

## The United Nations human rights treaty system

### (a) Human rights treaties

Multilateral treaties are agreements among States, with human rights treaties elaborating on the Universal Declaration of Human Rights, providing in legally binding form, rights in the civil, cultural, economic and social spheres.

There are currently eight human rights treaties in force:

International Convention on the Elimination of All Forms of Racial Discrimination, 1965

International Covenant on Economic, Social and Cultural Rights, 1966

International Covenant on Civil and Political Rights, 1966

Convention on the Elimination of All Forms of Discrimination against Women, 1979

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

Convention on the Rights of the Child, 1989

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990

Convention on the Rights of Persons with Disabilities, 2006.

Several of these have **optional protocols**, themselves treaties, which expand **substantive protection**:

Optional Protocol to the Covenant on Civil and Political Rights on the death penalty, 1989

Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, 2000

or provide **further monitoring procedures**:

First Optional Protocol to the International Covenant on Civil and Political Rights, 1966

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002

The Optional Protocol to the Convention on the Rights of Persons with Disabilities, 2006

A new human rights treaty is currently open for signature, ratification and accession:

International Convention for the Protection of All Persons from Enforced Disappearance, 2006

**(b) Monitoring mechanisms: the treaty bodies**

The treaty bodies are committees of experts which monitor implementation of the substantive provisions of the treaties. Currently, eight human rights treaty bodies, ranging from 10 to 23 experts, monitor the core human rights treaties. The Committee on the Rights of Persons with Disabilities was elected on 3 November 2008 and met for the first time from 23 to 27 February 2009.

Members are elected by secret ballot from a list of persons of 'high moral standing and competence in the field covered by the Convention' who are nominated by States parties.

Members serve in their individual capacity. They serve four year terms, and except in the case of the Subcommittee for the Prevention of Torture established under the Optional Protocol to the Convention against Torture and the Committee on the Rights of Persons with Disabilities, whose members can be renominated once, there is no limit on renomination. In their election, consideration is given to equitable geographical distribution and representation of different forms of civilization and the principal legal systems, and where the newer treaties are concerned, gender balance and the CRPD, the representation of persons with disabilities. With the exception of the committee which monitors implementation of the International Covenant on Economic, Social and Cultural Rights, there is no formal geographical quota.

The eight operative committees are:

The Committee on the Elimination of Racial Discrimination (CERD)  
The Committee on Economic, Social and Cultural Rights (CESCR)  
The Human Rights Committee (HRC)  
The Committee on the Elimination of Discrimination against Women (CEDAW)  
The Committee against Torture (CAT)  
The Committee on the Rights of the Child (CRC)  
The Committee on Migrant Workers (CMW)  
The Subcommittee on Prevention of Torture (SPT)  
The Committee on the Rights of Persons with Disabilities (CRPD)

**(c) Monitoring procedures of the treaty bodies**

The reporting procedure

With the exception of the Subcommittee on the Prevention of Torture which has a visiting mandate, the primary mandate of each committee is to monitor implementation of the treaty by reviewing reports submitted periodically by States parties in accordance with the treaty concerned.

The key purpose of reporting is to promote compliance by States parties with the treaty, but drafting of the report provides an opportunity for the State party to clarify its obligations under the treaty and take stock of the current situation of human rights and identify areas that require reform to ensure full compliance.

- ✓ Consultations required within government structures and between Government and civil society in order to prepare a good report can improve understanding of the treaty and the objectives of human rights generally;
- ✓ Publicity surrounding the preparation of a report draws attention to the level of the State's compliance with its obligations and the ways individuals and groups can further contribute to their implementation;
- ✓ Consideration of the report by a committee allows for dialogue between the State party and a group of impartial and highly experienced experts during which areas where further implementation is required can be identified, and suggestions for improvement proposed;
- ✓ Reporting highlights good practices and lessons learned which may be drawn on by other States as they seek to implement the treaty.

Reports are considered by the treaty bodies in the presence of a delegation of the State party. The consideration is based on information contained in the reports, responses to lists of issues and questions sent to States parties by the treaty body; information available to other human rights mechanisms of the United Nations; reports or information of the specialized agencies and other parts of the United Nations, including field-based entities, on implementation; reports or information provided by non-governmental organizations, national human rights institutions; and any other relevant information, such as available in regional human rights bodies.

The outcome of the procedure, the Committee's concluding observations constitute an authoritative guide for future legislation, policies and programmes. Although directed at the State party, they can be used by other stakeholders to encourage accelerated implementation and a culture of human rights in the State party.

Streamlining of the reporting procedure and harmonization of the working methods of the treaty bodies has been an objective of the United Nations since 2002 with the release of the Secretary-General's second reform report, Strengthening the United Nations: an Agenda for Further Change, with these ideas being reiterated in the 2005 report In Larger Freedom.

As a result, the eighteenth meeting of chairpersons of human rights treaty bodies in 2006 agreed that States parties should be report using a common core document, which would contain information relevant to all treaty bodies, as well as individual treaty specific documents. The common core document would form the first part of each report: see HRI/GEN/2/Rev. 4. Treaty bodies were also encouraged to adopt guidelines for their treaty specific documents, a task which has been completed by CERD (2007), CEDAW and CESCR (2008).

### General comments

Most of the treaty bodies publish their interpretation of the provisions of the human rights treaty it monitors in the form of general comments or general recommendations. These cover a variety of subjects, ranging from comprehensive interpretation of substantive provisions, such as the right to life or right to adequate food, general guidance on the information that should be submitted in reports, to cross-cutting issues, such as violence against women. The general comments which have been adopted by treaty bodies are contained in HRI/GEN/1/Rev. 9

Some treaty bodies also issue suggestions which are directed to UN organs and statements, such as with respect to UN conferences and other events or issues, while others, such as the Committee on the Rights of the Child, organize days of general discussion on particular themes.

### Individual complaints

Five of the treaty bodies (HRC, CERD, CAT , CEDAW, CRPD) may under certain circumstances consider complaints or communications from individuals who believe their rights have been violated by a State party. Communications may also be submitted on behalf of complainants, with their consent, or without consent where the author of the communication can justify acting without consent. This competence is also provided to the CMW, although it has only been accepted by one State party, and is included in the International Convention on the Protection of All Persons from Enforced Disappearance. A similar competence is created for the CESCR in the Optional Protocol to that Convention adopted by the General Assembly on 10 December 2009.

✓The procedure is optional, so communications may only be brought against States which have expressly recognized the competence of the treaty body in that regard, either by a declaration under the relevant article of the treaty or by accepting an optional protocol;

✓All available domestic remedies must be exhausted;

✓The same matter may not be being examined or examined in the past by the relevant treaty body or other international procedure;

✓The complaint must concern an alleged violation which occurs after the entry into force of the procedure for the State concerned or must meet the definition of a continuing violation.

In the case of the Optional Protocol to CESCR, the Committee is entitled to decline to consider a communication where it does not reveal that the author has suffered a clear disadvantage, unless the Committee considers that the communication raises a serious issue of general importance.

Committees have developed the practice of requesting States parties to implement interim measures to avoid irreparable harm to the complainant. Interim measures do not prejudice the admissibility or merits of the claim. These procedures are explicitly provided for in the newer instruments, such as the CEDAW, CPRD and the CESCR Optional Protocol.

The CESCR Optional Protocol also provides an opportunity for the Committee to make available its good offices to the parties with a view to reaching a friendly settlement:

Following consideration of admissible communications, the committees adopt 'views.' The newer instruments outline various procedures for follow-up to views.

#### Inquiry procedure

Three treaty bodies – CAT, CEDAW, CRPD – are invested with the competence to inquire of their own motion into reliable information indicating grave or systematic violations of the rights in the Convention in the State party in cases where the State concerned has accepted this competence.

CAT has so far conducted nine inquiries, while CEDAW has conducted one inquiry which concerned gender-based violence in the Juarez region of Mexico.

Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico (CEDAW/C/2005/OP.8/Mexico)

An optional inquiry competence is elaborated in the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to CESC.R.

### Visits

The Subcommittee on Prevention created under the Optional Protocol to the Convention against Torture (CATOP) which began its work in February 2007 is mandated to visit places of detention as a measure to prevent torture. States parties are required to establish independent preventive mechanisms which will also conduct regular visits to places of detention, and the Subcommittee is required to develop relationships with these. To date, the Subcommittee has conducted visits to Benin, Maldives, Mauritius, Mexico, Paraguay and Sweden.

### State-to-State communications

Four of the existing human rights treaties contain provisions to allow for States parties to complain to the relevant treaty body about alleged violations of the treaty by another State party (ICERD, ICCPR, CAT and ICRMW). These procedures are optional, or in the case of ICERD subject to an opt-out procedure, and have never been used, but such a procedure has been included in the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to CESC.R.

### New procedures

Article 34 of the International Convention for the Protection of All Persons from Enforced Disappearance allows the treaty body it establishes to urgently bring information appearing to contain well-founded indications that enforced disappearance is being practised on a widespread or systematic basis in the territory under the jurisdiction of a State party to the attention of the General Assembly through the Secretary-General.

### International assistance and co-operation

The Optional Protocol to CESC.R provides that the Committee shall transmit as it considers appropriate and with the consent of the State party concerned, to United Nations specialized agencies, funds and programmes and other competent bodies, its views or recommendations concerning

communications and inquiries that indicate a need for technical advice or assistance, along with the State party's observations and suggestions, if any, on these views or recommendations. The Committee is also entitled to bring any matter arising out of communications which might assist them to decide on the advisability of international measures which may contribute to assisting States parties to achieve progress in the implementation of the rights in the Covenant. Provision is made for the establishment of a trust fund to assist in providing expert and technical assistance to States parties in relation to implementation of the Covenant.

**(d) Impact of international procedures**

- In 1997, in *Vishaka and others v the State of Rajasthan* in a case of the alleged gang-rape of a Government social worker who had been campaigning against child marriage, and the failure of officials to investigate her complaint, the Supreme Court of India recalled that India had ratified CEDAW and that it was obliged to take all appropriate measures to eliminate discrimination against women in the field of employment and adopt all necessary measures at the national level aimed at achieving the full realization of the rights in the Convention. The Court drew on the provisions of the Convention and general recommendation 19 of CEDAW on violence against women to establish guidelines and norms to be observed in all workplaces to prevent and address sexual harassment.
- In *Turkey* domestic violence legislation was introduced shortly after CEDAW's consideration of Turkey's report in 1997.
- In 1999, the Supreme Court of Canada, in *R v Ewanchuk*, drew on CEDAW and the Committee's general recommendation 19 on violence against women to conclude that violence against women is as much a matter of equality as it is an offence against human dignity and a violation of human rights, and that stereotypical attitudes about the nature of sexual assault have created the myth that women are sexually available unless they resist.
- In *The State v Geoffrey Baloyi* decided in 1999, the Constitutional Court of South Africa considered the constitutionality of section 3(5) of the 1993 Prevention of Family Violence Act which provided that a person charged with breaching a family violence interdict was required to prove his innocence. Drawing on the Universal Declaration of Human Rights, the Declaration on the Elimination Violence against Women and the Convention on the Elimination of All Forms of Discrimination against Women, which it noted imposed positive obligations on States to pursue policies of eliminating discrimination against women by, *inter alia*, adopting legislation and other means

which prohibit discrimination, the Court held that the provision was constitutional as was necessary to ensure the right to equality and non-discrimination in a context of the gross denial of human rights resulting from previous domestic violence.

- In *Nigeria* concluding comments of CEDAW on Nigeria's reports brought the issue of trafficking in women onto the national agenda. By the end of 2005, the Government had promulgated the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act and had established the National Agency for the Prohibition of Trafficking.

**(d) The human rights treaty body system and the universal periodic review mechanism**

OHCHR compilation  
Recommendations of UPR  
Follow-up by treaty bodies

**(e) The reform imperative**

Treaty body reform has been a matter of discussion for over 15 years. The annual meeting of chairpersons of human rights treaty bodies and the biannual inter-committee meetings provide a framework in which reform can be discussed.

The reform imperative gained more impetus with the proposal of the High Commissioner for the establishment of a unified standing treaty body.

Concept paper on the High Commissioner's proposal for a unified standing treaty body (HRI/MC/2006/2)  
Report of the second brainstorming meeting in Malbun (A/61/351)  
Special issue of the Human Rights Law Review: Reform of the UN Human Rights Machinery: Volume 7, Number 1, 2007

Annemarie Devereux and Catherine Anderson, 'Reporting under International Human Rights Treaties: Perspectives from Timor Leste's Experience of the Reformed Process, Volume 8, Human Rights Law Review (2008), 69-104

The treaties, the output of treaty bodies and documents relating to reform can be found at <http://www.ohchr.org/english/bodies/index.htm>

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July 2009