaty. Accession is generally used by States wishing to express their consent to be bound by a treaty for which the deadline for signature has passed. However, many modern multilateral treaties provide for accession even when the treaty remains open for signature.

## **Succession**

Succession takes place only if a State, which is a party to a treaty, has undergone a major constitutional transformation which raises some doubt as to whether the original expression of consent to be bound is still valid. Such circumstances may include independence (for example, through decolonization), dissolution of a federation or union, and secession of a State or entity from a State or federation. The successor State may ratify or accede to the treaty in its own capacity or, alternatively, it may express its consent to continue to be bound by the legal obligations assumed by the original State party with respect to the same territory through an act of succession. In such cases, the State will notify the United Nations Secretary-General of its intention to succeed to the legal obligations.

## **Distinction between ratification/accession and entry into force**

The act by which a State (or, for some treaties, also a regional integration organization, such as the European Union) expresses its consent to be bound by a treaty is distinct from the treaty's entry into force. A State demonstrates its willingness to undertake the legal rights and obligations under a treaty through the deposit of an instrument of ratification, acceptance, approval or accession. Entry into force of a treaty with regard to a

### **Why is the date of entry into force important?**

It is the date on which the rights set out in the treaty become binding on the State in international law. Anyone wishing to bring a complaint against a State party before a treaty body under the terms of a treaty or optional protocol needs to make sure that the treaty or optional protocol has entered into force for that State. This date also determines when State parties must submit reports to the treaty bodies.

### **How do I find out whether a treaty is in force for a particular State?**

The definitive source is the United Nations Treaty Section, which maintains a register of multilateral treaties deposited with the Secretary-General. Its website is <http://untreaty.un.org>.

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State is the moment the treaty actually becomes legally binding on it. The treaty does not enter into force immediately; it usually takes some time, as specified in the treaty.

## **Entry into force**

Entry into force of a treaty is the moment when a treaty becomes legally binding on its parties. The provisions of the treaty determine the moment of its entry into force, usually after a month or so. There are two types of entry into force: definitive entry into force of the treaty as an international legal instrument; and specific entry into force for a particular State.

- **Definitive entry into force**

Definitive entry into force is when a new treaty becomes a legally binding instrument for those States that have already expressed their consent to be bound by its provisions. Most treaties stipulate that they will enter into force after a specified number of instruments of ratification, approval, acceptance or accession have been deposited with the Secretary-General. Until that date, the treaty cannot legally bind any State, even those that have ratified or acceded to it (although they are obliged to refrain in good faith from acts that would defeat its object and purpose).

- **Entry into force for a State**

Once a treaty has entered into force generally, additional provisions determine when the treaty will enter into force for any other State (or regional integration organization) that wishes to be bound by it.

## **Dates**

Consequently, there may be several dates attached to a treaty in relation to a given State:

*Date of definitive entry into force of the treaty:* the date, set in the treaty, at which the treaty enters generally into force in international law and becomes binding on States that have already taken the necessary measures.

*Date of signature:* the date on which a State signs the treaty. This has no legal effect other than to oblige the State to refrain from actions that would defeat the object and purpose of the treaty.

*Date of deposit of instrument of ratification or accession:* the date on which the United Nations treaty depositary receives the legal instrument that expresses the State's consent to be bound by the treaty.

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*Date of entry into force for a State:* the date, established in the treaty, on which the treaty becomes formally binding on the State in international law. Most treaties require a set period to elapse after the date of deposit of instrument before the treaty becomes binding. The precise period varies from treaty to treaty.

Calculation of date of entry into force of the treaties				
Treaty	Adopted	Entered into force on	Enters into force for State parties	
International Convention on the Elimination of All Forms of Racial Discrimination	21 December 1965	4 January 1969	on 30th day after date of deposit	
International Covenant on Economic, Social and Cultural Rights	16 December 1966	3 January 1976	three months after date of deposit	
• Optional Protocol to the International Covenant on Economic, Social and Cultural Rights	10 December 2008	(not yet in force)	one month after date of deposit	
International Covenant on Civil and Political Rights	16 December 1966	23 March 1976	three months after date of deposit	
• Optional Protocol to the International Covenant on Civil and Political Rights	16 December 1966	23 March 1976	three months after date of deposit	
• Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	15 December 1989	11 July 1991	three months after date of deposit	
Convention on the Elimination of All Forms of Discrimination against Women	18 December 1979	3 September 1981	on 30th day after date of deposit	
• Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	6 October 1999	22 December 2000	three months after date of deposit	
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	10 December 1984	26 June 1987	on 30th day after date of deposit	

<ul style="list-style-type: none"> <li>Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</li> </ul>	18 December 2002	22 June 2006	one month after date of deposit
Convention on the Rights of the Child	20 November 1989	2 September 1990	on 30th day after date of deposit
<ul style="list-style-type: none"> <li>Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography</li> </ul>	25 May 2000	18 January 2002	one month after date of deposit
<ul style="list-style-type: none"> <li>Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict</li> </ul>	25 May 2000	12 February 2002	one month after date of deposit
<ul style="list-style-type: none"> <li>Optional Protocol to the Convention on the Rights of the Child on a communications procedure</li> </ul>	19 December 2011	(not yet in force)	one month after date of deposit
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	18 December 1990	1 July 2003	on 1st day of month following a period of three months after date of deposit
Convention on the Rights of Persons with Disabilities	18 December 2006	3 May 2008	on 30th day after date of deposit
<ul style="list-style-type: none"> <li>Optional Protocol to the Convention on the Rights of Persons with Disabilities</li> </ul>	18 December 2006	3 May 2008	one month after date of deposit
International Convention for the Protection of All Persons from Enforced Disappearance	20 December 2006	23 December 2010	on 30th day after date of deposit

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## Human Rights Fact Sheets:\*

- No. 35 The Right to Water
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\* Fact sheets Nos. 1, 5 and 8 are no longer issued. All fact sheets are available online from [www.ohchr.org](http://www.ohchr.org).







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