

International Covenant on **Civil and Political Rights**



**Guide for Ratification
and Implementation**

ICCPR

**Centre for Civil
and Political Rights**

International Covenant on
Civil and Political Rights
(ICCPR)

Guide for Ratification and Implementation

Centre for Civil
and Political Rights



British Embassy
Rangoon

International Covenant on Civil and Political Rights (ICCPR)
- Guide for Ratification and Implementation

© Centre for Civil and Political Rights (CCPR-Centre), 2017

The contents of this publication may be reproduced and distributed for non-commercial purposes provided that CCPR-Centre is duly acknowledged.

This guide is developed by CCPR-Centre in cooperation with **Judge *Kristen Thelin***, former member of the UN Human Rights Committee,

and with support of:

UK Foreign & Commonwealth Office

Design and Layout: CCPR-Centre

Printing: AIPP Printing Press Co. Ltd.

ISBN: 978-616-7898-34-6

Centre for Civil and Political Rights (CCPR-Centre)

Rue de Varembe 1

PO Box 183

1202 Geneva, Switzerland

Tel: +41 (0) 22 33 22 555

Email: info@ccprcentre.org



Table of contents

<i>Foreword</i>	<i>i</i>
<i>Introduction</i>	<i>ii</i>
1. Ratification or Accession?	1
2. Ratification before and after	2
3. Reservation	4
4. ICCPR – an overview	5
5. Articles and issues of interest	8



Foreword

The International Covenant on Civil and Political Rights (ICCPR) is an international treaty, which provides legal protection for the civil and political rights set out in the Universal Declaration of Human Rights (UDHR). As the main international human rights law comprehensively dealing with civil and political rights, it was adopted by the UN General Assembly on 16 December 1966 and entered into force on 23 March 1976. As of August 2017, a total of 169 States are parties to the Covenant, while 6 countries have only signed it (China, Comoros, Cuba, Nauru, Palau and Saint Lucia) and other 22 UN members States are yet to take any action either sign or join it (Antigua and Barbuda, Bhutan, Brunei Darussalam, Cook Islands, Fiji, Holy See, Kiribati, Malaysia, Marshal Islands, Micronesia, Myanmar, Niue, Oman, Qatar, Saint Kitts and Nevis, Saudi Arabia, Singapore, Solomon Islands, South Sudan, Tonga, Tuvalu, and United Arab Emirates).

The Centre for Civil and Political Rights (CCPR-Centre) has one of its purposes on the promotion of universal ratification of ICCPR by encouraging and assisting non-State parties and other relevant stakeholders to take this significant step forward for the protection and promotion of fundamental human rights and freedoms.

This guide is developed and published in the context of CCPR-Centre's project to assist national efforts of Myanmar to join ICCPR and facilitate domestic processes for signature and ratification. This project was possible with support of the UK Foreign & Commonwealth Office.

In the framework of this project, a number of meetings with stakeholders and country visits were carried out by CCPR-Centre including the workshop with relevant national agencies of Myanmar, in February 2017 in Nay Pyi Taw.

Against this backdrop, primary topics dealt with in this tool were identified and selected based on the findings of the workshops and consultations held with relevant national authorities of Myanmar.

It is hoped that this guide helps those actors involved in the process and efforts towards ratification (or accession) of ICCPR overcome political, legal and administrative challenges by identifying, at earliest possible timing, where changes are needed for ratification of ICCPR. It should, however, also be stressed that provisions of ICCPR do not have to be realised in a country prior to the ratification, but the ratification is the start of long-term and incremental process for the full implementation of ICCPR, in which various assistance is offered by different stakeholders including the UN HR Committee (please refer to Chapter 3).

Patrick Mutzenberg

Director, Centre for Civil and Political Rights

Introduction

The guide seeks to provide practical information to State actors intending or considering *ratification* (or *accession*) of the *International Covenant on Civil and Political Rights (ICCPR)* in a simple and concise manner. It focuses on the information and issues that deem particularly useful for the representatives of State bodies and agencies to consider and take actual steps towards ratification of ICCPR.

For this purpose, it intends to avoid duplication of information already available or provided by other sources and materials. As such, please refer to the “*UN Human Rights Committee- Participation in the Reporting Process: Guidelines for Non-Governmental Organisations (NGOs)*”¹, another publication of the CCPR-Centre, for more general and comprehensive information on ICCPR and the system how the implementation of the Covenant is facilitated and monitored including the UN Human Rights Committee (monitoring body of ICCPR) and possibilities of civil society participation.

Furthermore, this guide can also be used, possibly in combination with the aforementioned guidelines, to train State officials, Members of Parliament as well as civil society actors.

*“A ratification is thus not an end in itself
but rather a starting point for a full
implementation of the rights and obligations
flowing from the ICCPR.”*

Judge Krister Thelin

Former Member of the UN HR Committee

¹ <http://ccprcentre.org/ccpr-ngo-guidelines>

1. Ratification or Accession?

Pursuant to the international law of treaties, States can either **ratify** or **accede** to ICCPR in order to be a State Party to it. There is only a slight difference between ratification and accession. In any case, States agree to be bound by ICCPR through ratification or accession. It follows the same procedure as the other UN treaties.

Ratification (ICCPR Article 48, §1-2) is a two-step process to join ICCPR, first, the State (i.e. an authorized State representative) signs the Covenant, and second, the State ratifies it by depositing an instrument of ratification with the UN Secretary General in New York. States, who only signed ICCPR, are not yet obliged to implement ICCPR, but the **signature** indicates the State's intention to join ICCPR through ratification at a later stage and obliges the State to refrain from acts that are contrary to the object and purpose of ICCPR. ICCPR becomes legally binding to a State through its ratification.

Accession (ICCPR Article 48, §3-4) is a single-step process, whereby a State joins ICCPR by depositing an instrument of accession with the UN Secretary General, without signing it or any other formal step in advance.

2. Ratification before and after

When joining ICCPR, through ratification or accession, provisions of ICCPR become legally binding commitments of all State parties. Against this backdrop, there is sometimes the misunderstanding that full compliance with these provisions is a pre-requisite for ICCPR ratification (or accession). It is therefore important to those States who have not joined ICCPR to note that they do not have to implement or realise these provisions before ratification (or accession). Instead, ***ratification is the start of long-term and incremental process for the full implementation of ICCPR***, which can and should take many years. (Nevertheless, information contained in this guide should also help those States that have not yet joined ICCPR analyse (potential) gaps between domestic framework and ICCPR, and start addressing them before ratification.

ICCPR enters into force 3 months after the ratification (ICCPR Article 49, §1). And from there on, all the ***State parties are required to take necessary steps*** to give effect to the rights recognised in the Covenant (ICCPR Article 2, §2), whereby inconsistencies of domestic law or practice with the Covenant must be changed. In such process, legislative, administrative or other measures may be necessary.

In the process towards full implementation of ICCPR, efforts of State parties are supported by the monitoring body of ICCPR, the ***UN Human Rights Committee*** (HR Committee), which consists of 18 independent experts nominated and elected by State parties to ICCPR. As one of its main functions, the HR Committee ***reviews*** situation of implementation in State parties through ***constructive dialogue*** and give expert ***recommendations*** to the State concerned.

In this context and as the obligation under ICCPR, State parties are required to submit a ***report to the HR Committee***, one year after the Covenant

entered into force (15 months after the ratification), for the initial **review by the Committee** (ICCPR Article 40).² Thereafter State parties are requested to submit **periodic reports** at intervals specified by the HR Committee for the following cycles of review (between three and seven years). These State reports should detail the measures taken by the State concerned to implement the Covenant. Based on the information provided by the State party and other stakeholders as well as through interactive dialogue with the State representatives, the HR Committee will issue recommendations to the State concerned for effective implementation of the Covenant. Experience shows that many State parties have **benefited** from the expert advices from the HR Committee as well as assistances from other stakeholders at different levels.

As such, non-party States do not need to see the current gaps between domestic situation and ICCPR (or any other international standards) as an obstacle for ratification, but ratification opens up the opportunity to more effectively address those gaps through different procedures set under ICCPR and cooperation with relevant stakeholders including the HR Committee.

At the same time, reporting procedure i.e. obligation to the UN bodies including HR Committee can be burdensome to State parties, especially to those who are party to several Treaties and those with limited capacity and/or resources. One effective way to overcome this challenge is to establish a specifically designated body within the State, i.e. **National Mechanism for Reporting and Follow-up** (NMRF), for this purpose, which can also coordinate efforts for the implementation of the Treaties.³ State parties may also wish to seek **assistance from partners** including relevant UN bodies such as OHCHR and UNDP⁴. **CCPR-Centre** also offers and has profound experience in providing various supports to national actors in order to facilitate relevant process and assist their efforts to implement ICCPR and HR Committee's recommendations as well as to report to the Committee.

² For more information about initial and periodic reports as well as the Common Core Document to be submitted by State parties to the HR Committee, please refer to: "Guidelines for the treaty-specific document to be submitted by States parties under article 40 of the International Covenant on Civil and Political Rights" (http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&SymbolNo=CCPR/C/2009/1) and "HRI/GEN/2/Rev.6_" (http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=HRI/GEN/2/Rev.6_&Lang=en)

³ For more information on NMRF, please refer to the practical guide published by OHCHR / UN: http://www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf

⁴ Ref. UN General Assembly resolution 68/268 adopted on 9 April 2014(A/RES/68/268)

3. Reservation

As the case with other international treaties, if a State cannot agree to specific provisions of ICCPR, it may put **reservations** or **interpretative declarations** on the part concerned.⁵ Such reservations or interpretative declarations exclude or modify the legal effect of the provisions concerned to the State Party. However, as for all the international treaties, such reservations must be specific and must not be incompatible with the object and purpose of the ICCPR.⁶

States can make reservations or interpretative declarations only **at the stage of ratification or accession** clarifying how it implement or interpret the certain parts concerned.

In order to make reservations (or interpretative declarations), a State first should send written communication to other State Parties and clearly identify the part, which it does not agree or cannot accept, and explain the reasons (in case of interpretative declarations, also clarify how it interprets the parts concerned). If the proposed reservations or declarations are not incompatible with the object and purpose of ICCPR and the other State Parties do not object, they can be accepted as such and put on record.

After making reservations or interpretative declarations at the time of ratification or accession to ICCPR, States Parties are continuously encouraged by the HR Committee to review and address their grounds and eventually withdraw them.

⁵ For an overview of the reservations and interpretative declarations currently put by State Parties to ICCPR, disaggregated by the Article and State Party concerned, please refer to the list made by CCPR Centre: http://ccprcentre.org/files/media/List_of_ICCPR_reservations.pdf

⁶ Also ref. Vienna Convention on the Law of Treaties (VCLT), Arts. 19 – 23

4. ICCPR - an overview

The International Covenant on Civil and Political Rights (ICCPR) was adopted by the UN General Assembly on 16 December 1966 and entered into force on 23 March 1976. As of August 2017, a total of 169 States are parties to the Covenant.⁷

ICCPR consists of 53 Articles divided into six parts:⁸

Part I – Right to self-determination

Article 1 guarantees the *right of peoples to self-determination*.

Part II – Scope of the Covenant

Article 2 provides that each State party to ICCPR must respect and ensure to *all individuals* within its jurisdiction the rights recognised in the Covenant *without discrimination* and provide *effective remedy* to any person whose rights under the Covenant are violated.

Article 3 sets out the *equality between men and women* in relation to the rights guaranteed in the Covenant.

Article 4 allows States to *derogate* from (i.e. to limit the application of) some of the rights recognised in the Covenant in certain *exceptional situations*, while *no derogation* may be made from ICCPR Articles *6, 7, 8 (§s 1 and 2), 11, 15, 16 and 18*.

Article 5 prohibits the use of the Covenant by any State, group or person as justification to limit or violate rights of others.

⁷ Up-to-date list of the States Parties to ICCPR can be found in the UN Treaty Collection database at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en

⁸ For the full text of the Covenant and more detailed explanation of each Article of ICCPR, please refer to the CCPR Centre's guidelines: <http://ccprcentre.org/ccpr-ngo-guidelines>

Part III – Substantive rights and fundamental freedoms of individuals

Article 6 protects the *right* of every human being *to life*, including those sentenced to death, which may be imposed only for the most serious crimes in accordance with the law.

Article 7 prohibits *torture*, cruel, inhumane or degrading treatment or punishment, and unauthorised medical experimentation.

Article 8 prohibits *slavery*, slave-trade, servitude and forced labour in all forms.

Article 9 prohibits unlawful arrests and *arbitrary detention*.

Article 10 protects the right of persons deprived of their liberty to appropriate *conditions of detention*.

Article 11 prohibits imprisonment of persons for their failure to fulfil contractual obligation.

Article 12 protects the right of everyone lawfully within a State to the *freedom of movement* within that State and to leave it.

Article 13 protects the *right of aliens* lawfully in a State *to remain* in that State with certain exceptions.

Article 14 protects the right of everyone to a *fair trial* in both criminal and civil cases, to the *equality before courts*, to fair adjudication of claims heard before courts and tribunals, and to other protections applicable to criminal cases.

Article 15 prohibits retroactive criminal punishment.

Article 16 protects the right of everyone to be *recognised as a person before the law*.

Article 17 protects the right of everyone to *privacy*.

Article 18 protects the right of everyone to the *freedom of thought, conscience and religion*, including the right to have or change one's religion.

Article 19 protects the right of everyone to the *freedom of opinion and expression*, including the right to information.

Article 20 prohibits *propaganda for war* and any *advocacy of* national, racial or religious *hatred*.

Article 21 protects the right of *peaceful assembly*.

International Covenant on Civil and Political Rights (ICCPR)

Article 22 protects the right of everyone to the *freedom of association*, including the right to form and join trade unions.

Article 23 recognises particularity of family as a unit of society and the *right of men and women to marry, prohibits forced marriage*, and guarantees the *equality of spouses* as to marriage, during marriage and at its dissolution.

Article 24 protects the *rights of every child* in general, including the right to acquire a nationality.

Article 25 protects the *right of every citizen to vote*, to be *elected* at genuine periodic elections with universal and equal suffrage held by secret ballot, and to have equal access to *public services* in his country.

Article 26 guarantees the rights of all persons to the *equality before the law*, to the equal and effective protection against discrimination on any ground.

Article 27 protects the *right of persons belonging to ethnic, religious or linguistic minorities*, in community with other members of the group, to enjoy and practice their own *culture, religion and language*.

Part IV – establishment and operation of the UN HR Committee

Articles 28 to 45 establish the UN HR Committee as monitoring body of ICCPR and sets out its functions and procedures.

Part V – General saving provision

Articles 46 and 47 are the saving provisions with respect to the United Nations Charter and to the inherent right of all peoples to freely enjoy and utilise their natural wealth and resources.

Part VI – Technicalities to become a Party to the Treaty

Articles 48 to 53 are the standard provisions of UN HR Treaties dealing with the mechanics of becoming a party and making notifications and amendments.

5. Articles and issues of interest

While situation and context varies from one to another, the following offers an explanation of some Articles and issues covered by ICCPR, which can be of particular interest to the States that have not joined ICCPR but considering doing so. These Articles and issues are selected by CCPR-Centre based on its experience as well as consultation and workshops conducted so far with relevant actors in this regard.

Article 1: Right of “peoples” to Self-Determination

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 co-operation, 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.

As the only one in ICCPR, Article 1 deals with a collective right i.e. the right of **peoples** (whereas the other Articles of ICCPR deal with rights of individuals). This Article, i.e. the right of peoples to **self-determination**, primarily addressing human rights issues related to colonialism, has its relevance when considering the **rights of indigenous peoples**.

In contrast to relatively high attention paid and interest in this Article by relevant stakeholders, this Article and the issue of self-determination are **rarely invoked or raised** by the HR Committee in its work, unless it is

brought up by the State concerned or already under discussion at national level e.g. in the context of the rights of indigenous peoples.

It is also important to note that Article 1 **cannot be invoked** in the **Individual Communications** procedure of the Committee, as it deals with a collective right of peoples, but not of individual persons.

Topics addressed under Article 1 by the HR Committee through its review process include: *self-governing or secession of non-self-governing territories; self-governing of indigenous peoples; land rights of indigenous peoples including free, prior and informed consent of indigenous peoples on the usage of their lands; representation / participation of indigenous peoples in decision making.*

Article 2: Non-discrimination, constitutional framework for ICCPR implementation, and access to remedies

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 laws 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, 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 2, § 1 lays out the principle of **non-discrimination** in the protection of the rights guaranteed in the Covenant including the obligation of State

parties to take positive measures to eliminate discrimination. Except for specific provisions of the ICCPR, which explicitly limit the applicability of rights to a certain group (or category) of population (e.g. Article 25 limited to the citizens), each State Party is **obliged to respect and ensure the rights** guaranteed under the Covenant to **all individuals**, regardless of nationality, including stateless persons, asylum seekers, refugees, migrants, who find themselves in the territory or subject to the jurisdiction of the State Party concerned.

The **working definition** of **discrimination** used by the Committee is as follows: *“any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on equal footing, of all rights and freedoms”*⁹. It is also important to note that enjoyment of rights and freedoms on an **equal footing** does not mean identical treatment in every instance.

Article 2, § 2 requires each State Party to take **necessary measures at the national level** to effectively and fully implement the Covenant. In this context, the Committee routinely asks State Parties to review and consider withdrawing any reservations or interpretative declarations. Furthermore, following issues are also addressed: incorporation of the Covenant in the domestic legislation and compatibility of domestic legislation including customary law with the Covenant; establishment and functioning of the National Human Rights Institute according to Paris Principles; independence of judiciary.

Article 2 § 3 guarantees the right of persons to **effective remedies**, when the rights or freedoms recognised in ICCPR are violated. It is closely linked with ICCPR Article 14, which sets out necessary guarantees and procedures for providing effective remedies. For the State parties that also ratified the first Optional Protocol, this paragraph also provides the grounds for the Committee to deal with individual communications. The right to an effective remedy set under this Article is, in practice, non-derogable even in a state of emergency.

⁹ General Comment of the HR Committee No. 18 (HRI/GEN/1/Rev.9 (Vol.1)), § 6: <http://ccprcentre.org/ccpr-general-comments>

A variety of issues relating to discrimination are addressed under Article 2 (sometimes together with other Articles) including *discrimination against or discriminatory treatment of: women; lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ); ethnic or national minorities; indigenous peoples; illegal and undocumented migrants; refugees and asylum seekers; non-citizens / nationals; persons with disabilities; children born out of wedlock; human rights abuses during periods of unrest including those perpetrated by non-state actors; protection of victims and witnesses of human rights violations.*

Article 4: derogation

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 (paragraphs 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 4 specifies the rights i.e. Articles from which State Parties may or may not derogate.¹⁰ Any derogation, or measures taken following derogations, from the provisions of the Covenant must be of an **exceptional and temporary** nature, and have to be justified as strictly required by the exigencies of the situation. However, no derogation may be made from the Articles set out in the Article 4, § 2 even in a state of emergency¹¹.

When addressing States in which a state of emergency has been (or might have been) declared, the HR Committee asks more specific questions about

¹⁰ For more detailed explanation of the Article 4, please also refer to the General Comment No. 29 of the HR Committee (CCPR/C/21/Rev.1/Add.11): <http://ccprcentre.org/ccpr-general-comments>

¹¹ Committee's understanding of the conditions in which a state of emergency may be declared is also explained in the abovementioned General Comment No. 29.

the protection of rights in relation to the Article 4. Counter-terrorism legislation is often addressed with Article 4, when the legislation affects non-derogable rights, or when terrorism is treated as an emergency situation and exercise of rights is restricted.

Although they are not specifically mentioned in the Article 4, there are rights and issues, which the Committee considers effectively non-derogable as fundamental rights, such as: non-discrimination; access to judicial or other remedies (Article 2, § 3); prohibition of hostage taking, abduction or unacknowledged detention (Article 9); treatment of persons deprived of liberty with humanity and dignity (Article 10); deportation or forcible transfer of population (Article 12); procedural and judicial guarantees (Articles 14 and 15); propaganda for war or advocacy of national, racial or religious hatred (Article 20); and protection of the rights of minorities (Article 27).

Topics addressed under this Article by the HR Committee through its review process include: *impact of counter-terrorism legislation on the rights covered by ICCPR including definition of terrorism and terrorist acts; conditions and processes for declaring a state of emergency; and, a state of emergency is declared: scope of any derogation; and safeguards to protect rights guaranteed under ICCPR.*

Article 14: equality before courts and tribunals and fair trial

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.

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

International Covenant on Civil and Political Rights (ICCPR)

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.

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 14 § 1 sets out a general guarantee of **equality before courts and tribunals** and entitles individuals to a **fair and public hearing** by a **competent, independent** and **impartial tribunal** established by law, if they face criminal charges or if their rights and obligations are determined in a suit at law. It also specifies the exceptional cases where media and public may be excluded from such hearings. Article 14, §§ 2 – 5 lay down

procedural **guarantees to be made available to the persons charged with a criminal offence**. § 6 secures a substantive right to **compensation in case of miscarriage of justice in criminal cases**. § 7 prohibits **double jeopardy**, i.e. guarantees the right to remain free from being tried or punished again for an offence for which the person concerned has already been finally convicted or acquitted.¹²

The right to equality before courts and tribunals applies to **all individuals**, not only citizens, who are in the territory or subject to the jurisdiction of the State Party, including equal access to and treatment before them without discrimination. Article 14 requires independence and effective functioning of the judiciary, in particular in criminal cases. General Comment No. 32 of the Committee (§§ 22 – 24) specifies application of Article 14 to military or special courts, as well as customary and religious courts. State Parties are also encouraged to provide free legal aid for individuals who do not have sufficient means to pay for it. Similar cases should be dealt with similar proceedings.

As fundamental safeguards for the rule of law, the HR Committee emphasises that the guarantees set out in the Article 14 must be respected regardless of legal tradition or domestic law. Any derogation from the Article 14 must be strictly limited to the extent it is absolutely necessary.

Topics addressed under this Article by the HR Committee through its review process include: *governance of the tenure, appointment, dismissal and disciplining of the members of the judiciary; transparency and accountability of public institutions; corruption in the judiciary; resources made available to the judiciary; availability of court translators and interpreters; presence of a lawyer and audio-visual recording of interrogations; “equality of arms” between the defence and prosecution in court; convictions based on confessions; length of custody and/or detention before being presented before a judge.*

Article 18: freedom of thought, conscience and religion

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.

¹² For more detailed explanation of the Article 14, please also refer to the General Comment No. 32 of the HR Committee (CCPR/C/GC/32): <http://ccprcentre.org/ccpr-general-comments>

International Covenant on Civil and Political Rights (ICCPR)

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.

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 18 protects the freedom of all individuals to have, not to have, or change one's thought, conscience, religion or belief.¹³ The freedom protected under Article 18 includes **freedoms of thought on all matters, theistic, non-theistic** and **atheistic beliefs** as well as the **right not to profess any religion or belief**. No one can be compelled to reveal his thoughts or adherence to a religion or belief.

Article 18 permits **no limitations** on the **freedom of thought and conscience** and on the **freedom to have or adopt a religion or belief** of one's choice, while the freedom to **manifest** a religion or belief **may be limited** in certain circumstances as specified in the Article 18, § 3 and Article 20. **Laws or practices regulating religious conversion** might be in conflict with this Article, if they are not in the condition specified in the Article 18, § 3.

The Committee points out that recognition of State religion(s) or existence of a majority religious group shall not result in any discrimination against adherents to other or minority religions, or non-believers. It should also be noted that rights of persons belonging to religious minority are also protected under ICCPR Article 27.

At the same time, freedom of thought, conscience and religion cannot be used to justify any infringement or abuse of other rights guaranteed in the Covenant, in particular the rights of vulnerable groups such as women, non-citizens and minorities.

The Committee also notes that, the right to **conscientious objection** to military service can be protected under Article 18, in case the obligation to use lethal weapon seriously conflicts with one's conscience, religion or belief.

¹³ For more detailed explanation of the Article 18, please also refer to the General Comment No. 22 of the HR Committee (CCPR/C/21/Rev.1/Add.4): <http://ccprcentre.org/ccpr-general-comments>

Topics addressed under this Article by the HR Committee through its review process include: *registration of religions including any restrictions on the possible registration; subsidisation of State religion(s); protection of the places of worship; guarantee of the right to change religion / regulation on the conversion; implicit or explicit requirements to have the State religion in order to hold a public position including in the judiciary; situation of religious classes at school.*

Article 19: freedoms of opinion and expression

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 19, § 1, protects the right to **freedom of opinion**, to which **no exception or restriction is permitted**.¹⁴ The freedom of opinion includes the right to change an opinion as well as the freedom not to express one's opinion. Any form of effort to coerce the holding or not holding of any opinion is prohibited and no one shall be subject to the impairment of any rights under the Covenant on the basis of his or her actual, perceived or supposed opinions. Reservation to Article 19, § 1 would be incompatible with the object and purpose of the Covenant and no derogation should be made from it even in a state of emergency.

Article 19, § 2, stipulates the right to **freedom of expression** including the **right to information**. It covers political discourse, commentary on one's own and on public affairs, canvassing, **discussion of human rights, journalism, cultural and artistic expression, teaching** and religious discourse. Some elements of this paragraph may be restricted in certain circumstances and conditions as provided in the Article 19, § 3 and Article 20. As such,

¹⁴ For more detailed explanation of the Article 19, please also refer to the General Comment No. 34 of the HR Committee (CCPR/C/GC/34): <http://ccprcentre.org/ccpr-general-comments>

reservations to particular elements of Article 19, § 2 may be acceptable, while a general reservation to the whole paragraph would be incompatible with the object and purpose of the Covenant.

Article 19, § 3, deals with certain conditions in which exercise of the rights guaranteed under Article 19 may be limited. Such **restrictions** must be provided and specified in law and meet strict tests of necessity and proportionality regarding the grounds set out in sub-para. (a) and (b) of the § 3. Restrictions on the other grounds that are not specified in Article 19, § 3, are not allowed. Similarly, restrictions must be applied only for the purpose, for which they are prescribed and must be directly related to the specific need on which they are predicated. Restrictions through traditional, religious or other customary laws are not compatible with the Covenant.

Laws and practices that prohibits criticism towards authority, penal codes having vague and broad definition of prohibited expression, or restricting independent journalism, both online or offline, might be incompatible with Article 19.

Topics addressed under this Article by the HR Committee through its review process include: *attacks against journalists; censorship and self-censorship; blocking of information critical to the government; any restrictions put on the freedoms guaranteed under Article 19; application of laws on incitement to national, racial or religious hatred; access to internet; legislation on libel and defamation; existence of non-State controlled or independent media.*

Article 21: freedom of peaceful assembly

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.

Article 21 protects the right to **freedom of peaceful assembly**, which covers **preparation and conduction of an assembly** and the right to **participate** in it. Restrictions on this right may be placed only in limited circumstances and conditions as described in the second sentence of the Article itself. It needs to be adequately protected by the State parties, even if the assembly concerned is organised against the (political, economic or other) interest of the State, but necessary to realise and maintain democracy and effective protection of rights guaranteed in the Covenant. It includes the obligation

of State parties to prevent a peaceful assembly from taking violent form due to provocation or use of force by security forces or by private actors. Freedom of peaceful assembly of *aliens*, who are lawfully within the territory of State parties should also be protected,

Only “peaceful” assembly is protected by the Article 21, whereas the condition of “peacefulness” primarily applies to the way how assembly is carried out, i.e. without violence. An assembly whose participants are armed is not regarded as peaceful even if the arms are not used. At the same time, organisation of an assembly may be limited, if any unpeaceful messages (e.g. inciting hatred, discrimination or violence) are disseminated at the assembly in accordance with the limitations set out in the Article 21 (and Article 19 and/or 20).

Purely private meetings e.g. gathering in a private house are not protected by this Article, while what constitutes “assembly” to be protected under this Article may only be determined case by case based on exact context and situation.

Topics addressed under this Article by the HR Committee through its review process include: *legislation and procedure for allowed assembly; statistics on the number of refused assembly and exact reasons therefor; criteria for determining a meeting illegal or threat to public security; measures to guarantee the right to peaceful assembly to all individuals in the territory or jurisdiction of the State concerned including migrant workers; (excessive) use of force by law enforcement personnel when dispersing assemblies; statistics on the penalties and arrests for holding unauthorized meetings.*

Article 22: freedom of association

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 Organize 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 22 protects the right to **freedom of association** including the right to form and join **trade unions**, on which restrictions may be placed only in limited circumstances and conditions as set out in the Article 22, § 2. More restrictions may be placed on the freedom of association of the members of the armed forces or the police. This freedom also covers the **freedom of individuals to choose, change or not to join associations**, whereby compulsory membership for an association can be a violation of Article 22, § 1. Associations that incite hatred, discrimination or violence may be prohibited under this Article (and in conjunction with other Articles such as 19, 20 and 21).

No specification is made in the Article 22 as to the “purpose” of associations, thus it can be political, economic, social, religious, cultural or sport associations. However, judicial persons under public law are not included. The freedom of association is a human **right of individual to form or join associations**, while it also covers a **collective right of existing associations to continue their activities** based on the common interests and needs of their member.

Obligations of State parties under this Article include the **positive obligation** to provide legal framework for the incorporation of juridical persons as well as to protect establishment or activities of associations from the interference by private parties.

Topics addressed under this Article by the HR Committee through its review process include: *requirements or restrictions on the recognition of associations including political parties; registration of associations including human rights organisations and non-governmental organisations (NGOs); on the impact of counter-terrorism legislation on the freedom of association; statistics on applications, refusals and reasons for the refusal of applications; legislative guarantees of the right to strike; attacks and threats against members of trade unions; restrictions on forming or joining trade unions for certain categories of workers; financial or other forms of control or restrictions on the operation of NGOs.*

Article 25: electoral rights

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.

In contrast to all the other substantial Articles of ICCPR and rights guaranteed therein, Article 25 is explicitly limited to **citizens**.¹⁵ In this context, clear and just **criteria and procedure to obtain citizenship** in domestic legislation is required to properly implement this Article. The Committee repeatedly stresses that any restrictions or differences in the ability of citizens, e.g. between those who obtained citizenship **by birth** and those **by naturalisation**, to exercise these rights must have justifiable objectives and clear reasonable criteria. Relevant policies and practices must not discriminate against holders of a particular religion or belief in the exercise of these rights.

To address inequalities in the protection of the relevant electoral rights, Article 25 is often raised in combination with other Articles such as 2, 3, 26 and 27.

Topics addressed under this Article by the HR Committee through its review process include: participation of women in public life; representation of minorities, indigenous peoples, persons with disabilities in public life; electoral rights of convicted persons; guarantees for free and fair elections; use of minority languages in the government and administration.

Article 27: rights of “individuals” belonging to minorities

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.

¹⁵ For more detailed explanation of the Article 25, please also refer to the General Comment No. 25 of the HR Committee (CCPR/C/21/Rev.1/Add.7): <http://ccprcentre.org/ccpr-general-comments>

Article 27 deals with the rights of **individuals belonging to minorities**.¹⁶ As such it is distinct from the Article 1 that deals with the right of peoples, while both Articles could be used to protect rights of certain groups e.g. **indigenous peoples**. In this context, Article 27 can be invoked through the Individual Communication procedure under ICCPR 1st Optional Protocol. Article 27 protects specific rights of members of minority groups, whereby it is often linked with Articles 2, 25 and 26 to address different issues related to discrimination against minorities and indigenous peoples.

The identification, whether a person belongs to minority groups as protected under Article 27, does not depend on the recognition by the State concerned or permanence of their existence. It means that members of minority groups do not have to be nationals, citizens or permanent residents of the State concerned, but they can be e.g. **migrant workers** or **temporary visitors**.

Moreover, State Parties are obliged to protect rights guaranteed under Article 27 not only **against the acts of State Party** itself, but also against the **acts of other persons** within the State Party.

The HR Committee notes that the **cultural rights** protected by Article 27 can take many forms including particular **way of living**, use of **land resources**, traditional way of fishing and hunting, especially in the case of **indigenous peoples**. Enjoyment of these rights may require **positive legal measures** for protection and measures to ensure **participation** of members of the minority groups and indigenous peoples in the decision-making processes that affect them.

However, the Committee also emphasises that none of the rights protected under Article 27 may be used in a manner that is inconsistent with other provisions of the Covenant. For example, Article 27 does not justify continuation of traditional practices of minority of indigenous groups, which are harmful or discriminatory against women.

¹⁶ For more detailed explanation of the Article 27, please also refer to the General Comment No. 23 of the HR Committee (CCPR/C/21/Rev.1/Ad.5): <http://ccprcentre.org/ccpr-general-comments>

About CCPR-Centre

The Centre for Civil and Political Rights (CCPR-Centre) is an international human rights NGO, with its headquarters in Geneva, Switzerland.

It has a regional office and coordinator for West Africa in Lomé, Togo and regional coordinator for Asia Pacific in Chiang Mai, Thailand.

CCPR-Centre envisions the full and universal realisation of the rights proclaimed in the International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols.

CCPR-Centre aims to fulfil that vision by facilitating the ratification and application of the ICCPR as well as promoting the implementation of the recommendations of the UN Human Rights Committee (the monitoring body of ICCPR), through constructive engagement and cooperation with stakeholders including State authorities, national and local NGOs and the Committee.

For more information, please visit our website: www.ccprcentre.org

International Covenant on Civil and Political Rights (ICCPR)

Guide for Ratification and Implementation



British Embassy
Rangoon