

# **Human Rights**

## **Civil and Political Rights: The Human Rights Committee**

Fact Sheet No. **15** (Rev.1)

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## **Introduction**

The Charter of the United Nations (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. This call was first given concrete expression with the promulgation of the Universal Declaration of Human Rights by the United Nations General Assembly in 1948. Adopted against the background of the horrors of the Second World War, the Universal Declaration was the first attempt by all States to agree, in a single document, on a comprehensive catalogue of the rights of the human person. As its name suggests, it was not conceived of as a treaty but rather a proclamation of basic rights and fundamental freedoms, bearing the moral force of universal agreement. Its purpose has thus been described as setting "a common standard of achievement for all peoples in all nations". Broadly speaking, the Universal Declaration sets down two broad categories of rights and freedoms - civil and political rights, on the one hand, and economic, social and cultural rights, on the other.

At the time of the adoption of the Universal Declaration, there was already broad agreement that human rights should be translated into legal form as a treaty, which would be directly binding on the States that agreed to be bound by its terms. This led to extensive negotiations in the Commission on Human Rights, the political body established in 1946, composed of State representatives meeting annually in Geneva to discuss a wide variety of human rights issues. The year 1966 saw the adoption by the General Assembly of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The two International Covenants on Human Rights form the cornerstone of an extensive series of internationally binding treaties covering a wide variety of issues in the field of human rights. The treaties define human rights and fundamental freedoms and set basic standards that have inspired more than 100 international and regional human rights conventions, declarations, sets of rules and principles.

Alongside the two Covenants are five further core United Nations human rights treaties: the International Convention on the Elimination of All Forms of Racial Discrimination (1965); the Convention on the Elimination of All Forms of Discrimination against Women (1979); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); the Convention on the Rights of the Child (1989); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990). Many of the treaties also have optional protocols, separate treaties which add

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substantive and/or procedural provisions to the original treaty to which they relate.

Each of these treaties, including the two Covenants, follows the same pattern. They set out a series of substantive rights, in what is often known as the “normative” part of the treaty, that define the basic rights and fundamental freedoms in the area addressed by that treaty. An independent monitoring body, or committee, established by the treaty itself, oversees the implementation of the treaty by States parties. These committees are comprised of independent experts, elected by the States that are parties to the treaty, whose impartiality, independence and experience in the field of human rights make them well placed to assess the progress made by States parties against the standards set out in the treaty in question. For the International Covenant on Civil and Political Rights, the treaty body established for that purpose is the Human Rights Committee.

This Fact Sheet will first provide an introduction to the International Covenant on Civil and Political Rights and its two Optional Protocols, the texts of which are annexed. Second, the Fact Sheet will describe the work of the Human Rights Committee. The Committee should not be confused with the Commission on Human Rights, which is a quite separate entity, as mentioned above. Nor should the Human Rights Committee be understood as a “global” body that addresses all human rights described in all the treaties; rather, it may best be described as a committee on civil and political rights as it is responsible for oversight of the implementation of the civil and political rights set out in the International Covenant on Civil and Political Rights.

## **PART I - The International Covenant on Civil and Political Rights and its Protocol**

Although the text of the Covenant was adopted in 1966, it took another 10 years before the necessary 35 States had become parties to it and it formally entered into force on 23 March 1976 for those States. As of June 2004, a further 117 States had become parties to the Covenant, making for a current total of 152 States parties. Updated lists of States parties to all the treaties may be found in the Treaty Bodies database of the Office of the United Nations High Commissioner for Human Rights (<http://www.unhchr.ch/tbs/doc.nsf>) and also in the United Nations Treaty Collection at <http://untreaty.un.org> (subscribers only).

### **Box I.1. How does a State agree to be bound by the terms of a treaty such as the Covenant and its Optional Protocols?**

A State can become party to a treaty in one of two main ways. Firstly, it can sign the treaty, following which, according to the rules of international law, the State may not act contrary to the objects and purposes of the treaty. Signature is followed by ratification. In depositing an instrument of ratification, a State formally indicates its intent to be bound by the treaty. Alternatively, a State can accede to a treaty. Accession, whereby a State that has not signed a treaty agrees to be bound by it, is equivalent to ratification. The treaty in question typically provides a short period of time after the date of ratification or accession before the State is actually bound by the terms of the treaty. In the case of the Covenant, this is three months. For further details on these steps, refer to the Treaty Handbook of the United Nations of the Office of Legal Affairs, accessible at:

*[http://untreaty.un.org/ola-internet/Assistance/handbook\\_eng/hbframeset.htm](http://untreaty.un.org/ola-internet/Assistance/handbook_eng/hbframeset.htm).*

Parties to the Covenant may also become parties to either or both of its two Optional Protocols. The first Optional Protocol sets out a system by which the Human Rights Committee can receive and consider complaints from individuals who allege that their human rights have been violated, while the second Optional Protocol abolishes the death penalty for States parties. The first Optional Protocol also came into force on 23 March 1976 and currently has 104 States parties, while the Second Optional Protocol came into force on 11 July 1991 and has 53 States parties.

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## ***Structure and Contents of the Covenant***

The Covenant is divided into six major Parts. Parts I and II set out a series of provisions generally applicable to all the rights described in the Covenant. Part III is the “backbone” of the Covenant, elaborating the substantive individual rights. The final Parts deal with the establishment of the Human Rights Committee, the Committee’s monitoring functions and a variety of technical matters. The Parts will now be described in turn.

### ***Parts I and II - Overarching Provisions***

The first two Parts, comprising articles 1 to 5, are an important set of what may best be described as provisions of an overarching or structural nature. Article 1, which forms Part I, guarantees the right of self-determination. This right differs from the other Covenant rights in that it is a right expressly ascribed to “peoples” rather than to individuals. It is also the only right that is common to both Covenants, as article 1 of the International Covenant on Economic, Social and Cultural Rights is identical. While the precise contours under international law of the right of self-determination remain in a state of flux, it can safely be taken that a precondition for a full and genuine expression of self-determination on the part of a people is the enjoyment by its members in whole measure of the rights contained in the Covenant.

Part II comprises articles 2 through 5. Article 2 is one of the fundamental cornerstones of the Covenant. It provides that a State party must respect and ensure the rights of the Covenant to all persons within its jurisdiction. With some exceptions, such as the right to vote, these rights extend not only to citizens but to all persons in the State’s territory, and must be respected without discrimination. If necessary, legislation should be enacted to properly guarantee these rights. Crucially, States parties are required to provide remedies to persons whose rights under the Covenant are breached. The Committee, in its jurisprudence, has interpreted this right to require a forum to be available to hear an allegation of a violation of a Covenant right when it is “sufficiently well founded to be arguable under the Covenant”. Commonly, it is the courts and administrative authorities that provide these remedies. Without this right to enforce a Covenant right before the domestic authorities by way of remedy, the actual substantive rights of the Covenant would be deprived of much practical effect. For greater detail on the scope of the obligation entailed by this key article, see General Comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant (CCPR/C/74/CRP.4/Rev.6).

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Treaty bodies and academic commentary have developed a three-part understanding of the responsibilities imposed by treaties on a State party. The first obligation is to *respect* the rights, which most obviously requires Governments to refrain from violating human rights. This is often also called a “negative” obligation, or an obligation not to engage in a particular act or practice. The classic example is that a State must refrain from an act of torture or arbitrary deprivation of life. The second obligation, to *protect* enjoyment of the rights, goes further: the State party must not only refrain from violating an individual’s rights itself, but it must also protect an individual from a violation of his or her rights by third parties, be they private individuals, corporations, or other non-State actors. This may well require positive action by the State party, for example by establishing an appropriate legislative and policy framework and devoting sufficient resources to their effective implementation. Thirdly, a State party must *promote* or *fulfil* an individual’s rights, that is take the required steps to create a necessary and conducive environment within which the relevant rights can be fully realized. This again is a “positive” obligation which may require a State party to take substantial steps, including the allocation of appropriate resources, to satisfy its obligations under the treaty. So, for example, with respect to the Covenant, a State party must provide legal aid to persons “where the interests of justice so require” under article 14, paragraph 3 (d), and prevent overcrowding in prisons so as to comply with the guarantee in article 10, paragraph 1, of humane conditions of detention for prisoners.

Article 3 of the Covenant provides for the equal right of men and women to the enjoyment of Covenant rights. As the Committee’s jurisprudence has evolved, article 26 in Part III of the Covenant, which provides for equality before the law and equal protection of the law without discrimination, including on the basis of sex, has been interpreted to encompass the same protection, but the importance of this question to the framers of the Covenant may be seen by virtue of its location in the first Part of the Covenant.

Article 4 of the Covenant recognizes that exceptional situations affecting a State party may make the guarantee of some rights difficult or impossible, at a practical level, for a temporary period of time. Accordingly, article 4 clearly sets out the strictly permissible boundaries for suspending or derogating from certain rights, in order to foreclose the possibility of any abuses. The threshold condition is that there must exist a public emergency, officially proclaimed, which threatens the life of the nation. The Human Rights Committee can, and does, question, in appropriate cases, whether this basic requirement has been satisfied when a State decides to derogate from its obligations under the

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Covenant. Even if such a situation does exist, the measures taken must be “strictly required by the exigencies of” the relevant crisis. This is a high standard, the respect for which a State party may be required to demonstrate to the Committee’s satisfaction. In addition, regardless of the situation, there are some rights, including the rights to life and to be protected from torture, which may not be derogated from in any circumstances. These rights are listed in paragraph 2 of article 4. For greater detail on issues arising under article 4, see General Comment No. 29 on states of emergency (CCPR/C/21/Rev.1/Add.11).

Part II of the Covenant concludes with article 5, a general protective provision stating that nothing in the Covenant confers the right to limit or destroy any of its provisions, and that a State party whose domestic law provides greater protections than those contained in the Covenant may not use that as an excuse to restrict or derogate from the fundamental rights contained in the Covenant.

### ***Part III - The Substantive Rights of the Covenant***

Part III is the heart of the Covenant. It lists the substantive rights and fundamental freedoms guaranteed by the treaty. These are the articles that are commonly invoked by individuals alleging that their rights under the Covenant have been violated, although provisions of Part I may also be invoked and may lend support to their interpretation.

Articles 6 to 11 may be regarded as core provisions for the protection of the life, liberty and physical security of the individual. These provisions also stipulate the narrow confines within which the death penalty may legitimately be imposed in States parties where that penalty has not been abolished. Specific prohibitions are set out concerning torture, unauthorized medical experimentation, slavery and forced labour. The rights of a person in the context of deprivation of liberty, commonly by arrest, and in detention are also covered here. Articles 12 and 13 deal with movement into, out of and within a State, with particular rules applicable to the expulsion of aliens.

Articles 14 to 16 deal with how a person must be treated by the judicial process. Article 14 guarantees the right to a fair trial in both criminal and civil cases, a right of fundamental importance, especially so given the close links to the right to an effective remedy contained in article 2. It sets out the rights to equality before the courts and to fair adjudication of claims resolved before courts and tribunals, and lists a series of additional protections applicable to criminal trials. Article 15 prohibits retrospective

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criminal punishment, while article 16 states simply that everyone has the right to be recognized as a person before the law.

Articles 17 to 22 set out fundamental freedoms to be enjoyed free of unjustified external interference. Article 17 addresses the right to privacy, article 18 freedom of thought and religion, article 19 freedom of opinion and expression (subject to the prohibitions in article 20 of advocacy of war or of national, racial or religious hatred), article 21 the right to peaceful assembly and article 22 freedom of association, including through trade unions.

Articles 23 and 24 recognize the particular role of the family unit and address issues of marriage and the rights of children. Article 25 stands alone as the major right to political participation in the Covenant, outlining the rights to vote and to be elected at genuine periodic elections by universal suffrage and secret ballot as well as the rights to take part in public affairs and to have equal access to the public service.

Alongside articles 2 and 14, article 26, as noted above, is a fundamental provision of the Covenant. It sets out the rights to equality before the law and to equal protection of the law, with a wide guarantee of non-discrimination. The Human Rights Committee has taken a broad view of this provision, relating it to all provisions of law, rather than simply the terms of the Covenant. Thus, if a State party confers a particular benefit of any kind on a person or group of persons, it must be accorded in a non-discriminatory fashion. That is to say, distinctions drawn by law must be based upon reasonable and objective grounds, these being criteria the Committee may assess, in order to be consistent with this provision.

Part III of the Covenant concludes with article 27, which guarantees persons belonging to ethnic, religious or linguistic minorities the right, in community with other members of the group, to enjoy and practise their own culture, religion or language. While nominally expressed as an individual right, this provision, by definition, may best be understood as a group right protecting a community of individuals.

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### **Box I.2. Can the rights that have been described in Part III be limited or restricted?**

A number of the rights described in Part III are expressly set out as being subject to restrictions or limitations, commonly where provided by law and necessary for specific enumerated purposes. Articles 17, 18, 19, 21, 22 and 25 expressly permit some form of restriction or limitation. If a State party chooses to limit or restrict one of these rights within the limits prescribed, this is permissible and does not amount to a violation of the right in question. Other rights, notably those protecting against “arbitrary” action on the part of the State, implicitly recognize as permissible certain reasonable measures taken by the State.

It should be emphasized, however, that in any case the permissible limits are neither wide nor generous, and certainly do not permit a State party effectively to void a certain right of practical meaning. The burden of justification in such a case lies with the State party to show, including to the Committee, that a certain limitation satisfies the tests of legality, necessity, reasonableness and legitimate purpose. Some rights may never be restricted or limited, no matter how serious the circumstances. In other cases, a right claimed by one person may have to be balanced against a right claimed by another. For example, it may be necessary, consistent with a child’s right to necessary measures of protection under article 24, for a child to be removed from an abusive domestic environment, even though such a separation from a family may appear contrary to the parents’ right under article 23 to protection of the family unit.

The other method by which rights may be restricted is by reservation. A reservation is a formal declaration lodged by a State party at the time it becomes party to a treaty that it declines to apply one or more provisions, either in whole or in part, in its jurisdiction. In contrast to some other treaties, the Covenant is silent on the effect of reservations. A reservation may be entered, subject to the general rule of international law, as expressed in the Vienna Convention on the Law of Treaties, that it may not be inconsistent with the object and purpose of the treaty. The traditional indicator of whether a reservation is acceptable is the reaction of other States parties, which may submit objections to a reservation lodged by another State party.

The Committee itself, as the body charged with monitoring the implementation of the Covenant, has assumed the power to make

a determination on the compatibility of a reservation with the Covenant's object and purpose and has expressed its view on this matter with respect to several States parties. If the Committee finds a reservation to be incompatible, it "severs" the reservation and applies the full obligation in question to the State party. While the possibility of lodging reservations may encourage States to become party to a treaty when they may not be willing to assume the whole extent of the obligations deriving therefrom, reservations are often regarded as a poor policy choice in that they may deprive certain persons of rights for reasons which are unclear to other States parties or which may only be valid for a time. For this reason, the Committee consistently encourages States parties to review, with a view to their removal, reservations that they have lodged. For further details on the Committee's approach to these matters, see General Comment No. 24 on issues relating to reservations (CCPR/C/21/Rev.1/Add.6).

#### ***Part IV to VI - Monitoring and Technical Aspects of the Covenant***

The remaining Parts of the Covenant establish the Human Rights Committee as the treaty's monitoring body. Part IV, covering articles 28 to 45, sets up the Committee and provides for its functions and procedures. These will be covered in detail below. Part V of the Covenant, in articles 46 and 47, includes savings provisions with respect to the United Nations Charter and, linked with article 1, to the inherent right of peoples freely to enjoy and utilize their natural wealth and resources. Articles 48 to 53, comprising the final Part VI, contain standard treaty provisions concerning mechanics for becoming a party, notification and amendments. Article 50 provides that the Covenant's provisions extend to all parts of a federal State without limitation or exception. This is important for States whose domestic law reserves exclusive competence in certain areas to state or provincial rather than federal authorities. In such a case, the federal authorities, who usually represent a State party before the Committee, must take such measures as may be necessary to ensure that the Covenant is fully applicable within its territory and that the necessary remedies for violations are available. In this sense, article 50 is a restatement of the well-known principles of international law whereby a State's international responsibility is engaged by the acts and omissions of its authorities at all levels, whether national, provincial or local, and that a State's domestic law does not excuse a breach of a treaty obligation.

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**Box I.3. Can the Covenant be rejected or denounced by a State that no longer wishes to be bound by it? What about new States emerging from the break-up of an old State that was a party to the treaty?**

Unlike many treaties, the concluding provisions of the Covenant do not provide for denunciation of the treaty allowing a State party to withdraw from the treaty regime. In these circumstances, the Committee has taken the view that in the light of the particular character of human rights treaties such as the Covenant, which extend basic rights and freedoms to persons within a State party's jurisdiction, these rights and freedoms may not be withdrawn once confirmed. Accordingly, once a State has ratified the Covenant, it is not permitted to withdraw from its obligations by denouncing the treaty. Likewise, States parties may not denounce the Second Optional Protocol, which does not contain any provisions on denunciation either. In contrast, the first Optional Protocol specifically sets out a denunciation procedure.

A related issue is the situation in terms of ongoing applicability of the Covenant when a State party to the Covenant breaks up into a series of successor States. Applying a similar approach, the Committee has taken the view that a successor State succeeds to a predecessor State's obligations under the Covenant. Thus, for example, the Committee views Kazakhstan as being bound by the Covenant, as a successor State to the USSR, which was a State party at the time of its dissolution. Generally, this precise situation does not arise, as successor States have acted to confirm the applicability of the Covenant in their jurisdictions, such as by making a declaration of succession. Similarly, when the United Kingdom and Portugal, as States parties to the Covenant, returned sovereignty over Hong Kong and Macau respectively to China, China agreed to apply the Covenant obligations in those territories, even though it was not itself a State party to the Covenant.

***Contents of the Two Optional Protocols to the Covenant?***

The first Optional Protocol is procedural and provides a mechanism for the Committee to receive and consider individual complaints alleging a violation of the Covenant, that is to say of the substantive rights contained in Part III, if appropriate in conjunction with the provisions of

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Parts I and II. As its name makes clear, the Protocol is not compulsory, but once a State party to the Covenant also becomes a party to the Protocol, any person subject to the jurisdiction of the State party may lodge a written complaint with the Human Rights Committee (subject to any permissible reservations). This is not limited to nationals, or to persons within a State's territory, but extends to all persons who are directly subject to a State's exercise of power through its authorities. Thus, for example, a national of a State party residing abroad who was denied a passport by that State was able to bring a claim to the Committee.

The Protocol sets out in articles 1, 2, 3 and 5 a series of admissibility requirements, explicit and implicit, which a complaint must satisfy before its substance, or merits, can be considered. Article 4 of the Protocol sets out basic procedural requirements for the treatment of a complaint. Under article 6, the Committee reports annually to the General Assembly on its activities concerning complaints, while articles 7 through 14 contain largely standard savings and technical provisions on the mechanics of becoming a party, entry into force, notification, amendment, denunciation and the like. Article 10, like the parent Covenant, provides that the Protocol too extends without exception to all parts of federal States. Article 12 allows a State party to denounce the Optional Protocol.

The purpose of the Second Optional Protocol is revealed by its full title, "aiming at the abolition of the death penalty". Its single substantive provision, article 1, states directly that no person within a State party's jurisdiction shall be executed, and that each State party shall take all necessary measures to abolish the death penalty. Article 2 permits, subject to certain procedural requirements, only one reservation, namely one reserving the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed in wartime. Article 6 provides that these provisions are non-derogable and, as substantive provisions, apply as additional provisions to the Covenant. Articles 3 to 5 apply to the Protocol the same reporting and State complaint procedures that are discussed below with respect to the Covenant, as well as complaints lodged under the Optional Protocol. The remaining articles 7 to 11 set out the federal provision discussed above as well as the usual treaty mechanics dealing with its entry into force, amendment and so on.

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## **Part II - The Human Rights Committee**

### ***What is the Committee and who are its members?***

The Human Rights Committee is established under article 28 of the Covenant. It has 18 members, who must be nationals of States parties to the Covenant. Members of the Committee, as of other treaty bodies, are also often called “experts”. Under article 28 of the Covenant, Committee members must be “persons of high moral character and recognized competence in the field of human rights”, with “consideration given to the usefulness of the participation of some persons having legal experience”. Each member is a national of the State party that nominates them. Most Committee members (past and present) have a legal background, whether from the judicial bench, as a practitioner or in academia.

Under article 31, the Committee “may not include more than one national of the same State”. Rather, “consideration should be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems”. It is these principles, set out in the Covenant, that guide States parties when they nominate members and then elect them by secret ballot to four-year terms. Elections for half of the Committee’s members are held at two-yearly intervals at United Nations Headquarters, during the annual session of the General Assembly. Members may be re-elected, if renominated, upon the expiry of their terms. If a Committee member should vacate his or her position early, for example by reason of death or resignation, another election may be held. The practice has, however, arisen whereby such members are replaced by persons nominated by the same State party as the vacating member. After elections, members also maintain contact with States parties and engage in dialogue on general issues of mutual concern through the forum of meetings with States parties that the Committee regularly schedules during its sessions.

### ***What are the roles of the Committee members?***

Members of the Committee serve in their personal capacity, not as representatives of their Governments. Therefore, the proceedings of the Committee should be politically impartial. In order to ensure highest standards of conduct, the Committee has adopted ethical guidelines for

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the guidance of its members. The Committee's rules of procedure (CCPR/C/3/Rev.7) also formalize certain of these elements. Accordingly, safeguards are in place to promote impartiality in appearance as well as in substance. For example, a Committee member does not participate in the consideration of a periodic report submitted by the State of which he or she is a national, or in the adoption of concluding observations thereon. Nor does a Committee member take part in discussion of a complaint under the Optional Protocol that is directed against his or her country. If for any other reason there may be a general apprehension of partiality with respect to a particular matter, a Committee member may recuse him- or herself from any proceedings on the question.

The members elect the Committee's officers for terms of two years. These officers are the Committee's Chairperson, with overall responsibility for the conduct of the Committee's work, three Vice-Chairpersons, and the Rapporteur, to whom the preparation of the Committee's annual report to the General Assembly is entrusted. In addition, there are currently three special rapporteurs who are appointed by the Committee for the same terms to perform specific functions. These are:

- The Special Rapporteur on New Communications, whose functions include the registration of new complaints under the Optional Protocol and such preliminary issues as requests for interim measures of protection that may be necessary to prevent irreparable harm in a case presented to the Committee;
- The Special Rapporteur on Follow-up to Views, who monitors the implementation of the Committee's decisions on the merits of individual cases; and
- The Special Rapporteur on Follow-up to Concluding Observations, who is tasked with the Committee's new procedure of follow-up with respect to individual State party reports considered by the Committee (see below).

In electing these officers of the Committee, a variety of factors are considered, including the desirability of a fair geographical and linguistic spread amongst them. The Committee is serviced by a secretariat provided by the Secretary-General of the United Nations and which is based at the Office of the United Nations High Commissioner for Human Rights in Geneva, Switzerland.

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### ***When does the Committee meet and how does it work?***

The Human Rights Committee normally holds three plenary sessions for its full membership, each lasting three weeks, during the course of a year. These sessions are usually held at United Nations Headquarters in March and at the United Nations Office at Geneva in July and October, respectively. The Committee may also meet at a different location. One such occasion was when, at the invitation of the (then) Federal Republic of Germany, a session was held in Bonn in 1981. The Committee's rules of procedure, available in the Treaty Bodies database of the Office of the United Nations High Commissioner for Human Rights (<http://www.unhchr.ch/tbs/doc.nsf>), set out in considerable detail the modalities of the Committee's operation. Thus, 12 Committee members constitute a quorum, with each member having one vote. The Committee makes all reasonable efforts to reach its decisions by consensus. On rare occasions when consensus cannot be reached, the Committee members may resort to a vote of those present.

Each session of the Committee is usually preceded by a one-week meeting of the Committee's working group, typically made up of five members. The functions of the working group have evolved over the years and are currently devoted solely to handling, as an initial chamber, decisions on individual complaints under the Optional Protocol. While it may declare complaints admissible in whole, its decisions on inadmissibility (whether in whole or in part) and on the merits of a complaint proceed to the full Committee for debate and formal plenary decision. For further details on these matters, see Fact Sheet 7 (Rev.1), entitled *Complaints Procedures*, published by the Office of the United Nations High Commissioner for Human Rights.

### **Part III - The Four Monitoring Functions of the Committee**

The Human Rights Committee's task is to supervise and monitor the implementation of Covenant obligations by States parties. One of the great strengths of the Committee is the moral authority it derives from the fact that its membership represents all parts of the world. Accordingly, far from representing a single geographical or national perspective, the Committee speaks with a global voice. In carrying out its monitoring and supervisory functions, the Committee has four major responsibilities. First, the Committee receives and examines reports from the States parties on the steps they have taken to give effect to the rights spelled out in the

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Covenant. Second, the Committee elaborates so-called general comments, which are designed to assist States parties to give effect to the provisions of the Covenant by providing greater detail regarding the substantive and procedural obligations of States parties. Third, the Committee receives and considers individual complaints, also known as “communications”, under the Optional Protocol made by individuals who claim violations of their Covenant rights by a State party. Fourth, the Committee has jurisdiction to consider certain complaints made by a State party that another State party is not abiding by the obligations assumed under the Covenant.

### ***Examination of Reports Submitted by States Parties***

All States that have ratified or acceded to the Covenant undertake to submit reports to the Committee on the measures they have adopted to give effect to the rights the Covenant establishes and on the progress made in the enjoyment of those rights. This obligation is contained in article 40 of the Covenant.

A State party’s initial report is due within one year of the entry into force of the Covenant for the country concerned. Subsequent reports, known as “periodic reports”, are now due at a time individually specified by the Committee for each State party. In 1997, the Committee changed its previous rule regarding subsequent periodic reports, under which States parties were generally required to submit reports every five years. Occasionally, the Committee would also call for reports outside the five-year cycle from States suffering from acute human rights crises, such as the States of the former Yugoslavia and Rwanda, during the respective civil wars. Owing to the growth in the number of States parties to the Covenant and the limited meeting time of the Committee, a fixed reporting period for all States parties became increasingly impractical. At present, the Committee sets, in the final paragraph of its concluding observations on a particular report (discussed below), the date by which the next periodic report should be submitted. Typically, this time frame is of the order of four to five years, although on occasion shorter periods have also been set. The Committee nevertheless retains the discretion, as exceptional circumstances warrant, to call for an additional report prior to the time that has been formally set for submission of the next report.

### ***What should a State party’s report to the Committee include?***

The Committee provides general guidelines to help Governments in preparing their reports. At the outset, States should submit what is

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known as a “core document”. This document details basic information about a State, its demography and geography, as well as its constitutional, legal and political structures and other general information. Because this information is of common interest to all the treaty bodies, it is provided in a single document available to all the treaty bodies that examine a particular State. The State in question is thus relieved of having to supply afresh the same information when it comes up for consideration before each treaty body. As important changes in a State take place, the core document should be updated in order that the treaty bodies can remain apprised of current developments of general interest to them.

The initial reports submitted by States to the Committee under the Covenant should comprehensively cover all substantive articles of the Covenant, including information on the State’s constitutional and legal framework that is not set out in the core document, and the legal and practical measures taken in order to implement the Covenant. It is of critical importance that States ensure that they describe the factual situation, or, in other words, the practical realities regarding the implementation and enjoyment of Covenant rights, rather than limiting themselves to a description of the formal situation as represented in the State’s laws and policies. These requirements are set out in much greater detail both in reporting guidelines published by the Committee, as well as in the *Manual on Human Rights Reporting* published by the Office of the United Nations High Commissioner for Human Rights. These documents are available in the Treaty Bodies database of the Office of the United Nations High Commissioner for Human Rights (<http://www.unhcr.ch/tbs/doc.nsf>) and under the Office’s online Professional Training Series at <http://www.unhcr.ch/html/menu6/2/training.htm>, respectively.

Thereafter, States are advised to submit shorter periodic reports that focus on the issues raised by the Committee in its previous concluding observations, and on significant developments since the previous report. All reports should also include explanations of the measures taken to address any decisions made against the State on the merits of individual complaints lodged under the Optional Protocol.

### ***How should a State party’s report be compiled?***

There is no one set method for compiling a report in the State. As the implementation of Covenant rights affects areas that cut right across the typical activities of Government, many if not all government departments will have an interest in the presentation of laws, programmes and policies

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to the Committee that fall within their areas of expertise. In addition, in many States, especially ones with a federal structure, provincial and regional governments may have particular competencies in certain areas and from whom contributions to the report will accordingly be required. As a result, it is crucial that a coordination mechanism be developed, whereby the different authorities are briefed on and tasked with the requirements of a report. Usually, the Ministry for Foreign Affairs takes the lead role in the submission of a report.

Non-governmental organizations (NGOs) and other members of civil society have assumed an increasingly prominent role in the reporting process, including in the compilation of a report. The Committee regards as best practice in the preparation of a report the involvement of a broad range of members of civil society. There is no set formula for how civil society should contribute, and different States have experimented with a variety of mechanisms. These include consultations with civil society prior to compiling a report, use of information and statistics provided by civil society, involving civil society in reviews of draft reports, and so on. In States with a national human rights institution (such as a Human Rights Commission), such an organization may also often possess valuable expertise and insights in the areas covered by the report. The key to achieving a report that reflects as broadly as possible a common view of governmental and society actors of the enjoyment of Covenant rights in the State in question is for consultation to be comprehensive and meaningful. (See the section below, entitled "Where is the reporting process headed?", for further discussion of related issues.) It may be that on one or several issues, there is disagreement between the State and one or more members of civil society. In such a case, naturally the State will submit its report to the Committee in a form that it regards as appropriate.

Upon submission, the report is translated into the official United Nations languages and posted publicly on the web site of the Office of the United Nations High Commissioner for Human Rights. Preferably prior to this, but at the latest by this point, members of civil society advancing a different perspective on issues raised in the report - or, alternatively, not addressed therein - may provide their own submissions to the Committee. In order to limit the information supplied to a manageable volume, civil society is encouraged, to the extent possible, to submit a common report reflecting the agreed views of a variety of groups or organizations. Such a report, which often tracks the format of the State's report, is known as a "shadow report". Naturally, the Committee is often able to give greater weight to information supplied in a report compiled by a number of

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members of civil society than to information supplied by one group alone, though this information can also be useful.

***How does the Committee examine a State party's report?***

The process of examining a report runs across two consecutive Committee sessions. At the first session, the report is assigned to a group of between four and six Committee members known as a Country Report Task Force (CRTF). The decision to create CRTFs was adopted in March 2002. They are designed to streamline the reporting procedure and improve the quality of the dialogue with States parties. At least one CRTF member should come from the same region as the relevant State. One member is the designated "country rapporteur", whose main responsibility is to accompany a report through the Committee's processes. With the assistance of the Committee's secretariat, the CRTF draws up a "List of Issues" arising from the relevant report and other information supplied to the Committee. The List of Issues addresses the most crucial matters regarding the enjoyment of Covenant rights in the relevant State and often seeks additional information with respect to key questions. The List of Issues is sent to the State party well in advance - at least one session ahead - of the session at which the report will be examined in the presence of representatives of the State party. It is increasingly common, and of real assistance to Committee members, for States to provide written answers (ideally in the Committee's three working languages of English, French and Spanish) to the List of Issues in advance or at the beginning of the Committee's public examination of the report.

***What happens during the session when the Committee examines a State party's report?***

At the beginning of the Committee's session, the Committee hears in a private meeting representatives of specialized agencies and other parts of the United Nations that wish to provide information on the State to be considered. The Committee is also often briefed, typically in an informal lunchtime meeting, on views of members of civil society wishing to bring Committee members up to date on certain issues.

The Committee then proceeds to examine each report in a public constructive dialogue with a delegation of the relevant State party. This delegation typically comprises the State party's ambassador to the United Nations Office at Geneva and other members of diplomatic staff, as well as representatives from government departments and agencies with expertise in matters dealt with in the Covenant. It is not uncommon for

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ministers of government departments to be part of these delegations, and on occasion members of civil society and minority groups, for example, have also been included. It usually takes one and a half days for the Committee to examine an initial report, with two half-day meetings being in general devoted to subsequent periodic reports. The examination begins by an opening presentation of the report by the State party's delegation, often including a response to the List of Issues. Thereafter, Committee members put questions to the representatives, seeking to clarify or deepen understanding of issues arising concerning the implementation and enjoyment of Covenant rights in the State party. This often includes questions that have not been fully clarified by the responses to the List of Issues. Members of the relevant CRTF have the main responsibility for putting questions to the State representatives, though other Committee members have an opportunity to intervene. There may be several rounds of exchanges between the Committee and the State party's delegation on different issues. The dialogue is also facilitated by the holding, where possible, of the initial meeting in the afternoon and the second meeting the following morning, to enable the delegation to obtain information and clarifications overnight from authorities in the State party. After the conclusion of the dialogue, there is usually also a short time for the delegation to supply additional information to the Committee.

After the conclusion of this dialogue, the Committee drafts detailed written concluding observations on the report in question. Concluding observations, which have been adopted since 1992, set out the results of the dialogue with the Committee's conclusions and are therefore a very useful way of monitoring a State's human rights record. The country rapporteur for the report in question, with the assistance of the members of the relevant CRTF, has initial responsibility for drafting the concluding observations, which are circulated to all members of the Committee for comment and are then referred for discussion and adoption by the Committee in plenary. Concluding observations are consensus comments on positive and negative aspects of a State party's implementation of the Covenant. They are generally divided into the following sections: Introduction, Positive factors, and Principal subjects of concern and recommendations. The bulk of the concluding observations is generally devoted to the last heading, where the issues that remain of concern to the Committee are paired with the Committee's recommendations for remedial action. The final paragraph sets forth the date by which the next periodic report should be submitted to the Committee. The concluding observations have the dual function of helping States to prepare future reports, and helping the Committee to focus on the most

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important issues in future dialogues over future reports. All concluding observations are publicly available via the Treaty Bodies database of the Office of the United Nations High Commissioner for Human Rights (<http://www.unhchr.ch/tbs/doc.nsf>).

***What happens once the Committee has adopted its concluding observations?***

In 2001, the Committee created a new position, that of Special Rapporteur on Follow-up to Concluding Observations. In almost all concluding observations, the Committee identifies, in the final paragraph of its findings, a limited number of issues of particular priority. It then asks the State party to provide, no later than a year thereafter, information on the measures it has taken to address those particular issues. This follow-up information is translated and in general made publicly available on the Treaty Bodies database of the Office of the United Nations High Commissioner for Human Rights (<http://www.unhchr.ch/tbs/doc.nsf>). Along with whatever information may have been supplied from other sources on these issues, the Special Rapporteur, with the assistance of the Committee secretariat, assesses this follow-up information and makes a recommendation to the Committee on any further steps that may be appropriate. The Committee then sets aside time to discuss the Special Rapporteur's findings and decides on further action. The decisions are very flexible, and may range from changing the date for the submission of the State party's next report, to requesting further information, to requesting the Special Rapporteur to meet with representatives of the State party on a specific issue. If States fail to submit the follow-up information, the Special Rapporteur will meet with representatives in order to pursue the issue. If a State continues to be unresponsive to the Committee's request, that fact is recorded in the Committee's annual report to the General Assembly. The initial reactions of States parties to the follow-up procedure within the reporting process have been very encouraging.

The Committee's follow-up procedure complements and focuses the efforts of States parties and civil society subsequent to the adoption of concluding observations. The Committee seeks to encourage, first of all, considered and comprehensive public debate on its findings, and for this reason routinely requests States parties to give appropriate publicity to its concluding observations. If necessary, this may involve translating them into one or more local languages. Debating the concluding observations in the national parliament is also a constructive way of publicizing and generating discussion on the Committee's findings and recommendations. Thereafter, government departments, again ideally in

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consultation with civil society and other relevant stakeholders, are best placed to assess whether changes of law, policy and practice are necessary or appropriate to give effect to the concluding observations and to monitor those steps, including proposals for legislative change, as they take their course. These responses at the national level lay the groundwork for the next report, in the preparation of which the Committee regards as best practice a thorough accounting of the steps taken, area by area, in response to its previous concluding observations.

***What happens if a State party fails to submit a report to the Committee?***

Some States have been chronically late in submitting their reports, and/or have failed to attend scheduled dialogues. This has meant that the situation in some States parties has not been examined by the Committee for many years. As a result of this unsatisfactory situation, the Committee decided in 2001 that a State's record under the Covenant could be examined at the Committee's discretion in the absence of a report, and if necessary in the absence of a delegation from a State party, which would be advised in advance of the proposed date of such an examination. The major factor in deciding which States are examined in this fashion is of course the delay in reporting or the non-submission of reports. In these circumstances, the Committee adopts provisional concluding observations in private session on the basis of information that has been submitted to it concerning the State party being examined. These observations are transmitted to the State party, and may subsequently be made public in original or amended form.

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### **Box III.1. Purpose and value of the reporting process**

The process of compiling a report, as described, provides an opportunity for a State party to clarify, in the context of its own national framework, the content of its obligations assumed under the Covenant and to take stock of the current situation with respect to Covenant rights, as well as to identify areas that require reform to ensure full compliance with the Covenant. The consultations required within government structures and between Government and civil society in order to prepare a thorough report can improve understanding of the Covenant and the objectives of human rights generally. At the same time, 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. The report's consideration by the Committee allows for dialogue between the State party and a group of impartial and highly experienced experts during which areas requiring improvement can be identified and suggestions made. Reporting also highlights good practices and lessons learned which may be drawn on by other States as they seek to implement the Covenant. Finally, the outcome of the procedure in the form of concluding observations constitutes an authoritative guide for future legislation, policies and programmes. Although directed at the State party, they can also be used by other stakeholders to encourage implementation and a culture of human rights in the State party. They also serve as a valuable guide to other States parties where similar issues arise.

### **Box III.2. Where is the reporting process headed?**

The reporting process has been the subject of debate for some years, not least as a result of substantial backlogs which emerged to differing degrees within all of the treaty bodies in the 1990s, as well as of general concerns about the efficacy of the process. The Committee has in past years been clearly concerned with improving the reporting process. Typically, one or more Committee members will make a proposal for reform, which is studied on behalf of the Committee by an informal working group of members with the secretariat's assistance, and then debated and decided upon in plenary. At the same time, treaty bodies are increasing their efforts to harmonize procedures, with a view to reducing overlap and duplication and drawing on the respective skills and experiences of the treaty bodies. Examples of the greater coordination taking place between the treaty bodies are the outcomes of the recently instituted annual meetings of the chairpersons of the treaty bodies and the inter-committee meetings, which bring together members of each of the treaty bodies. The documents agreed upon at these meetings are available on the Treaty Bodies database of the Office of the United Nations High Commissioner for Human Rights (<http://www.unhchr.ch/tbs/doc.nsf>).

In 2002, the Secretary-General called for further reform of the treaty body system. In response, the Office of the United Nations High Commissioner for Human Rights has moved forward with consultations with treaty bodies, States parties and other stakeholders in order to chart a path towards a more efficient and effective treaty body system. One possible simplification mooted was that States should submit a single combined report to all the treaty bodies covering the full scope of their obligations under those treaties to which they are parties. Studies are in progress examining, for example, the use that might be made of a much expanded core document covering all matters common to the treaties, with concise reports then focusing on treaty-specific issues, with particular reference to follow-up to that treaty body's previous concluding observations. In June 2004, the inter-committee meeting and the meeting of chairpersons of the committees agreed that States wishing to utilize such an approach in their reporting to treaty bodies may do so. Further improvements to the methods of work and practices of all treaty bodies, including the Human Rights Committee, can be expected to emerge in coming years.

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## ***Adoption of General Comments on Articles of the Covenant***

A further means by which the Committee carries out its function of interpreting the Covenant and to clarify the scope and meaning of its articles, and thus of all States parties' obligations, is through the development and adoption of so-called general comments. As the provisions of the Covenant, like most human rights treaties, are phrased in general terms and thus liable to be interpreted in a variety of ways, the Committee has taken up the elaboration of general comments by way of advice to all States parties. Rather than dealing with a particular issue as it arises in the context of a particular State party's situation, general comments analyse a specific article or general issue in the Covenant in an extended and comprehensive fashion. While most general comments are detailed interpretations of a specific Covenant right, some address the Covenant rights of specific groups, such as aliens, while others address procedural issues, such as the preparation of reports, or miscellaneous issues, such as reservations to the Covenant. The general comments are available on the Treaty Bodies database of the Office of the United Nations High Commissioner for Human Rights (<http://www.unhchr.ch/tbs/doc.nsf>).

The Committee takes its authority for these documents from article 40, paragraph 4, of the Covenant, which provides that it may transmit "such general comments as it may consider appropriate" to all States parties. The first general comments, issued in the early 1980s, were quite brief. However, those issued since the late 1980s have become increasingly detailed. A general comment now reads as a general statement of law that expresses the Committee's conceptual understanding of the content of a particular provision, and as such is a very useful guide to the normative substance of international human rights obligations. This function enables the Committee to permit the Covenant to speak to modern circumstances, in which understandings and perceptions of language and practice may have evolved substantially since the Covenant was adopted. In this sense, the Covenant is a living instrument that remains as relevant to the contemporary challenges of today as it was when it was adopted. These comments thus continue to guide States parties in applying the provisions of the Covenant, as well as in preparing their reports.

In 2003, there was discussion during the inter-committee meeting of the possibility of treaty bodies' issuing joint general comments, in view of the at times considerable overlap between provisions of different treaties monitored by different committees. The committees may thus, in the future, move towards adopting parallel general comments on issues of

common concern, such as the meaning of the prohibition on discrimination or on the consequences of non-reporting by States parties.

### ***Consideration of Individual Complaints Under the Optional Protocol***

As has been observed above in the discussion of the content of the Optional Protocol to the Covenant, individuals who claim that their rights and freedoms under the Covenant have been violated may call the State in question to account for its actions if that State is a party to the Covenant and to the Optional Protocol. As of early June 2004, 1,295 such complaints had been registered by the Committee, of which 362 had been declared inadmissible under the criteria described in articles 3 and 5 of the Protocol and 452 considered on the merits of the case. Of those, violations of the Covenant were found in 349 cases; 178 were withdrawn, and 305 were pending. Further updates on these figures may be obtained at: <http://www.unhchr.ch/html/menu2/8/stat2.htm>. Typically, it may take several years for a complaint to proceed from initial submission through the series of exchanges between the parties to a final decision by the Committee. In certain circumstances, a final resolution may be achieved much more quickly.

#### **Box III.3. Where can I find detailed information on how to submit an individual complaint?**

The process for submitting a communication and having it examined by the Human Rights Committee is set out in detail in Fact Sheet No. 7 (Rev.1), *Complaint Procedures*, also published by the Office of the United Nations High Commissioner for Human Rights. This publication is available in hard copy on request and is also accessible online at the following address: <http://www.unhchr.ch/html/menu6/2/sheets.htm>. The reader is referred to that source for a full discussion of the following elements, which are set out in brief.

#### ***What if my complaint is urgent?***

When a complaint is first submitted, the Committee may sometimes request the State party concerned to take what are called “interim measures” to avoid irreparable damage to the alleged victim while the complaint is being considered. These measures are designed to preserve the respective rights of the parties until the Committee takes a decision on a complaint. For example, States have been requested to refrain from

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executing or extraditing persons before the Committee examines the compatibility with the Covenant of such actions, which cannot be undone after the event.

***What technical and/or procedural requirements must my complaint satisfy?***

The complaint having been lodged, there are a number of admissibility criteria that must be satisfied before the Committee will consider the merits of an individual communication under the Optional Protocol. These are set out in the Optional Protocol itself and in the Committee's jurisprudence. The Committee does not have independent fact-finding functions under the Optional Protocol, but rather considers all written information made available to it by the author of the complaint and the State party concerned. No oral evidence is submitted. There is no strict rule regarding the allocation of the burden of proof in Optional Protocol cases. The Committee will tend to accept the facts as alleged by the victim if it receives no information from the relevant State, or if the State merely submits refutations in general terms. The Committee will tend to accept the State's specific denials of certain facts unless the victim can provide documentary proof supporting his or her own assertions. However, the Committee has on occasion recognized that the nature of a complaint may make it impossible for the victim to submit further relevant evidence, and/or that certain information is occasionally exclusively in the hands of the State party. In such cases, the burden placed upon the State to refute the alleged victim's allegations will be higher. At the very least, a State is required to investigate a complainant's allegations in good faith.

***What about the substance of my case?***

If the Committee finds the case to be admissible, it adopts "Views" on the substance, or merits, of the complaint. These Views consist of either a finding of violation, or a finding of non-violation, or a mixture of both if the complaint has made a number of allegations. The Views are communicated to the author of the complaint as well as to the State party, and are made public after the session at which they are adopted. Being decisions on individual complaints, this case law is a very important guide to the specific meaning in concrete circumstances of what the Covenant requires, and is thus a valuable point of reference for courts and decision makers in all States parties when considering the same or similar issues.

### *What happens if the Committee finds in my favour?*

If the Committee finds a violation in a particular case, the State party is requested to remedy that violation, pursuant to the obligation in article 2, paragraph 3, of the Covenant to provide an effective remedy for Covenant violations. The recommended remedy may take specific form, such as the payment of compensation, the repeal or amendment of legislation, and/or the release of a detained person. Thereupon, the case is taken up by the Committee's Special Rapporteur on Follow-up to Views, who communicates with the parties with a view to achieving a satisfactory resolution to the case in the light of the Committee's Views. In many cases, significant remedies have been achieved through the Optional Protocol process for victims of human rights violations. In addition, laws and policies have been changed in order to ensure that in future other individuals do not suffer the same violations. Each year, the results of these activities undertaken following a finding of a violation and the remedies provided by States parties are described in the annual report of the Committee.

### ***Assessment of Inter-State Complaints***

A State party may submit a communication to the Committee alleging that another State party is not fulfilling its obligations under the Covenant. This reflects the dual understanding of a human rights treaty as not simply a contract between a State party and persons subject to its jurisdiction, but also a multilateral treaty in the traditional sense that all States parties to a treaty have an interest in the compliance of other States parties with their obligations. In this fashion, it can be legally said that human rights violations in a State party are of direct concern to all other States parties. Such a complaint, which is provided for in article 41 of the Covenant, may, however, only be made in respect of two States parties that have declared that they recognize the competence of the Committee to receive and consider such inter-State complaints. As of publication, some 48 States had made such a declaration. To date, however, no inter-State complaint has been submitted to the Committee. Nevertheless, it is instructive to outline the way in which this procedure would operate.

The first step would be for the State lodging the complaint to bring the matter to the attention of the State that is alleged not to be fulfilling its obligations. Within three months, the latter should reply, in the form of a written explanation or clarification. If, within six months, the matter is not settled to the satisfaction of both parties, either may refer it to the Committee, which may deal with it once satisfied that, within a reasonable period of time, all domestic remedies have been tried, without success.

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The Committee may then take the matter up and propose its good offices in the search for a friendly solution. If there is still no agreement, the Committee may appoint a five-person conciliation commission, with the agreement of the States parties directly concerned, but not including their nationals among its members, with instructions to complete its business and submit a report to the Chairperson of the Committee and, through that person, to the parties in dispute, within 12 months.

#### **Box III.4. How can I access the Committee's work?**

The concluding observations, general comments, final decisions on individual complaints and other documents produced by and for the Committee are all available and searchable online in the Treaty Bodies database of the Office of the United Nations High Commissioner for Human Rights (<http://www.unhchr.ch/tbs/doc.nsf>). In order to stay up to date with developments as they occur, any individual can subscribe to a free public electronic LISTSERV which distributes via e-mail the results of each session of the Human Rights Committee at or shortly after the conclusion of each session. E-mail addresses may be added to this distribution mechanism by visiting the following web page and adding the address in the field provided: <http://www.unhchr.ch/tbmailin.nsf/email?Openform>. This LISTSERV provides a link to an updated chart showing which States parties have submitted reports and when they are scheduled for consideration by the Committee.

In order to stay abreast of developments while a session is in progress, press releases summarizing each day's developments can be consulted daily on the homepage of the Office of the United Nations High Commissioner for Human Rights (<http://www.ohchr.org>). A final press release after the end of the session reviews the most important decisions on individual complaints adopted during the session in question.

The same information may also be found in hard copy form in the Committee's annual report to the General Assembly, which is available for consultation in many libraries and information centres. The most important decisions with respect to individual complaints are also collected in the ongoing series "Selected Decisions of the Human Rights Committee Under the Optional Protocol". These volumes are likewise available for consultation in many libraries and information centres.

### *What impact does the Committee's work have?*

No country's record of protecting and promoting civil and political rights is perfect and free from criticism. As a result, the Committee's fourfold task, in respect of the particular circumstances of each national context, is to encourage each State party:

- To maintain in place those laws, policies and practices that enhance the enjoyment of these rights;
- To withdraw or suitably amend those measures that are destructive or corrosive of Covenant rights;
- To take appropriate positive action when a State party has failed to act to promote and protect these rights; and
- To consider appropriately the effects in terms of the Covenant of new laws, policies and practices that a State party proposes to introduce in order to ensure that it does not regress in giving practical effect to Covenant rights.

The Committee's work has had a real effect in promoting the enjoyment of civil and political rights in many countries, even though the cause and effect relationship is at times difficult to discern clearly. One can readily identify numerous instances of an individual complaint leading to positive results for the individual concerned, be it in the form of a payment of compensation, a commutation of a death sentence, a retrial, an investigation into particular events, or a number of other remedies, in the State party concerned. Such cases have also led to changes in laws that gave rise to a finding of violation of the Covenant. Each year, the results of the individual communications considered during the year may be consulted in the Committee's annual report to the General Assembly, which is published as Supplement No. 40 of the Official Records of the Assembly's session.

Similarly, in the context of the reporting process, the instances are numerous of the recommendations of the Human Rights Committee leading, directly or indirectly, to positive changes to law, policy and practice. One wide-ranging survey of these effects at national level is a 2001 study by C. Heyns and F. Viljoen, entitled "The Impact of the United Nations Human Rights Treaties at the Domestic Level". Similarly, a detailed study by the International Law Association has compiled the effects of treaty body recommendations upon national courts and tribunals. With the Committee's follow-up procedure by which feedback is requested from a State concerning priority recommendations contained in concluding observations within a year, the specific results in this field will

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become easier to trace. The broader effects should also not be neglected - when the Committee issues a recommendation on a matter or a finding on an individual complaint, other States parties with similar issues can derive guidance from the Committee's analysis and undertake appropriate action. The same effect is intended from the elaboration of general comments, which are not directed at a particular State party. In similar fashion, the institution of procedures to "vet" new laws or policies prior to their introduction for consistency or compatibility with, among other instruments, the Covenant has the effect of preventing violations before they can arise.

## **Conclusion**

The Human Rights Committee performs the vital function of monitoring the enjoyment of the rights set out in the Covenant, a legally binding international treaty. Whether in its consideration of States parties' reports, its adoption of general comments, or its examination of complaints by individuals or States alleging violations of the Covenant, the Committee is the pre-eminent interpreter of the meaning of the International Covenant on Civil and Political Rights. In doing so, it seeks to give a full and generous interpretation to the meaning of the Covenant's provisions, consistent with its character as an instrument guaranteeing fundamental rights and freedoms. The Committee's members do not simply look at the formal legal position applicable in a particular State or case, but rather go deeper, to the practical realities on the ground in the States with which it is concerned, and issue findings with a view to achieving positive change. Indeed, compliance by a State with the Committee's Views is evidence of a State's good faith attitude towards its Covenant obligations. Over the years, the Committee's work has resulted in numerous changes of law, policy and practice, both at the general national level and in the context of individual cases. In a direct sense, therefore, the Committee's discharge of the monitoring functions entrusted to it under the Covenant has improved the lives of individuals in countries in all parts of the world. It is in this spirit that the Committee will continue to make its work relevant and applicable to all States parties, and to strive for the enjoyment of all civil and political rights guaranteed by the Covenant, in full and without discrimination, by all people.

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# ANNEXES

## Annex I

### **INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

***Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966***

**Entry into force: 23 March 1976, in accordance with article 49**

#### **Preamble**

*The States parties to the present Covenant,*

*Considering* that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

*Recognizing* that these rights derive from the inherent dignity of the human person,

*Recognizing* that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

*Considering* the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

*Realizing* that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

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Agree upon the following articles:

## **PART I**

### *Article 1*

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

## **PART II**

### *Article 2*

1. Each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy,

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notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

### *Article 3*

The States parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

### *Article 4*

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paras. 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State party to the present Covenant availing itself of the right of derogation shall immediately inform the other States parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

### *Article 5*

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and

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freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

### **PART III**

#### *Article 6*

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below 18 years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State party to the present Covenant.

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*Article 7*

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

*Article 8*

1. No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

*Article 9*

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

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2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

#### *Article 10*

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

#### *Article 11*

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

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### Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

### Article 13

An alien lawfully in the territory of a State party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

### Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

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3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

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7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

*Article 15*

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

*Article 16*

Everyone shall have the right to recognition everywhere as a person before the law.

*Article 17*

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

*Article 18*

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

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3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

#### *Article 19*

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

#### *Article 20*

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

#### *Article 21*

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

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### Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

### Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

### Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

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*Article 25*

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

*Article 26*

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

*Article 27*

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

**PART IV**

*Article 28*

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of 18 members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights,

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consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

#### *Article 29*

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States parties to the present Covenant.

2. Each State party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

#### *Article 30*

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States parties which have nominated them, and shall submit it to the States parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States parties present and voting.

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### *Article 31*

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

### *Article 32*

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

### *Article 33*

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

### *Article 34*

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to

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the States parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

#### *Article 35*

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

#### *Article 36*

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

#### *Article 37*

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

#### *Article 38*

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

#### *Article 39*

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

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2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

#### *Article 40*

1. The States parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States parties to the present Covenant.

5. The States parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

#### *Article 41*

1. A State party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State party claims that another State party is not fulfilling its obligations under the

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present Covenant. Communications under this article may be received and considered only if submitted by a State party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State party to the present Covenant considers that another State party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being

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considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within 12 months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States parties concerned.

2. The provisions of this article shall come into force when 10 States parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State party concerned has made a new declaration.

#### *Article 42*

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States parties concerned, the Committee may, with the prior consent of the States parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States parties concerned. If the States parties concerned fail to reach agreement within three months on all or part of the composition of the

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Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States parties concerned, or of a State not party to the present Covenant, or of a State party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than 12 months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within 12 months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States parties concerned;

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(d) If the Commission's report is submitted under subparagraph (c), the States parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States parties concerned, in accordance with paragraph 9 of this article.

#### *Article 43*

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### *Article 44*

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

#### *Article 45*

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

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## **PART V**

### *Article 46*

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

### *Article 47*

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

## **PART VI**

### *Article 48*

1. The present Covenant is open for signature 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 to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

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#### *Article 49*

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

#### *Article 50*

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

#### *Article 51*

1. Any State party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States parties to the present Covenant with a request that they notify him whether they favour a conference of States parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States parties which have accepted them, other States parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

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*Article 52*

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

*Article 53*

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.



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## Annex II

### **OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

***Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966***

**Entry into force: 23 March 1976, in accordance with article 9**

*The States parties to the present Protocol,*

*Considering* that in order further to achieve the purposes of the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in Part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant

*Have agreed* as follows:

#### *Article 1*

A State party to the Covenant that becomes a party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State party to the Covenant which is not a party to the present Protocol.

#### *Article 2*

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

#### *Article 3*

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to

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be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

#### *Article 4*

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State party to the present Protocol alleged to be violating any provision of the Covenant.

2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

#### *Article 5*

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State party concerned.

2. The Committee shall not consider any communication from an individual unless it has ascertained that:

(a) The same matter is not being examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.

3. The Committee shall hold closed meetings when examining communications under the present Protocol.

4. The Committee shall forward its views to the State party concerned and to the individual.

#### *Article 6*

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

#### *Article 7*

Pending the achievement of the objectives of resolution 1514 (XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to

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Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

*Article 8*

1. The present Protocol is open for signature by any State which has signed the Covenant.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

*Article 9*

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

*Article 10*

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

*Article 11*

1. Any State party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations.

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The Secretary-General shall thereupon communicate any proposed amendments to the States parties to the present Protocol with a request that they notify him whether they favour a conference of States parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States parties which have accepted them, other States parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

#### *Article 12*

1. Any State party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

#### *Article 13*

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

(a) Signatures, ratifications and accessions under article 8;

(b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;

(c) Denunciations under article 12.

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*Article 14*

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

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## Annex III

### **SECOND OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, AIMING AT THE ABOLITION OF THE DEATH PENALTY**

***Adopted and proclaimed by General Assembly resolution 44/128 of  
15 December 1989***

*The States parties to the present Protocol,*

*Believing* that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights,

*Recalling* article 3 of the Universal Declaration of Human Rights, adopted on 10 December 1948, and article 6 of the International Covenant on Civil and Political Rights, adopted on 16 December 1966,

*Noting* that article 6 of the International Covenant on Civil and Political Rights refers to abolition of the death penalty in terms that strongly suggest that abolition is desirable,

*Convinced* that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life,

*Desirous* to undertake hereby an international commitment to abolish the death penalty,

*Have agreed* as follows:

#### *Article 1*

1. No one within the jurisdiction of a State party to the present Protocol shall be executed.
2. Each State party shall take all necessary measures to abolish the death penalty within its jurisdiction.

#### *Article 2*

1. No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.

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2. The State party making such a reservation shall at the time of ratification or accession communicate to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.

3. The State party having made such a reservation shall notify the Secretary-General of the United Nations of any beginning or ending of a state of war applicable to its territory.

### *Article 3*

The States parties to the present Protocol shall include in the reports they submit to the Human Rights Committee, in accordance with article 40 of the Covenant, information on the measures that they have adopted to give effect to the present Protocol.

### *Article 4*

With respect to the States parties to the Covenant that have made a declaration under article 41, the competence of the Human Rights Committee to receive and consider communications when a State party claims that another State party is not fulfilling its obligations shall extend to the provisions of the present Protocol, unless the State party concerned has made a statement to the contrary at the moment of ratification or accession.

### *Article 5*

With respect to the States parties to the first Optional Protocol to the International Covenant on Civil and Political Rights adopted on 16 December 1966, the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction shall extend to the provisions of the present Protocol, unless the State party concerned has made a statement to the contrary at the moment of ratification or accession.

### *Article 6*

1. The provisions of the present Protocol shall apply as additional provisions to the Covenant.

2. Without prejudice to the possibility of a reservation under article 2 of the present Protocol, the right guaranteed in article 1, paragraph 1, of the present Protocol shall not be subject to any derogation under article 4 of the Covenant.

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### *Article 7*

1. The present Protocol is open for signature by any State that has signed the Covenant.

2. The present Protocol is subject to ratification by any State that has ratified the Covenant or acceded to it. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified the Covenant or acceded to it.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

### *Article 8*

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

### *Article 9*

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

### *Article 10*

The Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

(a) Reservations, communications and notifications under article 2 of the present Protocol;

(b) Statements made under articles 4 or 5 of the present Protocol;

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(c) Signatures, ratifications and accessions under article 7 of the present Protocol;

(d) The date of the entry into force of the present Protocol under article 8 thereof.

*Article 11*

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

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## Human Rights Fact Sheets: \*

- No. 2 The International Bill of Human Rights (Rev.1)
- No. 3 Advisory Services and Technical Cooperation in the Field of Human Rights (Rev.1)
- No. 4 Combating Torture (Rev.1)
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- No. 7 Complaint Procedures (Rev.1)
- No. 9 The Rights of Indigenous Peoples (Rev.1)
- No. 10 The Rights of the Child (Rev.1)
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- No. 29 Human Rights Defenders: Protecting the Right to Defend Human Rights

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\* Fact Sheets Nos. 1, 5 and 8 are no longer issued.

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